

This is Schedule 11 referred to in the foregoing M8 M73 M74 Motorway Improvements Agreement between the Scottish Ministers and Scot Roads Partnership Project Ltd

**SCHEDULE 11
TERMINATION COMPENSATION**

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PART 1

TERMINATION FOR SCOTTISH MINISTERS DEFAULT/VOLUNTARY TERMINATION BY SCOTTISH MINISTERS

1. On termination of the Agreement under Clause 43 (Termination on Scottish Ministers Default) or Clause 47 (Voluntary Termination by the Scottish Ministers), the Scottish Ministers shall pay the Company the Scottish Ministers Default Termination Sum in accordance with Part 5 (Calculation and Payment of Termination Payments) of this Schedule 11 on the Termination Date.

Subject to paragraphs 3 to 5 below, the Scottish Ministers Default Termination Sum shall be an amount equal to the aggregate of:

- 1.1 the Base Senior Debt Termination Amount;
 - 1.2 Redundancy Payments and Sub-Contractor Breakage Costs; and
 - 1.3 the aggregate amount for which the share capital of the Company and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on the Relevant Assumptions.
2. On payment of the amount referred to in paragraph 1 above, the Scottish Ministers shall have the option to require the Company to transfer its right, title and interest in and to the Assets to the Scottish Ministers or as directed by the Scottish Ministers.
 3. If the aggregate of the amounts referred to in paragraphs 1.1 and 1.3 is less than the Revised Senior Debt Termination Amount, then the Scottish Ministers Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.2, provided always that:
 - 3.1 the amount referred to in paragraph 1.2 shall only be paid to the extent that the Company has demonstrated to the reasonable satisfaction of the Scottish Ministers that the amount will not be paid in payment (in whole or in part) of any Distribution, and
 - 3.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Company to terminate such Sub-Contract.

4. If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Company has wilfully, or through gross negligence, failed to comply with its obligations under Clause 9.4.4(a) of the Funders Direct Agreement then, in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Scottish Ministers shall be entitled to set-off the value of that Distribution a second time against the Scottish Ministers Default Termination Sum, provided that the amount of the Scottish Ministers Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

5. If the Company has wilfully or through gross negligence failed to comply with its obligations under Clause 9.4.4(b) of the Funders Direct Agreement and there has been an overstatement of the cash balances by the Company as at that date which has caused the Scottish Ministers to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Part 1, then the Scottish Ministers Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Scottish Ministers Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.

PART 2
TERMINATION FOR FORCE MAJEURE

1. On termination of the Agreement under Clause 45 (Force Majeure) the Scottish Ministers shall pay to the Company the Force Majeure Termination Sum in accordance with Part 5 (Calculation and Payment of Termination Payments) of this Schedule 11.

Subject to paragraphs 3 to 5 below the Force Majeure Termination Sum shall be the amount equal to the aggregate of:

- 1.1 the Base Senior Debt Termination Amount;
 - 1.2 an amount equal to the Subordinated Debt less an amount equal to the aggregate of payments of interest paid on the Subordinated Debt;
 - 1.3 Redundancy Payments and Sub-Contractor Breakage Costs (but excluding therefrom any claims for loss of profit).
2. If the amount referred to in paragraph 1.2 is less than zero, then, for the purposes of the calculation in paragraph 1, they shall be deemed to be zero.
 3. If the aggregate of the amounts referred to in paragraphs 1.1 and 1.2 is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in paragraph 1.3 provided always that:
 - 3.1 the amount referred to in paragraph 1.3 shall only be paid to the extent that the Company has demonstrated to the reasonable satisfaction of the Scottish Ministers that the amount will not be paid in payment (in whole or in part) of any Distribution: and
 - 3.2 if at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contract Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Company to terminate such Sub-Contract.
 4. If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Company has wilfully, or through gross negligence, failed to comply with its obligations under clause 9.4.4(a) of the Funders Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Scottish Ministers shall be entitled to set-off the value of that Distribution a

second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.

5. If the Company has wilfully or through gross negligence failed to comply with its obligations under clause 9.4.4(b) of the Funders Direct Agreement and there has been an overstatement of the cash balances by the Company as at that date which has caused the Scottish Ministers to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this Part 2, then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
6. On termination, the Scottish Ministers shall have the option to require the Company to transfer to the Scottish Ministers all of its rights, title and interest in and to the Assets.

PART 3
TERMINATION FOR CORRUPT GIFTS & FRAUD/BREACH OF REFINANCING OR NPD
REQUIREMENTS

1. On termination of this Agreement pursuant to Clause 40 (Refinancing), Clause 46 (Corrupt Gifts and Fraud) or Clause 48 (Termination on Breach of NPD Requirements), the Scottish Ministers shall pay the Company an amount equal to the Revised Senior Debