EXECUTION COPY

# SHAREHOLDERS AGREEMENT

among

BALFOUR BEATTY INFRASTRUCTURE INVESTMENTS LIMITED
as Shareholder

and

BALFOUR BEATTY FIRE AND RESCUE NW HOLDINGS LIMITED

and

BALFOUR BEATTY FIRE AND RESCUE NW LIMITED

and

BALFOUR BEATTY FIRE AND RESCUE NW INTERMEDIATE LIMITED

NORTH WEST FIRE AND RESCUE PFI PROJECT

23 FEBRUARY 2011

Ashfords

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**THIS SHAREHOLDERS AGREEMENT** is made on 23 FEBRUARY 2011 between:

(1) **BALFOUR BEATTY INFRASTRUCTURE INVESTMENTS LIMITED** registered number 00457719 whose registered office is at 4th Floor, 130 Wilton Road, London SW1V 1LQ (**BBIIL**);

(2) **BALFOUR BEATTY FIRE AND RESCUE NW HOLDINGS LIMITED** registered number 7404085 whose registered office is at 350 Euston Road, Regent's Place, London NW1 3AX (the **Holding Company**);

(3) **BALFOUR BEATTY FIRE AND RESCUE NW LIMITED** registered number 7403391 whose registered office is at 350 Euston Road, Regent's Place, London NW1 3AX (the **Company**); and

(4) **BALFOUR BEATTY FIRE AND RESCUE NW INTERMEDIATE LIMITED** registered number 7404079 whose registered office is at 350 Euston Road, Regent's Place, London NW1 3AX (the **Intermediate Company**).

**Background**:

(A) The Holding Company is a private limited liability company incorporated under the laws of England and Wales. Further details relating to the Holding Company immediately subsequent to completion of matters referred to in Clause 3.1 are set out in Part 1 of Schedule 1.

(B) The Company is a private limited liability company incorporated under the laws of England and Wales. Further details relating to the Company immediately subsequent to completion of matters referred to in Clause 3.1 are set out in Part 2 of Schedule 1.

(C) The Intermediate Company is a private limited liability company incorporated under the laws of England and Wales. Further details relating to the Intermediate Company immediately subsequent to completion of matters referred to in Clause 3.1 are set out in Part 3 of Schedule 1.

(D) The Company has entered into or is about to enter into:

(i) the Project Agreement with the Authorities (as defined below);

(ii) the Loan Facilities Agreement (as defined below) with the Original Lenders and other parties referred to therein; and

(iii) the other Project Documents (as defined below) to which it is a party and other transaction documents related to the Project.

(E) BBIIL has agreed to enter into this Agreement to govern its management of the Obligors (as defined below) and, in the event that another party becomes a Shareholder in the Holding Company, the joint ownership of the Holding Company. The Holding Company will own all the issued share capital of the Company and the Intermediate Company. The Company will engage in the Business (as defined below). BBIIL has entered into the Noteholder Subscription Agreement (as defined below) for the purpose of inter alia providing to the Facility Agent and the Security Trustee (both as defined in the Loan Facilities Agreement) a commitment to subscribe for shares in the Holding Company and Intermediate Loan Notes in the Intermediate Company and has agreed that its rights as a shareholder of the Holding Company and the Business shall be conducted in accordance with the provisions of this Agreement.

(F) The Company will issue Borrower Loan Notes to the Intermediate Company which in turn will issue Intermediate Loan Notes to BBIIL.

(G) In addition to the provisions of this Agreement, the management and operation of the Obligors are subject to certain restrictions and the requirements contained in the Loan Facilities Agreement, the Security Trust and Intercreditor Deed and the Noteholder Subscription Agreement (all as defined below).

(H) This Agreement is intended to take effect as a deed.

**IT IS AGREED** as follows:

## 1 DEFINITIONS

1.1 The following provisions shall have effect for the interpretation of this Agreement including the Recitals and Schedules.

1.2 The following words and expressions shall, unless the context otherwise requires, have the following meanings:

**Accounts Mandate Agreement** has the meaning given thereto in the Loan Facilities Agreement;

**'A' Director** means a director holding office pursuant to a notice given by the holder of the issued HC 'A' Shares under Clause 6.1;

**'A' Shareholder** means the owner for the time being of HC 'A' Shares being, at the date hereof, BBIIL, but in the event that any consent, approval, agreement, determination, decision, opinion or action is required of or to be taken by the 'A' Shareholder in terms of this Agreement such term shall be construed as a reference to the consent, approval, agreement, determination, decision, opinion or action (as the case may be) of the person or persons owning a majority of the HC 'A' Shares for the time being;

**Affiliate** means, in relation to any person which is a body corporate, a subsidiary or a holding company of such person, or any subsidiary of such holding company (applying for this purpose the definitions of "subsidiary" and "holding company" set out in Section 1159 of the Companies Act 2006 and a company shall be treated for the purposes only of the membership requirement contained in Sections 1159(1)(b) and (c) of the Companies Act 2006, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee) and for the avoidance of doubt, unless otherwise specified, the definitions of "subsidiary" and "holding company" shall not have domestic limitation but shall apply to international subsidiaries and holding companies;

**Agreed Form** has the meaning given to that term in Clause 1.9;

**Appointing Shareholder** has the meaning given to that term in Clause 4.3a);

**Auditors** means the auditors for the time being of an Obligor (as the case may be);

**Authorities** has the meaning given in the Project Agreement and, as at the date hereof, are Cumbria County Council, Lancashire Combined Fire and Rescue Authority and Merseyside Fire and Rescue Authority;

**'B' Director** means a director holding office pursuant to a notice given by the holder of the issued HC 'B' Shares under Clause 6.2;

**'B' Shareholder(s)** means the owner(s) for the time being of HC 'B' Shares being, at the date hereof, BBIIL, but in the event that any consent, approval, agreement, determination, decision, opinion or action is required of or to be taken by the 'B' Shareholder in terms of this Agreement such term shall be construed as a reference to the consent, approval, agreement, determination, decision, opinion or action (as the case may be) of the person or persons owning a majority of the HC 'B' Shares for the time being;

**Beneficiary** has the meaning given to that term in Clause 16.6;

**Board** means the board of Directors of the Holding Company, the Intermediate Company or the Company from time to time or all of them as the context requires and shall include a committee thereof (subject to the express provisions of this Agreement);

**Borrower Loan Note Instrument** means the instrument creating £ 5,284,735 secured loan notes 2038 executed by the Company on or about the date of its execution of this Agreement;

**Borrower Loan Notes** means the loan notes constituted by the Borrower Loan Note Instrument to be issued by the Company pursuant to this Agreement and the Noteholder Subscription Agreement;

**Budget** has the meaning given to that term in Clause 10.1;

**Building Contract** has the meaning given to it in the Loan Facilities Agreement;

**Business** means the works and services referred to in the definition of Project and any other works and services ancillary to the Project;

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open in London for the transaction of normal banking business;

**Chairman** means the Chairman of the Board appointed pursuant to Clause 7.1;

**Commission** has the meaning given to that term in Clause 15.1;

**Company Articles** means the articles of association of the Company as the same may be amended from time to time;

**Confidential Information** means information concerning the business and affairs of the Obligors and the other Shareholder that a Shareholder obtained or received as a result of the discussions leading up to or the entering into or implementation of this Agreement or during the term of this Agreement;

**Construction Period** has the meaning given to that term in the Loan Facilities Agreement;

**Defaulting Shareholder** has the meaning given to that term in Clause 16.2;

**Directors** means the 'A' Directors and the 'B' Directors;

**Equity Guarantee** has the meaning given to that term in the Noteholder Subscription Agreement;

**Equity Guarantor** has the meaning given to that term in the Noteholder Subscription Agreement;

**Event of Shareholder Default** has the meaning given to that term in Clause 16.1;

**Facility Agent** has the meaning given thereto in the Loan Facilities Agreement;

**Fair Value** shall be the sum equal to the open market value of the Shares and Intermediate Loan Notes specified in the Transfer Notice at the date of the Transfer Notice calculated on the following assumptions and bases:-

(i) valuing those Shares and Intermediate Loan Notes as on an arm's length sale between a willing vendor and a willing purchaser;

(ii) if the Obligors are then carrying on their businesses as going concerns, on the assumption that they will continue to do so;

(iii) that those Shares and Intermediate Loan Notes are capable of being transferred without restriction (save for those restrictions applying pursuant to the Project Agreement, the Financing Documents and this Agreement);

(iv) the open market value of those Shares and Intermediate Loan Notes shall be that proportion of the open market value of all the Shares of that class and Intermediate Loan Notes as the number of the relevant Shares and face value of the relevant Intermediate Loan Notes bears to all the Shares of that class and the face value of all Intermediate Loan Notes and without any premium or discount being attributable to the class of the Shares and Intermediate Loan Notes (except as permitted under Clause 12) or the percentage of the issued share capital and/or indebtedness which they represent;

**Financial Close** has the meaning ascribed thereto in the Loan Facilities Agreement;

**Financing Documents** has the meaning given to it in the Loan Facilities Agreement;

**FM Agreement** has the meaning given to it in the Loan Facilities Agreement;

**General Manager** means the general manager of the Company;

**Group Relief** has the meaning given to it in Section 402(1) of TA;

**HC Articles** means the articles of association of the Holding Company as the same may be amended from time to time;

**HC 'A' Shares** means the ordinary shares of £1 each designated 'A' shares in the capital of the Holding Company having the rights and privileges specified in the HC Articles;

**HC 'B' Shares** means the ordinary shares of £1 each designated 'B' shares in the capital of the Holding Company having the rights and privileges specified in the HC Articles;

**Intellectual Property** means all patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered design rights,

confidential information, Know-How and other intellectual property rights of whatsoever nature;

**Intermediate Company Articles** means the articles of association of the Intermediate Company as the same may be amended from time to time;

**Intermediate Loan Note Instrument** means the instrument creating £ 5,284,735 secured loan notes 2038 executed by the Intermediate Company on or about the date of its execution of this Agreement;

**Intermediate Loan Notes** means the loan notes constituted by the Intermediate Loan Note Instrument to be issued by the Intermediate Company pursuant to this Agreement and the Noteholder Subscription Agreement;

**Know-How** means all data, formulae, techniques, invented processes or products, specifications, drawings, algorithms, prototypes, research materials and other information whether commercial, technical or otherwise and whether patentable or not;

**Lenders** has the meaning set out in the Loan Facilities Agreement;

**Loan Facilities Agreement** means the Loan Facilities Agreement executed by the Company on or about the date of its execution of this Agreement between (1) the Company, (2) the Holding Company, (3) the Intermediate Company, (4) the Arranging Banks (as defined therein) (5) the Original Lenders (6) the Facility Agent and (7) the Security Trustee (as defined therein), under the terms of which finance is provided to the Company to provide credit support for the Project;

**Lock-In Period** has the meaning given to that term in the Project Agreement;

**Non Performing Purchaser** has the meaning given to that term in Clause 12.5;

**Noteholder** means each person to whom Intermediate Loan Notes have been issued;

**Noteholder Subscription Agreement** means the noteholder subscription agreement executed by the Company on or about the date of its execution of this Agreement between (1) BBIIL, (2) the Company, (3) the Intermediate Company and (4) the Security Trustee (as defined therein);

**Obligors** means the Company, the Intermediate Company and the Holding Company and '**Obligor**' shall mean any one of them;

**Original Lenders** has the meaning set out in the Loan Facilities Agreement;

**Original Shareholder** means BBIIL;

**Parent Company** has the meaning given to the term "parent undertaking" by Section 1162 of the Companies Act 2006 and for the purposes only of the membership requirement contained in Section 1162(2) of the Companies Act 2006, a company shall still be treated as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee; and

the use of the term 'holding company' in this Agreement (save in the definition of Affiliate) shall have the same meaning;

**Parties** means the parties to this Agreement and '**Party**' shall mean any one of them;

**Paying Shareholder** has the meaning given to that term in Clause 11.4;

**PFI Project** means a project under the private finance initiative or such other similar initiatives or similar infrastructure or investment project whether in the UK or elsewhere;

**Prescribed Period** has the meaning given to that term in Clause 12.4;

**Prescribed Price** means the price offered pursuant to Clause 12.3a)(i) or the price or value under Clause 12.3a)(ii), the price agreed pursuant to Clause 12.3b) or the price determined pursuant to Clause 12.3c) (as the case may be);

**Proceeds Account** means the deposit account with Barclays Bank plc (account number 83246264, sort code 20-72-17) opened by the Company pursuant to clause 13.1 of the Loan Facilities Agreement;

**Project** means the design, construction and maintenance of sixteen fire stations in Cumbria, Lancashire and Merseyside as described in the Project Agreement;

**Project Agreement** means the agreement entered into or to be entered into by (1) the Company and (2) the Authorities executed by the Company on or about the date of this Agreement concerning the Project;

**Project Documents** has the meaning given to that term in the Project Agreement;

**Proposing Transferor** has the meaning given to that term in Clause 12.2a);

**Purchase Notice** has the meaning given to that term in Clause 12.6;

**Purchaser** has the meaning given to that term in Clause 12.5a);

**Realisation of Value** means a realisation of economic value for the transferor, or the Affiliate or fund managed by the Affiliate which acquired the Shares and/or Intermediate Loan Notes as a result of, or following, the transfer, as the case may be, of the Shares and/or Intermediate Loan Notes where such realisation of monetary value is not connected with a re-organisation or tax restructuring of the Transferor or its group and without prejudice to the generality of the foregoing the following events shall be a Realisation of Value:

a) where the Affiliate or the fund managed by the Affiliate which acquired the Shares and/or Intermediate Loan Notes is admitted to the official list of the U.K. Listing Authority and admitted to trading on the main market or alternative investment market of the London Stock Exchange plc;

b) a sale of the Affiliate or the fund managed by the Affiliate which acquired the Shares and Intermediate Loan Notes to a party other than an Affiliate, a fund managed by an Affiliate, the original Transferor or an Affiliate of the original Transferor;

**Recognised Stock Exchange** has the meaning given to that term by Section 841 of TA;

**Regulatory Action** means any order of a court of competent jurisdiction or any order or determination made by a competent governmental or regulatory authority or agency or an enactment of a legislative body:

(a) which would materially prohibit or restrict the carrying on of the Business as contemplated by this Agreement; or

(b) in consequence of which any Shareholder would incur fines or a liability in damages were this Agreement to be performed in accordance with its terms;

**Related Contract** means any contract or arrangement entered into by any Shareholder or its Affiliates and the Holding Company, the Intermediate Company or the Company and shall include any parent company guarantee or letter of credit obtained by a Shareholder to fulfil any Shareholder Funding Commitment even though the parent company guarantee or letter of credit may be in favour of the Security Trustee (as defined in the Noteholder Subscription Agreement) and may not have the Holding Company, the Intermediate Company or the Company as a party and shall also include, at the date of this Agreement, the Building Contract and the FM Agreement;

**Reserved Matters** means the matters which require the unanimous consent of the 'A' Shareholders and the 'B' Shareholders referred to in Clause 13 and detailed in Schedule 3;

**Sale Notice** has the meaning given to that term in Clause 12.6;

**Second Period** has the meaning given to that term in Clause 12.6;

**Security Trust and Intercreditor Deed** has the meaning given to it in the Loan Facilities Agreement;

**Shareholder Funding Commitments** means £5,284,735 to be contributed by the Shareholders to the Intermediate Company as subordinated debt in the form of Intermediate Loan Notes;

**Shareholder Funding Commitment Percentage** means, in relation to a Shareholder, the percentage of Shareholder Funding Commitments that it is required from time to time to pay pursuant to this Agreement and the Noteholder Subscription Agreement and being, at the date of this Agreement:-

| | |
|---|---|
| 'A' Shareholder | 50% |
| 'B' Shareholder | 50% |

**Shareholders** means the 'A' Shareholder and the 'B' Shareholder and any other person to whom the Holding Company shall issue shares or to whom shares in the Holding Company have been properly transferred in accordance with the provisions of this Agreement, the HC Articles and the Noteholder Subscription Agreement (but references to Shareholder in Clauses 9 and 16 shall be deemed to include the holders of Intermediate Loan Notes), and Shareholder means any one of them,

provided that a person shall only be a Shareholder for so long as it is an owner of Shares;

**Shares** means the shares in the Holding Company being, at the date hereof, the HC 'A' Shares and the HC 'B' Shares;

**TA** means the Income and Corporation Taxes Act 1988;

**Tax Losses** means trading losses and all other amounts eligible for relief by way of Group Relief and consortium relief in accordance with the provisions of Chapter IV of Part X of TA;

**Transfer Notice** has the meaning given to that term in Clause 12.2a); and

**Wholly-Owned Subsidiary** in relation to an undertaking (hereinafter referred to as a **Holding Undertaking**) means any other company incorporated and registered in England and Wales or Scotland or Northern Ireland in which the Holding Undertaking for the time being directly or through another Wholly-Owned Subsidiary holds or controls: (i) all of the voting rights exercisable at general meetings of the members of that undertaking; and (ii) the right to appoint or remove all of the directors of that undertaking.

1.3 References to any statute or statutory provision or order or regulation made thereunder shall include that statute, provision, order or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date hereof.

1.4 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa, words in the masculine shall include the feminine and vice versa and words denoting persons shall include bodies corporate, unincorporated associations, partnerships and individuals.

1.5 References to any documents or agreement include a reference to that document or agreement as varied, amended, supplemented, substituted, novated or assigned from time to time.

1.6 Headings to Clauses are for information only and shall not form part of the operative provisions of this Agreement or the Schedules and shall be ignored in construing the same.

1.7 References to Recitals, Clauses or Schedules are, unless the context otherwise requires, to recitals to, clauses of or schedules to this Agreement.

1.8 Save to the extent otherwise defined in this Agreement or if the context otherwise requires, words and expressions defined in the Project Agreement shall have the same meaning in this Agreement.

1.9 Reference to a document being in the "Agreed Form" means in the form of a draft of such document signed for the purpose of identification by or on behalf of the Shareholders on or about the date of this Agreement.

## 2 OBJECTS OF THE OBLIGORS AND ENFORCEABILITY OF CLAUSES

2.1 The primary object of:

a) the Holding Company shall be to hold shares in the Company and the Intermediate Company;

b) the Company shall be to carry out the Project and assist in its financing by issuing Borrower Loan Notes to the Intermediate Company and borrowing monies from the lenders under the Loan Facilities Agreement; and

c) the Intermediate Company shall be to assist the financing of the Project by issuing Intermediate Loan Notes to the Shareholders.

2.2 Notwithstanding any provision in this Agreement to the contrary, in the event that the 'A' Shareholder and the 'B' Shareholder are the same person at any time during the continuance of this Agreement:

a) the provisions of Clauses 3.6, 6.4, 7.1B, 7.3B, 7.4(a), 9.3, 11.4, 11.5, 11.6, 12, 14, 15, 16, 17.2, 18.3B, and 18.4 (and the definitions of any words and expressions which are defined in Clause 1.2 and arise only in those Clauses) will be deemed to be excluded from this Agreement; and

b) for the avoidance of doubt the provisions of Clauses 7.1A, 7.3A, 7.4(b) and 18.3A will be deemed to be incorporated into this Agreement and will be fully enforceable.

2.3 Notwithstanding any provision in this Agreement to the contrary, in the event that the 'A' Shareholder and the 'B' Shareholder are not the same person at any time during the continuance of this Agreement:

a) the provisions of Clauses 7.1A, 7.3A, 7.4(b) and 18.3A will be deemed to be excluded from this Agreement; and

b) for the avoidance of doubt the provisions of Clauses 3.6, 6.4, 7.1B, 7.3B, 7.4(a), 9.3, 11.4, 11.5, 11.6, 12, 14, 15, 16, 17.2, 18.3B and 18.4 will be fully enforceable.

## 3 EFFECTIVE DATE AND SHAREHOLDER CONTRIBUTIONS

3.1 On or about the date of this Agreement, the Shareholder shall procure (or shall have procured, as applicable) the convening of meetings of the Board of each of the Obligors, and meetings of the members of the Obligors (or in each case the effecting of written resolutions), and at such meetings (or by effecting such written resolutions) the Parties shall procure (or shall have procured, as applicable) the implementation of the following business and the passing of the resolutions necessary (to the extent that the same shall not already have taken place or been implemented):

a) to sanction the reorganisation of the share capital of the Obligors by the passing of resolutions of the Obligors;

b) to approve the adoption by the Holding Company of the HC Articles, by the Intermediate Company of the Intermediate Company Articles and by the Company of the Company Articles;

c) to approve and give effect to the allotment and/or transfer of:

i) 550 HC 'A' Shares to BBIIL and 550 HC 'B' Shares to BBIIL;

ii) 1000 ordinary shares of £1 each in the share capital of the Company to the Holding Company;

iii) 100 ordinary shares of £1 each in the share capital of the Intermediate Company to the Holding Company,

all shares being fully paid for cash at £1 per share;

d) to constitute, in the case of the Company, the Borrower Loan Notes;

e) to constitute, in the case of the Intermediate Company, the Intermediate Loan Notes;

f) to appoint B R Walker and Ion Appuhamy as 'A' Directors to the Board of each of the Obligors;

g) to appoint A C Beauchamp as a 'B' Director to the Board of each of the Obligors;

h) to resolve that the accounting reference date of the Obligors be 31st December and that the first accounts be prepared in respect of the period from incorporation until 31st December 2011;

i) to appoint Deloitte as the initial auditors of each Obligor; and

j) that the initial account bank for each bank account of each Obligor shall be Barclays Bank plc pursuant to the Accounts Mandate Agreement.

3.2 The Shareholders agree and shall procure that as soon as reasonably practicable after the execution of this Agreement the Obligors shall execute the Project Documents and Financing Documents to which it is party.

3.3 Each Shareholder hereby undertakes to each other Party that it shall subscribe for the Intermediate Loan Notes to discharge in full its Shareholder Funding Commitment Percentage of outstanding Shareholder Funding Commitments by no later than 2 Business Days before the Equity Facility Final Repayment Date (as defined in the Loan Facilities Agreement).

3.4 Each Shareholder shall procure that the Intermediate Company shall subscribe for Borrower Loan Notes immediately following the subscription for Intermediate Loan Notes in accordance with Clause 3.3.

3.5 Within 5 Business Days of receipt of the amounts due from the Shareholders in terms of Clause 3.3 the Shareholders shall procure that the Intermediate Company shall issue to each Shareholder Intermediate Loan Notes having an aggregate par value equal to the monies received by the Intermediate Company from that Shareholder and that the Company shall issue to the Intermediate Company Borrower Loan Notes having an aggregate par value equal to the monies received by the Company from the Intermediate Company.

3.6 Any Shareholder may at its option pursuant to Clause 11.4 subscribe for all or part of the Intermediate Loan Notes due to be subscribed for by another Shareholder but which is not subscribed for by that Shareholder (or its Equity Guarantor after being

called upon to do so by the Security Trustee in terms of the Equity Guarantee) on the due date under this Agreement.

3.7 Notwithstanding Clause 3.3, each Shareholder further undertakes to the other parties to this Agreement that it will upon receipt of a notice from the Security Trustee that an Accelerated Injection Event (as defined in the Noteholder Subscription Agreement) has occurred subscribe, on or prior to the date notified by the Security Trustee therein, for Intermediate Loan Notes in an aggregate amount equal to its Shareholder Funding Commitment Percentage of the outstanding Shareholder Funding Commitments without increasing its aggregate liability for Shareholder Funding Commitments under Clause 3.3.

## 4 BUSINESS OF OBLIGORS

4.1 The Shareholders agree that the only business of the Holding Company shall be to act as the holding company of the Company, that the only business of the Company shall be the Business and to assist in the financing of the Project by issuing the Borrower Loan Notes and borrowing monies from the Lenders under the Loan Facilities Agreement and that the only business of the Intermediate Company shall be to issue the Intermediate Loan Notes. In the event that the 'A' Shareholder and the 'B' Shareholder are not the same person the Shareholders agree to co-operate with each other in the running and operation of the Obligors to achieve these objectives and to act reasonably and in good faith.

4.2 Notwithstanding Clause 5.2, each Shareholder covenants with each Obligor that it shall exercise its respective rights hereunder and as a shareholder in such manner as can reasonably be expected to prevent, and shall not exercise (or fail to exercise) any such rights in any manner which could reasonably be expected to result in, (a) a breach by any Obligor of any of its obligations or the restrictions imposed on it under this Agreement, the Financing Documents, the Project Agreement, the Building Contract, the FM Agreement, the other Project Documents, the HC Articles, the Intermediate Company Articles or the Company Articles (whether or not such obligations or restrictions will be enforceable against the Obligors) or (b) the affairs of the Obligors being carried on in a manner inconsistent with the terms of this Agreement and/or the Noteholder Subscription Agreement. Notwithstanding Clause 10.7, for the avoidance of doubt, the provisions of this Clause 4.2 shall not constitute an obligation upon any Shareholder to provide funding to the Obligors beyond what is committed under this Agreement and the Noteholder Subscription Agreement.

4.3

a) If a Director shall exercise voting rights in a manner which, had such Director been a Shareholder, would have constituted a breach of Clause 4.2 then, within five Business Days of written notification by any other Director to the Shareholder who appointed the first mentioned Director (the **Appointing Shareholder**), the Appointing Shareholder shall take all reasonable steps to reverse or otherwise rectify any consequences of any such actions taken by such Director or shall remove such Director from office in accordance with the HC Articles, the Intermediate Company Articles and the Company Articles (as the case may be) and this Agreement.

b) In the event that the Appointing Shareholder removes such Director from office it shall, co-incident with such removal, appoint a replacement Director.

c) The Appointing Shareholder shall indemnify the Obligors and the other Shareholders in respect of any claims brought against them or any of them by any Director so removed by reason of or in connection with his removal.

4.4 Subject to Clauses 4.1 to 4.3 (inclusive), no Shareholder or an Affiliate shall be prevented or restricted from tendering for, entering into or performing any contract for the supply of goods or services in the ordinary course of that Shareholder's or its Affiliate's business provided that if a Shareholder or one of its Affiliates wishes to enter into a contract which will create a conflict of interest not covered by Clause 18 between it and an Obligor and the 'A' Shareholder and the 'B' Shareholder are not the same person, such Shareholder in so far as it is aware of such proposal shall promptly consult with the other Shareholders through the Board before such action is taken.

4.5 Subject to Clauses 4.1 to 4.3 (inclusive), nothing in this Agreement shall prevent a Shareholder or any of its Affiliates from carrying out its statutory obligations or seeking to protect its ability to perform such obligations by, inter alia, making representations in relation to or petitioning against any Parliamentary Bill or Order or subordinate legislation that it considers appropriate.

## 5 APPLICATION OF THIS AGREEMENT TO THE OBLIGORS

5.1 The entitlement of the Shareholders to appoint Directors of the Obligors, the requirement of the Obligors to obtain consents or approvals from the Directors or the Shareholders under the terms of this Agreement and any other obligations or arrangements assumed by the Obligors or by the Shareholders in relation to the Obligors under this Agreement by which the Shareholders are required to or entitled to exercise any control over the management of the Obligors or any subsidiary and/or the conduct by it of their respective businesses shall not have any effect in relation to the Obligors during any period of enforcement of any of the Security Documents (as defined in the Loan Facilities Agreement) pursuant to the Financing Documents, to the extent that such enforcement prevents or limits the exercise of such rights or the performance of such obligations. Accordingly, none of the parties to this Agreement shall be in breach of this Agreement or under any liability to any other party as a consequence of its failure to exercise any such rights, or perform any such obligations, under this Agreement to the extent that enforcement of any of the Security Documents as aforesaid prevents or limits their exercise or performance.

5.2 Subject to Clause 4.2, neither the Board nor any Obligor shall be liable for any act or omission which amounts to a breach of the terms of this Agreement where the Obligor's failure arises solely by reason of the Board resolving that in order to act in the best interest of the Obligor and its respective members as a whole, it was necessary (having taken appropriate legal advice) for the Obligor to take the action or omit to take the action which amounts to a breach of the terms and conditions of this Agreement.

5.3 The parties to this Agreement acknowledge and agree that Clauses 18.7 (Controls on Payments to holders of Loan Notes) and 18.8 (Controls on Dealings with Holding Company, Intermediate Company and Shareholders) of the Loan Facilities Agreement contain certain restrictions on the Obligors' actions in relation to this Agreement, the Shares, the Company's shares, the Intermediate Company's shares, the Intermediate Loan Notes and the Borrower Loan Notes and they will not have any right to take any action (such as, without limitation, an action for damages or for an

injunction) against any other party to this Agreement in respect of such restriction or compliance therewith by the Obligors.

## 6 BOARD

6.1 The 'A' Shareholder shall have the right exercisable by notice in writing signed by a duly authorised signatory of the registered holder to require the appointment of not more than two Directors (each of whom shall be an 'A' Director) of each of the Obligors from time to time and, subject to Clause 6.6, by like notice to remove or to require the removal of any 'A' Director so appointed and to appoint or to require the appointment of another person to act in place of such 'A' Director. The initial 'A' Directors are the persons referred to in Clause 3.1f).

6.2 The 'B' Shareholder shall have the right exercisable by notice in writing signed by a duly authorised signatory of the registered holder to require the appointment of not more than two Directors (each of whom shall be a 'B' Director) of each of the Obligors from time to time and, subject to Clause 6.6, by like notice to remove or to require the removal of any 'B' Director so appointed and to appoint or to require the appointment of another person to act in place of such 'B' Director. The initial 'B' Director is the person referred to in Clause 3.1g).

6.3 Notice of any appointment or removal required under Clause 6.1 or 6.2 shall be given to the Obligors. Each Director shall be entitled to appoint an alternate or alternates in accordance with the HC Articles, the Intermediate Company Articles and the Company Articles (as the case may be).

6.4 Without prejudice to their rights hereunder, any Shareholder proposing to require the appointment or removal of a Director under this Clause shall consult with the other Shareholders before giving notice under Clause 6.1 or 6.2 (as the case may be).

6.5 The Obligors and the Shareholders shall respectively procure that any notice of appointment or removal of a Director to or from the Obligors pursuant to this Clause 6 shall be approved, registered and filed as appropriate. The Shareholder giving notice of the removal of a Director under Clause 6.1 or 6.2 shall indemnify the Obligors and the other Shareholders (if any) in respect of any claims brought against them or any of them by any Director so removed by reason of or in connection with his removal.

6.6 The Shareholders shall procure that the Directors of each of the Obligors shall at all times be the same persons.

## 7 MANAGEMENT

7.1A The Chairman of the Board of the Obligors shall be appointed by the Shareholders from time to time and may be removed by the Shareholders at any time. The first Chairman of the Board of each of the Obligors shall be B. R. Walker.

7.1B In the event that the Original Shareholder transfers any Shares to any person (the "New Shareholder"), the Original Shareholder will be entitled to appoint the Chairman of the Board of each of the Obligors for the period of 12 months from the date of such transfer. Thereafter the Original Shareholder and the New Shareholder shall have the right to appoint the Chairman in turn from amongst the Original Shareholder and the New Shareholder respectively for a period of 12 months commencing with the New Shareholder followed by the Original Shareholder, provided that if an Event of Shareholder Default occurs and the Chairman was appointed by the Defaulting

Shareholder, whichever of the Original Shareholder and the New Shareholder is not the Defaulting Shareholder shall be entitled to appoint the Chairman. The Chairman of each of the Obligors shall be the same person. The Chairman of each of the Obligors shall not have a casting vote at any Board meeting or at any general meeting of the applicable Obligor.

7.2 If the Chairman is not present at any Board meeting then the other Director appointed by the same Shareholder as appointed the Chairman, if present, shall act as Chairman for the purpose of the meeting.

7.3A The quorum for the meetings of the Board shall be one Director (which term shall include any alternate director duly appointed by a Director) being either an 'A' Director or a 'B' Director, present at the commencement and throughout the whole of the meeting.

7.3B In the event that the Original Shareholder transfers any Shares to any person, the quorum for meetings of the Board shall be two Directors (subject as hereinafter provided), being one 'A' Director and one 'B' Director (which terms shall include any alternate director duly appointed by an 'A' Director or a 'B' Director), present at the commencement and throughout the whole of the meeting provided that where there are Directors suspended pursuant to Clause 16.2b) or decisions are required pursuant to Clause 18 in respect of which Directors appointed by Shareholders holding one class of Shares are not permitted to vote, the quorum for meetings of the Board shall be any two Directors appointed by Shareholders holding the other class of Shares (who shall either be 'A' Directors or 'B' Directors, as the case may be). If a scheduled Board meeting of which the Directors have been duly notified pursuant to Clause 7.8 is inquorate then the Board meeting shall be reconvened five Business Days later at the same time and place and if at that subsequent Board meeting the meeting is still inquorate due to non attendance by some Directors, then, if the Directors present consider that there are urgent matters requiring resolution, the required quorum shall be any two Directors (who may both be 'A' Directors or 'B' Directors).

7.4 All decisions of the Board shall be by unanimous vote of the Directors present at a duly convened and quorate meeting, PROVIDED that where there are Directors suspended pursuant to Clause 16.2b) or decisions are required pursuant to Clause 18 in which a Director is not permitted to vote, and (a) where the 'A' Shareholder and the 'B' Shareholder are not the same person decisions shall be reached by the unanimous vote of any two Directors of the same class present at a duly convened and quorate meeting or (b) where the 'A' Shareholder and the 'B' Shareholder are the same person decisions shall be reached on the vote of the remaining Director.

7.5 In the event that unanimity in terms of Clause 7.4 is not achieved and:-

a) in the reasonable opinion of any Director there are issues which require immediate resolution or if written professional advice has been given to the Shareholders at their request that an Obligor should be wound up, such issue or matter shall forthwith be referred to the Shareholders for decision; or

b) Clause 7.5a) does not apply, a further Board meeting shall be convened five Business Days after the Board meeting at which unanimity was not achieved (or at such other time as the Directors may agree, not exceeding seven Business Days after such Board meeting) and if, at such further Board

meeting, unanimity is not achieved the matter shall forthwith be referred to the Shareholders for decision.

7.6 The Board of the Company will be responsible, inter alia, for the running of the Company (except for those matters expressly reserved to the Shareholders in this Agreement) including without limitation determining issues relating to appointment of staff (including the appointment of the General Manager and other senior managers), the taking of reports from and giving directions to the General Manager, the preparation (and approval) of budgets, and the preparation and approval of monthly management accounts and statutory accounts and the preparation and approval of the management manual (if any).

7.7 Notwithstanding any of the provisions of this Clause 7, any 'A' Director or 'B' Director may determine that a decision or resolution on any specified matter which shall have been proposed for consideration by the Board shall only be taken or passed with the express written agreement of the Shareholders. Any such determination may be made by the relevant Director either:

a) by delivering to the Secretary of the relevant Obligor (according to the Board of the company which is considering the matter) a notice in writing specifying the matter in respect of which the determination is being made (i) at any time before the time fixed for the meeting at which such matter is to be considered or (ii) at the meeting itself; or

b) orally during the course of the meeting.

Following such determination being made, the Board shall have no power to take any further action with regard to the matter which shall have been specified unless and until the Shareholders shall have given their written consent thereto.

7.8 Meetings of the Board shall be held at such times as the Board shall determine, provided that, unless otherwise agreed by the Shareholders, a meeting of the Board of each of the Obligors shall be held at least once every three months. Meetings of the Board shall be held in the United Kingdom, or where any Director is attending by telephone or any other similar method of communication and is located outside the United Kingdom, such conference call shall be initiated in the United Kingdom. The Shareholders shall each use their reasonable endeavours to ensure the attendance of the Directors appointed by them or their nominated alternates and that a quorum is present at each meeting of the Board. Not less than five Business Days' notice (or such other period of notice as may be agreed from time to time by an 'A' Director and a 'B' Director) of each meeting of the Board specifying the date, time and place of the meeting and, subject to Clause 7.9, the business to be transacted thereat shall be given to all Directors.

7.9 All relevant Board papers for Board meetings shall be sent to all Directors not less than three Business Days prior to the relevant Board meeting (save where any Board meeting is called on a short notice of less than three Business Days in accordance with the provisions of Clause 7.8). This is without prejudice to the ability of any Director at such meeting to raise a matter for which no prior notice has been given. Minutes shall be sent to the Directors as soon as practicable after the holding of the relevant meeting.

7.10 The Parties acknowledge that, in respect of the Directors (and their nominated alternates) nominated by each Shareholder, directors and officers liability insurance

shall be taken out and maintained by such Shareholder and that the Obligors shall have no responsibility to take out such insurance from the date of this Agreement or at any time in the future unless the Shareholders agree otherwise.

7.11 The Directors may delegate any of their powers or discretions to committees. Any committees so formed shall, in the exercise of the power so delegated to them, conform to any regulations which may from time to time be imposed by the Directors.

## 8 DIVIDEND POLICY

Subject to the terms of the Financing Documents (and, in particular, to clause 18.8a) of the Loan Facilities Agreement), the requirements of the Companies Act 2006 relating to the availability of distributable profits and in accordance with the working capital requirements of the Company set out in the Budget as well as bearing in mind its financial position, the Obligors shall unless the Shareholders otherwise agree distribute the maximum amount available for distribution to the Shareholders by way of dividend at intervals of approximately six months.

## 9 TAXATION

### 9.1 United Kingdom Residence

a) If a Shareholder or Holding Company is not or ceases to be United Kingdom resident for tax purposes, it shall be treated no differently for the purposes of the making of distributions by either the Holding Company, the Intermediate Company or the Company or otherwise, and, in particular, shall not be entitled to any additional sums to compensate for any withholding required to be made by the payer of any sums to it pursuant to this Agreement.

b) To the extent that any payment of interest to a Shareholder that is not entitled to receive payment of interest gross of withholding tax (a "**non-Exempted Shareholder**") under the Intermediate Loan Note Instrument has been made by the Intermediate Company without any deduction or withholding in respect of United Kingdom tax and a deduction or withholding should have been made because the non-Exempted Shareholder did not qualify for full exemption from United Kingdom tax on interest under either UK domestic law or the income tax treaty between the jurisdiction of the non-Exempted Shareholder and the United Kingdom, the non-Exempted Shareholder shall indemnify the Intermediate Company in respect of any liability to deduct or withhold an amount in respect of United Kingdom tax from that payment and to account for the same to HM Revenue & Customs (together with any interest and penalties thereon). The Intermediate Company shall be entitled to settle such tax interest and penalties by withholding cash from the next distribution due to the non-Exempted Shareholder.

c) Each of the Shareholders warrants on the date that it becomes a Noteholder that it is beneficially entitled to any interest payable to it in respect of Intermediate Loan Notes and is entitled to receive any such payments free of any deduction or withholding for or on account of United Kingdom tax, and shall promptly inform the Intermediate Company of any change in that status.

9.2 **Surrender of Tax Losses to the Company, the Intermediate Company or the Holding Company**

a) Subject to the terms of the Financing Documents and the requirements of the TA and any other law or regulation, any Shareholder which is in the same group as the Holding Company, the Company or the Intermediate Company for the purposes of s413(3) of the TA may make available for surrender and sale via group relief to the Company, the Intermediate Company or the Holding Company any Tax Losses in the current or following years if the Shareholders so agree, on terms to be agreed (including fair price, reference to an independent valuation of the Tax Losses and that any such transaction be upon an arm's length basis) at the relevant time. If such agreement is reached then the Shareholders will facilitate such surrender and sale by making all necessary elections and taking all necessary steps. The Shareholders further agree that the Holding Company, the Company or the Intermediate Company may make available for surrender and sale via group relief to any shareholder in the same group for the purposes of s413(3) of the TA any Tax Losses in the current or following years if the Shareholders so agree, on terms to be agreed (including fair price, reference to an independent valuation of the Tax Losses and that any such transaction be upon an arm's length basis) at the relevant time. If such agreement is reached then the Shareholders will facilitate such claim by making all necessary elections and taking all necessary steps. In the event that payments are made for the surrender of tax losses via group relief which is subsequently found not to be available or not required, the surrenderer shall repay the amount overpaid within fourteen Business Days of the issue of a written claim by the payer.

b) Subject to the terms of the Financing Documents and the requirements of the TA and any other law or regulation, each Shareholder which is a member of any consortium ("**Consortium Member**") which owns Holdco for the purpose of Section 413(6) of the TA agrees that the Obligors may make available for surrender and sale to each Consortium Member or any of the Consortium Member's associated companies, a proportionate share of their tax losses which may be available to the Consortium Member via consortium relief and which arises from the trading activities of the Obligors, for consideration payable on the later of nine months following the accounting period ending to which the losses relate and 14 Business Days after the receipt by the relevant parties of fully completed consortium relief documentation, at a fair price to be determined at the relevant time. The fair price agreed will be made known to, and agreed by, all Shareholders. Completed consortium relief documentation comprises signed claims by all Consortium Members and a signed CT600 for the relevant Obligor (as appropriate). An Obligor must inform each Consortium Member where HM Revenue & Customs have disputed any such tax losses. The Shareholders further agree that any Shareholder may make available for surrender and sale to the Obligors any Tax Losses in the current of or following tax years if the Shareholders so agree on terms to be agreed (including fair price, with reference to an independent valuation of the Tax Losses and that any such transaction be at an arm's length) at the relevant time. The fair price agreed will be made known to, and agreed by, all Shareholders. If such an agreement is reached then the Shareholders will facilitate such surrender and sale by making all necessary elections and taking all necessary steps. In the event that

payments are made for the surrender of tax losses via consortium relief which is subsequently found not to be available or not required, the surrenderer shall repay the amount overpaid within fourteen Business Days of the issue of a written claim by the payer.

9.3 **VAT Groups** In the event that the 'A' Shareholders and the 'B' Shareholders are not the same person, no application shall be made, save with the prior written consent of the Shareholders, to treat the Obligors as a member of the same group or same group registration for value added tax purposes as any other company other than a group or group registration the only members of which are the Obligors.

9.4 **Amendment to this Clause 9** If after the date of this Agreement there is any change in any legislation or statutory provision relevant in relation to any of Clauses 9.1 to 9.3 (inclusive) then the Shareholders and the Obligors will consult with each other in good faith as to the amendments, if any, which may be required to this Clause 9 to give effect to the intention of the Parties as set out in this Clause 9.

## 10 BUDGET, AUDITORS, ACCOUNTS AND SHAREHOLDER INFORMATION

10.1 During the continuance of this Agreement (unless otherwise agreed by the Shareholders) and without prejudice to any additional requirements applicable from time to time under any of the Financing Documents, for each financial year of the Project the Company shall cause to be prepared a budget for the carrying out of the Project (the **Budget**) which shall include the following:

a) an estimate of the working capital requirements of the Company incorporated in a cashflow statement (together with an indication of the amount, if any, which it is considered prudent to retain out of the Company's distributable profits to meet such working capital requirements);

b) a projected profit and loss account;

c) balance sheet forecasts;

d) an evaluation/analysis of the projected business; and

e) a summary of the business objectives.

10.2 The draft Budget shall be submitted to the Board of the Company for approval no later than 45 days before the beginning of the financial year in question and the Budget may be revised prior to the expiry of the relevant financial year of the Company or may be superseded or modified from time to time. If for any reason by the commencement of any financial year a Budget for that year has not been approved by the Board until such time as a new Budget for the new financial year has been agreed and adopted by the Board, the Board shall, in respect of the newly commenced financial year, be entitled to take such actions and incur such costs as are consistent with the outgoings specified for that period in the forecast most recently approved by the Board.

10.3 The Obligors shall maintain accurate and complete accounts, books and financial and other records in accordance with all applicable laws and generally accepted accounting principles applicable in the United Kingdom.

10.4 Without prejudice to the requirements of the Financing Documents following Financial Close, the Company shall prepare and maintain (or procure the preparation and maintenance of) the following accounts and information in the following manner (or as the Shareholders shall otherwise determine) and shall deliver the same to the Shareholders in accordance with the following provisions:

a) monthly management accounts, which accounts shall be in such form as the Board may determine but including, inter alia, a profit and loss account, balance sheet, cashflow statement and variation from the Budget. Such monthly management accounts shall be submitted to the Board or any committee established by the Board for financial review purposes within ten Business Days after the end of each month;

b) audited accounts for the Company to be prepared and reported on by the Auditors within 180 days after the end of the financial year. Such accounts shall comply with all legal requirements and be prepared on the basis of generally accepted accounting principles applicable in the United Kingdom;

c) management information on a monthly basis in respect of the Obligors in such form and at such time as the Shareholders may determine; and

d) such other accounts and information (at the same time as such information is sent to the Lenders) as the Company is, or would be, required to provide under and in accordance with the Loan Facilities Agreement (whether or not the Loan Facilities Agreement is, at that time, still in force).

10.5 Following Financial Close, the Holding Company shall prepare and maintain (or procure the preparation and maintenance of) the following accounts and information in the following manner (or as the Shareholders shall otherwise determine) and shall deliver the same to the Shareholders in accordance with the following provisions:

a) audited consolidated accounts for the Obligors to be prepared and reported on by the Auditors within 180 days after the end of the financial year. Such accounts shall comply with all legal requirements and be prepared on the basis of generally accepted accounting principles applicable in the United Kingdom (including international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant accounts); and

b) such other accounts and information (at the same time as such information is sent to the Lenders) as the Holding Company is, or would be, required to provide under and in accordance with the Loan Facilities Agreement (whether or not the Loan Facilities Agreement is, at that time, still in force).

10.6 Without prejudice to Clause 10.4 following Financial Close, the Company shall deliver to the Shareholders such information at the same time, at the latest, as such information is sent by the Company to the Authority as the Company is required to provide under and in accordance with the Project Agreement.

10.7 Subject to Clause 4.2, any finance which is from time to time required by any Obligor shall unless otherwise agreed by the Shareholders be provided by the Shareholders or their respective Affiliates situated in the United Kingdom in accordance with the Budget (if this is specified in the Budget) or a subsequently agreed budget (if this is likewise specified) and pro rata to their or their respective Affiliates (situated in the

United Kingdom) holdings of Shares and Intermediate Loan Notes and in sufficient amount to permit the Obligors fully and effectually to carry on the Business.

## 11 TRANSFER OF SHARES AND INTERMEDIATE LOAN NOTES

11.1 Subject to the terms of the Financing Documents (including for the avoidance of doubt the Noteholder Subscription Agreement) and the Project Agreement any Shareholder may, as an alternative to the transfer provisions set out in Clause 11.7 and the pre-emption procedures in Clause 12, transfer any Shares and Intermediate Loan Notes to any other person so long as all the other Shareholders give their prior written consent. If such prior written consent is not received and Clause 11.7b) does not apply, then any proposed transfer must be made in accordance with Clause 12.

11.2 Subject as provided in Clauses 11.1, 11.7 or 12 or as required by the Project Agreement, no Shareholder shall:

a) directly or indirectly pledge, mortgage (whether by way of fixed or floating charge) or otherwise encumber its legal or beneficial interest in its Shares or Intermediate Loan Notes; or

b) sell, transfer or otherwise dispose of any of such Shares or Intermediate Loan Notes (or any interest therein) or enter into any agreement or understanding whereby beneficial ownership of or any interest in or right conferred by such Shares or Intermediate Loan Notes is transferred directly or indirectly to or exercised by or on behalf of any other person, in any such case except as provided under the provisions of this Agreement, the HC Articles, the Intermediate Loan Note Instrument, the Noteholder Subscription Agreement and the HC Debenture (as defined in the Loan Facilities Agreement).

11.3 Every transfer or disposal of Shares and Intermediate Loan Notes including without limitation pursuant to Clauses 11, 11.7 or 12 shall, in addition to the requirements of the Financing Documents, be subject to the following conditions which must be satisfied before any such transfer or disposal shall occur and before the transferee is entered into the relevant register in respect of the Shares and Intermediate Loan Notes:

a) in the case of a transfer or disposal of Shares, the transferee shall execute and deliver to the Holding Company a deed of adherence substantially in the form set out in Schedule 2;

b) in the case of (i) a transfer or disposal of Shares and Intermediate Loan Notes, the transferee shall accede to the terms of the Noteholder Subscription Agreement and the Security Trust and Intercreditor Deed by executing and delivering a deed of accession to the Noteholder Subscription Agreement and Security Trust and Intercreditor Deed (provided that this obligation shall cease upon the expiry of the Noteholder Subscription Agreement and Security Trust and Intercreditor Deed); and (ii) a transfer or disposal of Intermediate Loan Notes, to the extent that any obligation of the transferor to subscribe in cash for its Shareholder Funding Commitment Percentage of outstanding Shareholder Funding Commitments remains undischarged, the transferee shall assume the obligations of the transferor to subscribe for its Shareholder Funding Commitment Percentage of outstanding Shareholder Funding Commitments and procure that a letter of

credit or parent company guarantee is obtained satisfactory to the other Shareholders and the Lenders in respect of the same and shall accede to the terms of the Noteholder Subscription Agreement and the Security Trust and Intercreditor Deed by executing and delivering a deed of accession to the Noteholder Subscription Agreement and the Security Trust and Intercreditor Deed;

c) Shares and Intermediate Loan Notes may only be transferred or disposed of together to the same transferee in the same proportion that the number of Shares held by the transferor bears to the nominal amount of all the Intermediate Loan Notes held by the transferor EXCEPT that the Shareholders agree that, in the period following the end of the Lock-In Period, the Intermediate Loan Notes may, with the consent of the 'A' Shareholder and the 'B' Shareholder, be transferred separately from the Shares;

d) the provisions of the Noteholder Subscription Agreement in respect of security for outstanding obligations to subscribe for Intermediate Loan Notes have been complied with; and

e) no transfers shall be registered that would result in circumstances constituting a breach or default under the Project Agreement or any of the Financing Documents or which, with the lapse of time or service of a notice, would constitute such breach or default including, without limitation, any Event of Default (as defined in the Loan Facilities Agreement).

11.4 The obligations to subscribe for Intermediate Loan Notes in clause 2.2 of the Noteholder Subscription Agreement shall also be deemed to be an obligation on each Shareholder to subscribe for Intermediate Loan Notes in this Agreement. In the event of any Shareholder failing to subscribe for Intermediate Loan Notes in accordance with clause 2.2 of the Noteholder Subscription Agreement and Clauses 3.3 and 3.7 of this Agreement, there shall be no Event of Shareholder Default under this Agreement if the Security Trustee makes a call on the Equity Guarantee which is satisfied by the relevant Equity Guarantor within 21 Business Days of the Shareholder being notified of such default. If such a claim is not made by the Security Trustee on the Equity Guarantee or such claim fails for whatever reason, then any payment by a Shareholder (a **Paying Shareholder** or together, if more than one, **Paying Shareholders**) (other than the Defaulting Shareholder) pursuant to clause 6(d) of the Noteholder Subscription Agreement of any shortfall in subscription by the Defaulting Shareholder for Intermediate Loan Notes shall have the following consequences:

a) the Intermediate Company shall, forthwith upon receipt of monies paid by the Paying Shareholder pursuant to clause 6(d) of the Noteholder Subscription Agreement, issue to the Paying Shareholder an Intermediate Loan Note certificate in respect of such Intermediate Loan Notes so subscribed at the subscription price under the Noteholder Subscription Agreement by the Paying Shareholder by the payment of such monies, but for the avoidance of doubt, if the Paying Shareholder makes such payment within 21 days of the defaulter being notified of such default pursuant to Clause 16.1a) of this Agreement, then the defaulter shall not be a Defaulting Shareholder and this Agreement shall continue in respect of that Shareholder who shall continue to be liable to perform its obligations under this Agreement and the Noteholder Subscription Agreement;

b) upon service by notice in writing by the Paying Shareholder served on the Defaulting Shareholder and the Intermediate Company after the expiration of 21 days from the notification of the default to the defaulter (who shall be a Defaulting Shareholder), the Defaulting Shareholder shall at the option of the Paying Shareholder (subject to the terms of the Financing Documents) forthwith novate its rights and obligations in and to the Noteholder Subscription Agreement to the Paying Shareholders (where more than one in proportion to the monies paid as referred to in Clause 11.4a)), and the Defaulting Shareholder shall be deemed to have served a Transfer Notice in accordance with Clause 16.3 and the provisions of Clause 12 shall apply mutatis mutandis;

c) if so required by notice in writing by the Paying Shareholder(s) served on the Defaulting Shareholder and the Holding Company, the Defaulting Shareholder shall sell to the Paying Shareholder(s) (where more than one in proportion to the monies paid as referred to in Clause 11.4(a)) (i) all the Shares of the Defaulting Shareholder for a price equivalent to the Fair Value of such Shares and (ii) all the Intermediate Loan Notes of the Defaulting Shareholder for a price equivalent to the Fair Value of such Intermediate Loan Notes; and

d) for the purposes of Clause 11.4c), the Fair Value of the Shares and Intermediate Loan Notes of the Defaulting Shareholder shall be the Fair Value as agreed by the Paying Shareholder(s) and the Defaulting Shareholder or in the event of disagreement, as determined and certified by the independent valuer and the provisions of Clause 12.3c) shall apply mutatis mutandis to the appointment of the independent valuer; and the cost of the independent valuer shall be borne by the Defaulting Shareholder.

11.5 Nothing contained in Clause 11.4 shall affect any claim the Paying Shareholder may have against a Defaulting Shareholder whether under any of the Financing Documents or otherwise in respect of any payment made as aforesaid under clause 6(d) of the Noteholder Subscription Agreement but for the avoidance of doubt, this Clause shall not extend to any claims by any Party against the Defaulting Shareholder for payment of any amounts under the Loan Facilities Agreement and the Parties further agree not to pursue any damages claim against the Defaulting Shareholder in respect of the same under this Clause.

11.6 Each of the Shareholders agrees that, for the purposes of the HC Articles and this Agreement, it shall be deemed to have waived any rights of pre-emption it may have in respect of any transfer made or to be made which complies fully with the provisions of this Agreement and shall be deemed to have agreed in writing to such transfer.

11.7 Subject to the terms of the Financing Documents and the Project Agreement, the following provisions shall apply in respect of any transfer of Shares and/or Intermediate Loan Notes by a Shareholder to any of its Affiliates or any funds managed by an Affiliate:-

a) A transferor cannot transfer Shares at a price exceeding one pound sterling per Share or Intermediate Loan Notes at a price exceeding its nominal value to its Affiliate or a fund managed by an Affiliate unless the transferor has first given the other Shareholders an opportunity to acquire the Shares and/or Intermediate Loan Notes by serving a Transfer Notice under Clause 12.2a).

For the avoidance of doubt, once the transferor has served a Transfer Notice the pre-emption procedure in Clause 12 shall apply.

b) Where a transferor wishes to transfer Shares at a price equal to or less than one pound sterling per Share and/or Intermediate Loan Notes at a price equal to or less than its nominal value, the transferor shall, subject to the provisions of Clause 11.7c), be entitled to transfer the Shares and/or Intermediate Loan Notes to its Affiliate or a fund managed by an Affiliate as an alternative to the pre-emption procedure in Clause 12.

c) Where a transferor wishes to transfer Shares and/or Intermediate Loan Notes under Clause 11.7b) and it is foreseeable that the transfer of the Shares and/or Intermediate Loan Notes would on completion thereof result in a Realisation of Value, the transferor cannot transfer the Shares and/or Intermediate Loan Notes to its Affiliate or a fund managed by its Affiliate unless the transferor has first given the other Shareholders an opportunity to acquire the Shares and/or Intermediate Loan Notes by serving a Transfer Notice under Clause 12.2(a). For the avoidance of doubt, once the transferor has served a Transfer Notice the pre-emption procedure in Clause 12 shall apply.

d) Where a transfer of Shares and/or Intermediate Loan Notes to an Affiliate or a fund managed by an Affiliate pursuant to Clause 11.7b) has occurred and there is a subsequent Realisation of Value after the said transfer (and for the avoidance of doubt a subsequent Realisation of Value can occur after any period of time after the transfer, no matter how short or long), the Affiliate or the fund managed by the Affiliate shall at the point in time of the Realisation of Value either:-

   i) transfer the Shares and/or Intermediate Loan Notes acquired by it to the original transferor or an Affiliate, or a fund managed by the Affiliate, of the original transferor provided that such person is resident for tax purposes in the United Kingdom; or

   ii) give the other Shareholders an opportunity to acquire the Shares and/or Intermediate Loan Notes by serving a Transfer Notice under Clause 12.2(a). For the avoidance of doubt, once the transferor has served a Transfer Notice the pre-emption procedure in Clause 12 shall apply.

e) Where a transferor has transferred the Shares and/or Intermediate Loan Notes to a fund managed by its Affiliate in accordance with this Clause 11.7 and that Affiliate was to subsequently lose its existing contract to manage the relevant fund (the **Management Contract**) the fund must prior to the cessation of the Management Contract, at its option, either:-

   i) transfer the Shares and/or Intermediate Loan Notes acquired by it to the original transferor or an Affiliate, or a fund managed by the Affiliate, of the original transferor provided that such person is resident for tax purposes in the United Kingdom; or

   ii) give the other Shareholders an opportunity to acquire the Shares and/or Intermediate Loan Notes by serving a Transfer Notice under Clause 12.2(a). For the avoidance of doubt, once the fund has

served a Transfer Notice the pre-emption procedure in Clause 12 shall apply.

## 12 PRE-EMPTION ON TRANSFER

### 12.1 Restrictions on Transfer

Except in the case of a transfer or disposal made under Clause 11.1 or 11.7b) (but subject to the terms of the Project Agreement and the Financing Documents), the right to transfer Shares or Intermediate Loan Notes or to dispose of any Shares or Intermediate Loan Notes or any interest therein shall be subject to the restrictions and provisions of this Clause 12 and the Financing Documents and the Project Agreement.

### 12.2 The Transfer Notice

a) Before transferring or disposing of any Shares or any interest in any Shares otherwise than under Clause 11.1 or 11.7b), any Shareholder proposing to transfer or dispose of the same (the **Proposing Transferor**) shall give a notice in writing (a **Transfer Notice**) to the Holding Company that it desires to transfer or dispose of the same and such Transfer Notice shall specify the number and class of such Shares and Intermediate Loan Notes (if applicable), the name and address of any prospective purchaser and the price offered in cash and/or the nature and cash value of any other consideration offered and the terms of the purchaser's offer which require amendment to the project documents and in the case of a Realisation of Value under Clause 11.7c) or 11.7d), that proportion of the sale or flotation price or other value of the Affiliate or fund managed by the Affiliate which is attributable to the value of the Shares and Intermediate Loan Notes held by the Affiliate or fund managed by the Affiliate.

b) The Transfer Notice shall constitute the Holding Company as such Shareholder's agent for the sale of the Shares referred to therein and the proportionate amount of the Intermediate Loan Notes (calculated in accordance with Clause 11.3c) above) (together with all rights and obligations attached thereto), except where otherwise agreed by the 'A' Shareholder and the 'B' Shareholder pursuant to Clause 11.3c) in respect of the period following the expiry of the date that falls 12 months after the end of the Construction Period at the Prescribed Price during the Prescribed Period and Second Period (if applicable) and otherwise in accordance with this Clause 12.

c) The Transfer Notice shall be irrevocable except with the consent of the Directors of the Holding Company or where the Proposing Transferor is not willing to sell at the Prescribed Price as determined by the Auditors in accordance with Clause 12.3 (in which case the Proposing Transferor shall give written notice of revocation of the Transfer Notice).

### 12.3 The Prescribed Price

a) Subject to Clause 12.13, if

i) an offer is made by a bona fide arm's length purchaser for the Shares and for the Intermediate Loan Notes to be transferred, then

the price offered shall constitute the Prescribed Price for the Shares and the Intermediate Loan Notes; or

ii) in the case of a Realisation of Value under Clause 11.7c) or 11.7d), that proportion of the sale or flotation price or other value of the Affiliate or fund managed by the Affiliate which is attributable to the value of the Shares and Intermediate Loan Notes held by the Affiliate or fund managed by the Affiliate shall constitute the Prescribed Price for the Shares and Intermediate Loan Notes.

The offer in sub-paragraph (i) above must have received preliminary approval from the purchaser's board or equivalent and be developed to such an extent and subject only to such conditions as would not be unreasonable to expect in similar transactions for the sale of equity interests in a PFI project. The Shareholders agree that a material change to the price offered and/or material terms of the offer will result in the operation of this Clause 12 as regards the offer with the previous price and/or terms being terminated and the Proposing Transferor shall instead give a further notice in terms of Clause 12.2(a) and the provisions of Clause 12 shall apply to the offer with the new price and/or new terms.

b) If no offer is made pursuant to Clause 12.3(a)(i) or Clause 12.3(a)(ii) does not apply but the Proposing Transferor and the other Shareholders have agreed a price per Share subject to the Transfer Notice and for each £1 in nominal amount of the Intermediate Loan Notes and such agreement was reached not more than one month before nor five Business Days after the Transfer Notice was given then such price shall be the Prescribed Price.

c) In all other circumstances on the expiry of five Business Days after the giving of the Transfer Notice (if the Prescribed Price shall not by then have been so agreed) the Directors of the Holding Company shall forthwith appoint and instruct an independent valuer to determine and certify the Fair Value of the Shares and the Intermediate Loan Notes, and once determined shall be the Prescribed Price (and in the event of disagreement as to the appointment of the independent valuer, the independent valuer shall be appointed by the President of the Institute of Chartered Accountants in England and Wales or any successor body on the application of any Shareholder).

d) In any case there shall be deducted from the Prescribed Price so agreed or determined and certified, save to the extent that such has already been taken into account in calculating the Prescribed Price, any dividend or other distribution or interest declared, made or paid after the date of the agreement or, as the case may be, the determination and certification of the Prescribed Price which is to be retained by the Proposing Transferor.

e) If the Proposing Transferor is not willing to sell at the Prescribed Price as determined and certified by the independent valuer then the Proposing Transferor may within a period of 15 Business Days following the date of the determination and certification by the independent valuer of the Prescribed Price withdraw the Shares and Intermediate Loan Notes from sale by serving notice of revocation of the Transfer Notice on the Holding Company.

f) The cost of the independent valuer (if any) shall be borne by the Proposing Transferor.

g) The Prescribed Price for Shares and Intermediate Loan Notes, once offered, agreed or determined shall be applicable until the earlier of:-

i) the date of completion of the purchase of all of those Shares and Intermediate Loan Notes by the Shareholder(s) under Clause 12.5b) or 12.7; or

ii) the date of completion of the purchase of all of those Shares and Intermediate Loan Notes by the prospective purchaser or any other person under Clause 12.8c)ii); or

iii) the expiry of the six month period referred to in Clause 12.8c)ii),

and after the occurrence of any of the above events the Prescribed Price shall lapse and the provisions of Clause 12 shall require to be re-commenced (if required).

12.4 **First Offering Round**

As soon as reasonably practicable after the offer, agreement or determination of the Prescribed Price and in any event within 10 Business Days after the offer, agreement or determination and certification of the Prescribed Price, all Shares included in the Transfer Notice and Intermediate Loan Notes shall first be offered by the Holding Company by notice in writing to all the Shareholders (other than the Proposing Transferor and any Shareholder which has given or has been deemed to have given a Transfer Notice in respect of all of its Shares) for purchase at the Prescribed Price on terms that, in the case of competition, the Shares and Intermediate Loan Notes so offered shall (in accordance with the provisions of this Agreement) be sold to Shareholders wishing to accept such offer in proportion (as nearly as may be without involving fractions or increasing the number of Shares sold) to their respective holdings of Shares. Such offer shall specify a time limit of 20 Business Days within which it must be accepted or in default of acceptance will lapse (the **Prescribed Period**) subject to Clause 12.6. If the Holding Company fails to make such an offer within the aforementioned 10 Business Days then the Proposing Transferor shall be entitled to act on behalf of and in place of the Holding Company in making such an offer to the other Shareholder(s) pursuant to this Clause.

12.5 **Transfer of Shares following First Offering Round**

a) If the Holding Company shall have on the expiry of the Prescribed Period (or such earlier time in such period if all Shareholders so entitled have by then responded to the notice given in terms of Clause 12.4), found Shareholders (each a **Purchaser**) to purchase all or any of the Shares and Intermediate Loan Notes (if any) concerned, it shall as soon as reasonably practicable, give notice in writing thereof to the Proposing Transferor who shall be bound upon receipt of the Prescribed Price to transfer such Shares and Intermediate Loan Notes to the respective Purchasers.

b) Each such notice shall state the name and address of the Purchaser and the number of Shares and the amount of Intermediate Loan Notes (if any) agreed to be purchased by it and the purchase shall be completed at a place and time (being not less than ten Business Days nor more than 30 Business Days after the date of such notice or such other agreed period) as are contained in such notice. If such purchase is not completed within such period due to the

non performance of the Purchaser, that Purchaser (a **Non Performing Purchaser**) shall be deemed to have declined the offer made pursuant to Clause 12.4 and shall not be re-offered any Shares or Intermediate Loan Notes under Clause 12.6. For the avoidance of doubt, if all the Shareholders who had been offered Shares and Intermediate Loan Notes pursuant to Clause 12.4 are Non Performing Purchasers then the provisions of Clauses 12.6 and 12.7 shall not apply.

12.6 **Second Offering Round**

If:-

a) on the expiry of the Prescribed Period (or such earlier time in such period if all Shareholders so entitled have by then responded to the notice given in terms of Clause 12.4), the Holding Company shall not have found Purchasers willing to purchase all or the remaining, as the case may be, Shares contained in the Transfer Notice and Intermediate Loan Notes; or

b) on the expiry of the 30 Business Days or such other agreed period in Clause 12.5b), a Purchaser does not complete the transfer of the Shares and Intermediate Loan Notes it had agreed to acquire;

the Holding Company shall, as soon as reasonably practicable and in any event within 10 Business Days, give a notice in writing thereof (a **Sale Notice**) in the case of paragraph (a) above to the Proposing Transferor and to any Shareholders who shall have the right to purchase the Shares and Intermediate Loan Notes pursuant to Clause 12.4, if in competition, in proportion (as nearly as may be without involving fractions or increasing the number of Shares sold) to their respective holdings of Shares and in the case of paragraph (b) above to the Proposing Transferor and any Shareholders who shall have the right to purchase the Shares and Intermediate Loan Notes pursuant to Clause 12.4 (other than the Non Performing Purchaser). Any Shareholder who has the right to purchase the Shares and Intermediate Loan Notes can acquire the Shares and Intermediate Loan Notes by giving notice (a **Purchase Notice**) to the Holding Company within ten Business Days of receipt by the Purchasers of the Sale Notice from the Holding Company (the **Second Period**). If the Holding Company fails to give the Sale Notice within the aforementioned 10 Business Days then the Proposing Transferor shall be entitled to act on behalf of and in place of the Holding Company in giving the Sale Notice to the other Shareholders pursuant to this Clause.

12.7 **Transfer of Shares following Second Offering Round**

Any such purchase shall be completed at a place and time being not less than ten Business Days nor more than 30 Business Days after the date of such Purchase Notice or such other agreed period.

12.8 **Shares not taken up by Shareholders**

If:-

a) on the expiry of 30 Business Days or such other agreed period in Clause 12.5b) all the Shareholders who have been offered Shares and Intermediate Loan Notes are Non Performing Purchasers; or

b) on the expiry of the Second Period (or such earlier time in such period if all Shareholders so entitled have by then responded to the Sale Notice given in terms of Clause 12.6), the Holding Company shall not have found Shareholders wishing to purchase all or the remaining, as the case may be, Shares contained in the Transfer Notice and Intermediate Loan Notes pursuant to Clause 12.4 and Clause 12.6; or

c) on the expiry of 30 Business Days or such other agreed period in Clause 12.7 a Purchaser does not complete the transfer of the Shares and Intermediate Loan Notes which it had agreed to acquire:-

i) the Holding Company shall, as soon as reasonably practicable, give to the Proposing Transferor a notice in writing that the Holding Company has not found Purchasers for all or the remaining, as the case may be, Shares contained in the Transfer Notice and Intermediate Loan Notes; and

ii) the Proposing Transferor shall then be at liberty, at any time thereafter up to the expiration of six months or other agreed period after the end of the period in either paragraph a), b) or c) above (as applicable), to transfer all or the remaining, as the case may be, Shares and Intermediate Loan Notes to (A) the prospective purchaser referred to in Clause 12.2a) (if any) or, (B) with the consent of the Shareholders other than the Proposing Transferor (such consent not to be unreasonably withheld), to any other person on a bona fide arm's length sale at any price not being less than the Prescribed Price (after deducting where appropriate any dividend or other distribution or interest declared, made or paid after the date of determination of the Prescribed Price and being retained by the Proposing Transferor and which was not taken into account in the determination of the Prescribed Price) PROVIDED that (aa) if the consent of the Shareholders other than the Proposing Transferor is withheld then the Shareholder(s) who have not consented shall purchase all or the remaining, as the case may be, Shares contained in the Transfer Notice and Intermediate Loan Notes at the Prescribed Price which is in proportion to their respective holdings of Shares within 30 Business Days of the refusal of consent, (bb) if the Shareholder(s) fail to purchase all or the remaining, as the case may be, Shares contained in the Transfer Notice and the Intermediate Loan Notes within the said 30 Business Day period in paragraph (aa) above, the Proposing Transferor shall then be at liberty to sell all or the remaining, as the case may be, Shares and Intermediate Loan Notes to the person in respect of whom consent was not given, and (cc) no transfer may be made and the Directors of the Holding Company shall not register a transfer unless the provisions of Clause 11.3 have been observed.

12.9 **Designation of Shares**

The designation (as HC 'A' Shares or HC 'B' Shares) of any Shares included in a Transfer Notice shall be retained in the designation of the said Shares upon a transfer of all Shares held by a Shareholder to a Purchaser but if some only are transferred then a new designation shall be created, except that, if such Purchaser is a Shareholder (or is an Affiliate of such a Shareholder) any Shares transferred to that

Purchaser pursuant to this Clause 12 shall upon transfer be reclassified as the same class of Shares which are or were held by such original Shareholder and the Shareholders undertake to take such steps as are necessary to procure the same.

12.10 **Transfer of Intermediate Loan Notes**

Save to the extent that Intermediate Loan Notes require to be transferred together with Shares pursuant to the provisions of this Agreement (other than this Clause 12) or the Financing Documents, the provisions of this Clause 12 shall not apply to transfers of Intermediate Loan Notes, which shall be transferable in accordance with the Intermediate Loan Note Instrument.

12.11 **Transfer of Shares in a Shareholder**

Each Shareholder undertakes to the other Shareholders and to the Obligors that should the Holding Undertaking of which such Shareholder is a Wholly-Owned Subsidiary wish, whether directly or indirectly, to dispose of all or part of its shareholding in such Shareholder, such Shareholder shall prior to any such disposal transfer all of the Shares held by it and all the Intermediate Loan Notes held by it to another Wholly-Owned Subsidiary of its Holding Undertaking or to the Holding Undertaking.

12.12 **Duty to act in good faith**

Each of the Proposing Transferor and Purchaser (or Purchasers) agree that it shall act reasonably and in good faith to complete the transfer of the Shares and Intermediate Loan Notes within the periods set out in Clauses 12.5 and 12.7.

12.13 **Portfolio Sale**

Where a Shareholder is proposing to transfer or dispose of any Shares (or any interest in any Shares) and/or Intermediate Loan Notes to a bona fide arm's length purchaser and that Shareholder is also proposing to transfer or dispose of other equity interests in another PFI Project to the same prospective purchaser, the Proposing Transferor undertakes to the other Shareholders that it shall not deliberately over-value the Shares and/or Intermediate Loan Notes.

12.14 **Restrictions on Transfer**

No Share or Intermediate Loan Note transfer shall be permitted under this Clause 12 or under Clause 16 unless either (i) the proposed transfer arises before the expiry of the Lock-In Period where a transfer of the Shares and Intermediate Loan Notes is (a) permitted under the Project Agreement with the consent of the Authority and consent is forthcoming, or (b) permitted under the Project Agreement without the consent of the Authority , or (ii) the proposed transfer arises after the expiry of the Lock-In Period and the consent of the Authority is not required, and in all cases, such transfer is permitted in terms of the Financing Documents.

12.15 **Transfer of whole or part**

For the avoidance of doubt and subject to the terms of this Agreement and the terms of the Project Agreement, any Shareholder may transfer its entire holding or part only of its holding of Shares and Intermediate Loan Notes.

## 13 RESERVED MATTERS

Without prejudice to any consents or approvals that are required to be obtained pursuant to any of the Financing Documents none of the Obligors shall without the written consent of the 'A' Shareholder and the 'B' Shareholder carry out any of those matters or decisions reserved for the unanimous consent of the 'A' Shareholder and the 'B' Shareholder in the list of Reserved Matters detailed in Schedule 3.

## 14 DEADLOCK

If at any time the Shareholders are unable to reach a unanimous decision on any matter which requires to be so determined by them in accordance with this Agreement then, if such matter remains unresolved for a period of at least 14 days from the date of the meeting at which it was discussed (excluding the date of the meeting) or from the date on which it was referred to the Shareholders for decision, the matter shall be referred by the company secretary of the Holding Company, to the chief executive (or equivalent) of the 'A' Shareholder (or, if there is more than one 'A' Shareholder, the chief executive of such one of the 'A' Shareholders as the 'A' Shareholders may agree) and the chief executive (or equivalent) of the 'B' Shareholder (or, if there is more than one 'B' Shareholder, the chief executive of such one of the 'B' Shareholders as the 'B' Shareholders may agree) for resolution by them (or such other person as the respective Shareholders may nominate in writing from time to time) jointly and acting in such a manner that is not likely to render the Company in breach of its obligations under the Project Agreement, Financing Documents or hereunder. They shall notify any such resolution of the matter jointly to the Shareholders within seven days from the date on which it was referred to them and such resolution shall be given effect by the Parties hereto. No Shareholder shall resort to any arbitration or litigation against any other Shareholder in respect of that matter unless and until such procedure has been followed.

## 15 REGULATORY ACTION AND MATERIAL REGULATORY OBJECTION

15.1 If any material Regulatory Action is taken or threatened, the Shareholders shall promptly meet to discuss the situation and the action to be taken as a result, and (if such be the case) whether any modification to the terms of this Agreement (or any agreement entered into pursuant hereto) shall be made, in order that any requirements (whether as a condition of giving any approval, exemption, clearance or consent or otherwise) of the Commission of the European Union (the **Commission**) or other regulatory authority may be reconciled with, and within the intended scope of, the business arrangement contemplated by this Agreement. The Shareholders shall co-operate in giving effect to any modifications so agreed upon.

15.2 If under relevant European Union or other laws applicable in the United Kingdom, the Commission or other regulatory authority (after all appropriate notifications and hearings have been made and held) makes a decision or order or expresses a conclusive view that effect should not be given to the basic principles of this Agreement, then the Shareholders shall promptly meet to decide the appropriate course in the mutual interests of the Shareholders to give effect to the requirements of the Commission and/or such other regulatory authority and to reinstate, as fully as may be lawful and practicable, the legal position of the Parties which prevailed in relation to the subject matter of this Agreement prior to the signing of this Agreement.

15.3 The Parties shall co operate with each other to ensure that all information necessary or desirable for the making of (or responding to any requests for further information consequent upon) any notifications or filings to be made in respect of this Agreement,

or the transactions contemplated hereunder, (including without limitation filing pursuant to the Competition Act 1998 and notification pursuant to Article 81 of the Treaty of Rome) is supplied to the Party dealing with such notifications and filings and that such filings and notifications are made as soon as reasonably practicable and in any event within three months following a request being made, or the need arising for, such filing or notification.

15.4 Each of the Parties agrees that notwithstanding any express provision to the contrary, no restriction contained in this Agreement or in another agreement entered into pursuant to or in connection with this Agreement by virtue of which the arrangement constituted by such agreements is subject to registration under the Competition Act 1998 shall take effect until the day after the date on which particulars of such agreements have been furnished to the Office of Fair Trading in accordance with that Act.

## 16 EVENTS OF SHAREHOLDER DEFAULT

16.1 The following shall be Events of Shareholder Default in relation to a Shareholder:

a) a material breach by such Shareholder of its obligations under this Agreement or the Noteholder Subscription Agreement (which, for the avoidance of doubt, includes a breach by a Shareholder of its obligations to subscribe in cash for Intermediate Loan Notes in accordance with this Agreement and the Noteholder Subscription Agreement) or the Equity Guarantor under the Equity Guarantee if such default is incapable of remedy or, if capable of remedy, such default continues unremedied for 21 days after written notice thereof has been given by any one Shareholder to the Shareholder alleged to be in breach and (if applicable) the Equity Guarantor and the Holding Company;

b) a Shareholder or the Equity Guarantor whilst insolvent compounds or proposes or enters into any re-organisation or other special arrangement with its creditors or is unable to pay its debts as they fall due;

c) an encumbrancer lawfully takes possession (and does not relinquish possession within 30 days) or an administrative receiver or receiver is validly appointed over the whole or a substantial part of the undertaking, property or assets of a Shareholder or the Equity Guarantor or an administration order is made in respect of a Shareholder or the Equity Guarantor; or

d) an order is made or an effective resolution is passed or any analogous proceedings are taken for the winding up of a Shareholder or its Equity Guarantor (other than a members' voluntary liquidation solely for the purpose of amalgamation or reconstruction on terms previously approved in writing by the other Shareholders, such approval not to be unreasonably withheld or delayed).

16.2 If an Event of Shareholder Default shall occur in respect of any Shareholder (a **Defaulting Shareholder**) then upon written notice served on the Defaulting Shareholder by any other Shareholder advising that such an Event of Shareholder Default has occurred, until the sale of the Defaulting Shareholder's Shares and Intermediate Loan Notes pursuant to Clauses 12 and 16.3 (either (i) if the Event of Shareholder Default arises before the expiry of the Lock-In Period and (a) no transfer of the Shares and Intermediate Loan Notes is permitted under the Project Agreement

without the consent of the Authority and such consent is not forthcoming, or (b) a transfer of the Shares and Intermediate Loan Notes is permitted without the consent of the Authority but until such transfer is effected, or (ii) if the Event of Shareholder Default arises after the expiry of the Lock-In Period and a transfer of the Shares and Intermediate Loan Notes is permitted without the consent of the Authority but until such transfer is effected, or (iii) if a transfer of Shares and Intermediate Loan Notes is not permitted in terms of the Financing Documents):

a) the Defaulting Shareholder shall not be entitled to participate in the taking of any decisions of the Obligors and shall not be entitled to receive notice of or attend or exercise any vote at nor be required to be present to constitute a quorum at any general meeting (or class meeting of the Holding Company) or demand or receive any information which it would otherwise be entitled to in accordance with this Agreement, nor shall its consent be required for any action or decision otherwise required under this Agreement;

b) the Directors appointed by the Defaulting Shareholder shall be suspended from the Board of each of the Obligors and the Defaulting Shareholder shall have no power to appoint any Directors in the place of such Directors. For the avoidance of doubt, such Directors shall not be entitled to take any part in the management of the Obligors and, in particular, shall not be entitled to receive notice of, attend, be represented at, speak or vote at nor be required to be present to constitute a quorum (notwithstanding any other provision of this Agreement, the HC Articles, the Intermediate Company Articles or the Company Articles) at any meeting of the Board of any of the Obligors; and

c) the Defaulting Shareholder shall not be entitled to demand or receive any distribution (including dividends on Shares or interest or principal under the Intermediate Loan Notes) by the Obligors and shall forfeit all rights to any distribution which becomes payable to Shareholders.

16.3

a) As soon as a transfer of the Shares and Intermediate Loan Notes is permissible under the terms of Clauses 12.14 and 16.2, the Financing Documents and the Project Agreement, the Shares and Intermediate Loan Notes of the Defaulting Shareholder in the Holding Company may be purchased by the other Shareholders and the Defaulting Shareholder shall be deemed to have served a Transfer Notice in respect of all Shares and Intermediate Loan Notes of the Defaulting Shareholder under the HC Articles and the provisions of Clause 12 shall apply mutatis mutandis and the Shares and Intermediate Loan Notes shall be offered to the other Shareholders on a pre-emptive basis in accordance with Clauses 12.2 to 12.9 provided always that the Defaulting Shareholder shall not be entitled to withdraw a Transfer Notice on the determination of the Prescribed Price; and

b) the Defaulting Shareholder shall be deemed to have appointed the Holding Company as its agent for the transfer of the Shares and Intermediate Loan Notes pursuant to Clause 16.3a) above. If the Defaulting Shareholder fails to transfer the Shares and Intermediate Loan Notes pursuant to Clause 16.3a) above, the HC Articles and the provisions of Clause 12 forthwith upon being bound to do so, any one of the Directors for the time being of the Holding Company appointed by a Shareholder (other than the Defaulting Shareholder) (each of which Directors is hereby irrevocably appointed the

attorney of the Defaulting Shareholder for this purpose) may execute stock transfer forms and all other documents necessary to give effect to the transfer of the Shares and the Intermediate Loan Notes in favour of the Shareholders or other persons purchasing them who shall thereupon be registered as the holders of its/their respective proportion of the Shares and the Intermediate Loan Notes. Once the register of members and the register of holders of the Intermediate Loan Notes have been amended to record the transfers and such transfers are duly intimated to the Holding Company (if required), the validity of the proceedings shall not be questioned by any person.

16.4 Upon completion of any transfer pursuant to such a deemed Transfer Notice referred to in Clause 16.3 the Defaulting Shareholder shall cease to be a party to this Agreement but without prejudice to any liability the Defaulting Shareholder may have in respect of any antecedent breaches.

16.5 A Defaulting Shareholder shall free, relieve and indemnify the Company, the Intermediate Company, the Holding Company and each of the other Shareholders of and from all loss, liability, claims, costs and expenses incurred by each of them by reason of the Event of Shareholder Default and the direct (but not indirect) consequences thereof, but for the avoidance of doubt, the indemnity in this Clause shall not extend to any claims by any party to this Agreement against the Defaulting Shareholder for payment of any amounts under the Loan Facilities Agreement and the parties further agree not to pursue any damages claim against the Defaulting Shareholder in respect of the same in lieu of an indemnity under this Clause.

16.6 If any Obligor or any Shareholder (other than the Defaulting Shareholder) (in this Clause 16.6 and Clause 16.7 referred to as the **Beneficiary**) becomes aware of any matter which might give rise to a claim by a third party against the Beneficiary which might in turn give rise to a claim by the Beneficiary for indemnity under this Agreement from the Defaulting Shareholder, the following provisions shall apply:

a) the Beneficiary shall give written notice as soon as reasonably practicable to the Defaulting Shareholder of the matter in respect of which the indemnity is being claimed (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed) and shall consult with the Defaulting Shareholder with respect to the matter (and if the matter has become the subject of any proceedings the Beneficiary shall give the notice within sufficient time to enable the Defaulting Shareholder time to contest the proceedings before any first instance judgment in respect of such proceedings is given);

b) the Beneficiary shall take such action and institute such proceedings, and give such information and assistance, as the Defaulting Shareholder or its insurers may reasonably request, to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against any person (other than the Defaulting Shareholder) the rights of the Beneficiary or its insurers in relation to the matter;

c) in connection with any proceedings related to the matter (other than against the Defaulting Shareholder) the Beneficiary shall use professional advisers nominated by the Defaulting Shareholder or its insurers and approved by the Beneficiary (such approval not to be unreasonably withheld or delayed) and if the Defaulting Shareholder or its insurers so requests and the Beneficiary

consents (such consent not to be unreasonably withheld or delayed), allow the Defaulting Shareholder or its insurers the exclusive conduct of the proceedings in each case;

d) the obligation on the Beneficiary under Clauses 16.6b) or 16.6c) above to take any action or proceedings shall, at the option of the Beneficiary, only be incumbent on the Beneficiary to the extent that the Defaulting Shareholder has provided adequate security in advance for all costs incurred or to be incurred in connection with the taking of such action or proceedings;

e) the Defaulting Shareholder shall fully indemnify the Beneficiary for all costs incurred as a result of any request or nomination by the Defaulting Shareholder or its insurers pursuant to Clauses 16.6b) or 16.6c) above;

f) the Beneficiary shall not admit liability in respect of or settle the matter without the prior written consent of the Defaulting Shareholder (such consent not to be unreasonably withheld or delayed) and vice versa; and

g) if the Defaulting Shareholder has conduct of any litigation and negotiations in connection with a claim, the Defaulting Shareholder shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Beneficiary to be in breach of its obligations under this or any other agreement or to cause the Beneficiary's business interests to be materially prejudiced.

16.7 The indemnities contained in Clause 16.5 shall, for the avoidance of doubt, extend to include all costs and expenses suffered or reasonably incurred by the Beneficiary in connection with enforcing its rights under this Clause 16.

## 17 INTELLECTUAL PROPERTY

17.1 All Intellectual Property created by persons employed by or seconded to the Obligors in connection with the Project to the extent such Intellectual Property is created in the course of such employment or secondment shall vest in the relevant Obligor and shall not be available for use by any of the Parties unless the Party in question agrees with the Board of the relevant Obligor the terms on which it is entitled to use such Intellectual Property.

17.2 Notwithstanding the sale of a Shareholder's Shares and Intermediate Loan Notes under Clause 12 or the sale of a Defaulting Shareholder's Shares and Intermediate Loan Notes under Clause 16, the provisions of Clause 17.1 shall continue to apply with regard to the vesting of Intellectual Property in the relevant Obligor and the selling Shareholder or Defaulting Shareholder (as the case may be) agrees that it shall have no rights or title to the Intellectual Property or make any claim in respect thereof and the selling Shareholder or Defaulting Shareholder (as the case may be) acknowledge that the Obligors shall have free and uninhibited access to use the Intellectual Property in pursuit of the Business and the Project.

## 18 RELATED CONTRACTS

18.1 If :

a) any Obligor or a Shareholder or an Affiliate of a Shareholder through the relevant Board requires to make any decision in relation to (i) any variation or

amendment to a Related Contract and the making of such variation or amendment gives rise to a dispute or (ii) any dispute arising out of a Related Contract (but this Clause 18 shall not apply where a variation or amendment is suggested by one Shareholder or its Affiliate to a Related Contract to which another Shareholder or its Affiliate is a party); or

b) it is proposed by an Obligor or a Shareholder or an Affiliate of a Shareholder through the Board that an Obligor shall enter into a contract which upon execution would be a Related Contract (which in this context does not include the Building Contract or the FM Agreement) and such proposal gives rise to a dispute; or

c) a Director has a personal interest which conflicts with the interest of an Obligor,

then the Director (i) appointed to the Board by a Shareholder which is a party to such Related Contract (or whose Affiliate is a party to such Related Contract) detailed in a) above or a proposed Related Contract detailed in b) above or (ii) in respect of whom a personal interest exists in an agreement detailed in c) above, shall be deemed to have a conflict of interest and shall not be permitted to reach any decision on behalf of the Obligor in respect of those matters. If a Director has a conflict within the meaning of limbs (a) - (c) above, he shall bring such matter to the attention of the relevant Board for authorisation in accordance with the procedure in Clauses 18.2 to 18.5 below notwithstanding whether there are any previous resolutions of the relevant Board to the matter in question. The quorum and voting requirements in this Agreement shall be varied accordingly to exclude the participation of such conflicted Director. All Directors shall be entitled to attend, count in the quorum and vote in any Board meeting authorising the entry into the Building Contract and the FM Agreement and the circumstances described in Clauses a)(i) and b) where no dispute has arisen, provided the relevant Director has declared his interest in the matter.

18.2 Notwithstanding the terms of Clause 18.1, upon the Director in question declaring his interest in a matter which is the subject of Clause 18.1 to the Board, such Director shall be entitled, if authorised by the Board, to vote on the matter in question and to count in a quorum. However, the relevant Director shall not count in the quorum or be permitted to vote on any resolution of the Board permitting him to vote (or have any say in whether or not the relevant Director shall be entitled to vote). If any Director is authorised to vote in terms of this Clause 18.2, such Director shall not vote against the passing of a resolution to enforce the Company's or the Holding Company's material contractual rights under the contract in question (which shall include, without limitation, the right to claim liquidated damages, the right to call on a parent company guarantee, the right to make deductions, the right to claim indemnified sums, the right to sue for breach, and the right to terminate the contract). If any such Director shall vote against such a resolution then that Director's vote shall not be counted and his attendance shall not be required for that meeting to be quorate in relation to the resolution to enforce such rights.

18.3A In the event that the 'A' Shareholder and the 'B' Shareholder are the same person and the 'A' Director and 'B' Director are excluded from making any decision in terms of this Clause 18 the matter shall be referred by the company secretary to the Shareholder for resolution.

18.3B The provisions of Clauses 18.1 and 18.2 are without prejudice to any Directors' right to invoke the provisions of Clause 7.7 by which any matter can be referred to the Shareholders for their resolution.

18.4 No Director (i) appointed to the Board by a Shareholder which is a party to such Related Contract (or whose Affiliate is a party to such Related Contract) detailed in Clause 18.1a) above or a proposed Related Contract detailed in Clause 18.1b) above or (ii) in respect of whom a personal interest exists in a contract referred to in Clause 18.1c) above, is permitted to bind the relevant Obligor by the execution, sealing or initialling of such aforementioned Related Contract or agreement or amendment or variation thereto, unless authorised by the Board of the relevant Obligor to do so, but at the Board meeting authorising such action by that Director, that Director shall not count in the quorum or be permitted to vote on any resolution of the relevant Board permitting him to execute, seal or initial such Related Contract or agreement as aforesaid, and the quorum and the voting requirements in this Agreement shall be varied accordingly to exclude the participation of such Director in obtaining such authorisation.

## 19 CONFIDENTIALITY

19.1 Each Shareholder undertakes and shall procure that the Equity Guarantor undertakes to the other Parties to this Agreement to keep confidential all Confidential Information save that which is:

a) trivial or obvious;

b) necessary to discharge its obligations or enforce its rights under this Agreement;

c) information already in its possession prior to having been obtained or received as described in the definition of Confidential Information, other than as a result of a breach of this Clause;

d) in the public domain other than as a result of a breach of this Clause; or

e) required to be disclosed by law or any regulatory authority or the rules of any Recognised Stock Exchange.

19.2 Each Shareholder undertakes and shall procure that the Equity Guarantor undertakes to the other Parties to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this Clause 19 by its employees, agents and sub-contractors.

19.3 A Shareholder on ceasing to be a Shareholder shall and shall procure that the Equity Guarantor shall on that date hand over to the Holding Company all lists of customers, correspondence, budgets, schedules, documents, papers and records belonging to the business of the Obligors and will not keep any copies thereof unless required to do so by law.

19.4 A Shareholder shall be at liberty to divulge Confidential Information to a prospective purchaser of the Shares and/or Intermediate Loan Notes held by it provided that prior to such disclosure of Confidential Information the prospective purchaser has entered into a confidentiality undertaking in terms substantially similar to those contained herein.

## 20 CONTINUANCE OF AGREEMENT

This Agreement shall continue in full force and effect and shall continue to bind each Shareholder until it ceases to hold any Shares or Intermediate Loan Notes but without prejudice to any accrued obligations or liabilities incurred or arising in respect of any period prior to such cessation. Clause 19 shall continue to bind the Parties hereto in all events for the duration of the Project, notwithstanding that they cease to hold any Shares or Intermediate Loan Notes.

## 21 NO PARTNERSHIP OR AGENCY

Nothing herein shall be taken to constitute a partnership between the Parties hereto nor the appointment of any of the Parties as agent for any other party.

## 22 NO ASSIGNMENT

Save as otherwise expressly provided under this Agreement all rights hereunder are personal to the Parties and may not be assigned or transferred at law or in equity without the prior written consent of all of the other Parties.

## 23 FINANCING DOCUMENTS

The Parties hereto agree that the terms and conditions of the Financing Documents so long as they remain in force shall override the terms and conditions of this Agreement and, in the event of any inconsistency or conflict between the provisions of this Agreement and any Financing Document, the provisions of the Financing Documents shall so long as they remain in force prevail to the extent of the inconsistency or conflict.

## 24 ARTICLES OF ASSOCIATION

24.1 To the extent that any of the provisions of this Agreement conflict with any of the provisions of the HC Articles, the Intermediate Company Articles or the Company Articles the provisions of this Agreement shall prevail amongst the parties to this Agreement.

24.2 To the extent that any of the provisions contained herein are additional to the provisions contained in the HC Articles, the Intermediate Company Articles or the Company Articles, the Shareholders agree to do all such things and take all such actions to procure that the provisions of this Agreement are put into effect.

## 25 DISCLOSURE AND ANNOUNCEMENTS

Neither the making of this Agreement nor its terms shall be disclosed by any party without the prior consent of the other Parties unless (i) any of the exceptions in Clause 19.1a) to d) apply or (ii) disclosure is required by law or the rules of any Recognised Stock Exchange so far as applicable and disclosure shall then only be made:

a) after prior consultation with the other Parties as to the terms of such disclosure;

b) strictly in accordance with any agreement made as to the terms of disclosure; and

c) only to the person or persons and in the manner required by law or such Recognised Stock Exchange or as otherwise agreed between the Parties hereto;

provided that the foregoing restriction shall not apply to any party in relation to the making of this Agreement (but not its terms) at any time after such information is in the public domain, otherwise than by breach of this Agreement.

## 26 ENTIRE AGREEMENT

Except where otherwise specified, this Agreement and the documents referred to in this Agreement constitute the whole agreement between the Parties in relation to the subject matter hereof and supersede any previous agreement between the Parties in relation to such matters (which agreement shall cease to have any further effect). It is agreed that:

a) no party has entered into this Agreement in reliance upon any representation, warranty or undertaking which is not set out or referred to in this Agreement;

b) in the absence of fraud, no party will have any remedy (other than a claim for damages for breach of contract) in respect of any untrue statement, made to it or its representatives or agents, upon which it or they relied; and

c) this Clause 26 shall not exclude any liability for fraudulent misrepresentation.

## 27 SEVERABILITY

If any provision of this Agreement or part thereof is rendered under any applicable law void, illegal or unenforceable in any respect (whether against all or only some of the Parties) the validity, legality and enforceability of the remaining provisions (and in any case where the provision in question is only void, illegal or unenforceable in respect of some but not all of the Parties, the validity, legality and enforceability of such provisions against the other Parties) shall not in any way be affected or impaired thereby. The Parties agree to substitute for such void, illegal or unenforceable provision a new provision which gives effect to the intention of the void, illegal or unenforceable provision to the fullest possible extent and which maintains the purpose and continuity of this Agreement.

## 28 WAIVER AND AMENDMENT

28.1 There shall be no waiver of any term, provision or condition of this Agreement unless such waiver is evidenced in writing and signed by the waiving party.

28.2 No omission or delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

28.3 No variation of this Agreement shall be effective unless made in writing and signed by all the Parties.

29 **FURTHER ASSURANCES**

At all times after the date hereof the Parties shall at their own expense execute all such documents and do such acts and things as may reasonably be required for the purpose of giving full effect to this Agreement.

30 **THIRD PARTY RIGHTS**

The Contracts (Rights of Third Parties) Act 1999 is excluded.

31 **NOTICES**

Save as specifically otherwise provided in this Agreement any notice, demand or other communication to be served under this Agreement may be served upon any party only by posting by first class post or delivering the same to the party to be served at its address stated below, or at such other address in the United Kingdom as it may from time to time notify in writing to the other Parties to this Agreement:

| | |
|---|---|
| BBIIL: | To the registered office address from time to time of BBIIL<br><br>FAO: the Company Secretary |
| The Holding Company: | To the registered office address from time to time of the Holding Company<br><br>FAO: the Company Secretary |
| The Intermediate Company: | To the registered office address from time to time of the Intermediate Company<br><br>FAO: the Company Secretary |
| The Company: | To the registered office address from time to time of the Company<br><br>FAO: the Company Secretary |

A notice or demand served by hand delivery shall be deemed to be served at the time of hand delivery, and a notice or demand served by first class post shall be deemed duly served forty-eight hours after posting and in proving service of the same it will be sufficient to prove, in the case of service by first class post, that such notice or demand was properly stamped or franked first class, addressed and placed in the post. For the purposes of this clause, no account shall be taken of any part of a day that is not a working day.

32 **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement and any party hereto may enter into this agreement by executing a counterpart.

33 **GOVERNING LAW AND JURISDICTION**

33.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law and the Parties hereby submit to the exclusive jurisdiction of the English courts.

33.2 Each of the Parties hereby irrevocably and unconditionally waives and agrees not to raise any plea or objection which it may have now or hereafter to the raising of any action or proceedings in the English courts and any claim, plea or objection that any such action or proceedings have been brought in an inappropriate or inconvenient forum. Each party hereto further irrevocably agrees that a final judgment obtained in any action or proceedings raised in the English courts shall be conclusive and binding upon it, as the case may be, and may be enforced in any other jurisdiction.

**IN WITNESS WHEREOF** this Agreement has been executed and delivered as a deed on the date first above written.

## SCHEDULE 1

## HOLDING COMPANY, COMPANY AND INTERMEDIATE COMPANY DETAILS

### PART 1 BALFOUR BEATTY FIRE AND RESCUE NW HOLDINGS LIMITED

| | |
|---|---|
| Date of Incorporation: | 12 September 2010 |
| Authorised Share Capital: | £ 1100 |
| Issued Share Capital: | £ 1100 divided into 550 'A' ordinary shares of £1 each and 550 'B' ordinary shares of £1 each |
| Directors: | BR Walker<br>Ion Appuhamy<br>AC Beauchamp |
| Secretary: | NJ Marshall |
| Accounting Reference Date: | 31 December |
| Registered Office: | 350 Euston Road, Regent's Place, London NW1 3AX |

### PART 2 BALFOUR BEATTY FIRE AND RESCUE NW LIMITED

| | |
|---|---|
| Date of Incorporation: | 11 September 2010 |
| Authorised Share Capital: | £ 1000 |
| Issued Share Capital: | £ 1000 divided into 1000 ordinary shares of £1 each |
| Directors: | BR Walker<br>Ion Appuhamy<br>AC Beauchamp |
| Secretary: | NJ Marshall |
| Accounting Reference Date: | 31 December |
| Registered Office: | 350 Euston Road, Regent's Place, London NW1 3AX |

### PART 3 BALFOUR BEATTY FIRE AND RESCUE NW INTERMEDIATE LIMITED

| | |
|---|---|
| Date of Incorporation: | 12 September 2010 |
| Authorised Share Capital: | £ 100 |
| Issued Share Capital: | £ 100 divided into 100 ordinary shares of £1 each |
| Directors: | BR Walker<br>Ion Appuhamy<br>AC Beauchamp |
| Secretary: | NJ Marshall |
| Accounting Reference Date: | 31 December |
| Registered Office: | 350 Euston Road, Regent's Place, London NW1 3AX |

## SCHEDULE 2

## DEED OF ADHERENCE

**THIS DEED OF ADHERENCE** is made on 20[ ]

**BY:**

[***insert name of Transferee***] of [***insert address of Transferee***] (the **New Shareholder**) in favour of the persons whose names are set out in the schedule to this deed is supplemental to the Shareholders Agreement dated [ ] [ ] between (1) Balfour Beatty Infrastructure Investments Limited, (2) Balfour Beatty Fire and Rescue NW Holdings Limited, (3) Balfour Beatty Fire and Rescue NW Limited and (4) Balfour Beatty Fire and Rescue NW Intermediate Limited (the **Agreement**).

**THE NEW SHAREHOLDER UNDERTAKES AS FOLLOWS:**

1 The New Shareholder confirms that it has read a copy of the Agreement and undertakes to each person named in the schedule to this deed to perform and be bound by all the terms of the Agreement (subject to Clause 11 of the Agreement) as if the New Shareholder was named in the Agreement as a Shareholder.

2 This deed is governed by English law.

**IN WITNESS WHEREOF** this deed has been executed and delivered as a deed on the date first above written.

[*Schedule to Deed to include all Parties (including by way of earlier Deeds of Adherence) to the Agreement.*]

## SCHEDULE 3

## RESERVED MATTERS

Each of the following matters in respect of the Obligors shall require unanimous approval of the Shareholders without prejudice to any consents or approvals required to be obtained under the Financing Documents:-

1 sell, transfer, lease, licence, assign or otherwise dispose of the whole of or any material part of its business, undertaking, property and/or assets or of any subsidiary company;

2 carry on any activity other than, in the case of the Holding Company, acting as the holding company of the Company and the Intermediate Company, in the case of the Company, the Business and, in the case of the Intermediate Company issuing the Intermediate Loan Notes and any activities incidental thereto;

3 other than pursuant to this Agreement and the Noteholder Subscription Agreement, issue or allot or agree to issue or allot any shares or stock in its capital or any security convertible into such shares or stock or any loan stock or grant or agree to grant options over or rights in any such shares, stock, securities or loan stock;

4 acquire or dispose of any share, debenture, mortgage, loan capital or security (or any interest therein) in any body corporate or trust;

5 do or permit or suffer to be done any act or thing (including the passing of a member's resolution of an Obligor) whereby such Obligor may be wound up (whether voluntarily or compulsorily) save as expressly provided in this Agreement;

6 create or issue any debenture, mortgage, charge or other security or increase the amount of any borrowings capable of being secured thereby, other than pursuant to and in accordance with the Security Documents (as defined in the Loan Facilities Agreement);

7 make any loan other than giving credit in the normal course of trading;

8 (other than pursuant to Clauses 11 or 12 or the terms of the Intermediate Loan Note Instrument) sell, release, assign or factor the debts or securities of the Obligors;

9 make any change in its status as a limited liability company;

10 reduce its share capital or cancel its share premium account;

11 create, acquire or dispose of any subsidiary or any shares in any subsidiary; and

12 establish any profit-sharing, bonus or pension scheme.

**SIGNATORIES**

Executed as a deed by
**BALFOUR BEATTY INFRASTRUCTURE INVESTMENTS LIMITED**

by:
(print name) SANJIP MAHATAN (signature) .....
its duly appointed Attorney in the presence of:

(witness signature).....
Witness

Witness Name (print name) ..... BRIAN FARRELL, SOLICITOR

Witness Address .....

.....

Ashfords LLP
Solicitors
**Tower Wharf**
**Cheese Lane**
**Bristol BS2 0JJ**

Executed as a deed by
**BALFOUR BEATTY FIRE AND RESCUE NW HOLDINGS LIMITED**

by:
(print name) IAN APPUHAMY (signature) .....
its director/ duly appointed Attorney in the presence of:

(witness signature).....
Witness

Witness Name (print name) ..... BRIAN FARRELL, SOLICITOR

Witness Address .....

.....

Ashfords LLP
Solicitors
**Tower Wharf**
**Cheese Lane**
**Bristol BS2 0JJ**

Executed as a deed by
**BALFOUR BEATTY FIRE AND RESCUE NW LIMITED**

by: (signature) .....
(print name).....
its director/ duly appointed Attorney in the presence
of:

(witness signature).....
Witness

Witness Name (print name) ..... BRIAN FARRELL, SOLICITOR

Witness Address .....

.....

Ashfords LLP
Solicitors
Tower Wharf
Cheese Lane
Bristol BS2 0JJ

Executed as a deed by
**BALFOUR BEATTY FIRE AND RESCUE NW INTERMEDIATE LIMITED**

by: (signature) .....
(print name).....
its director/ duly appointed Attorney in the presence
of:

(witness signature).....
Witness

Witness Name (print name) ..... BRIAN FARRELL, SOLICITOR.

Witness Address .....

.....

Ashfords LLP
Solicitors
Tower Wharf
Cheese Lane
Bristol BS2 0JJ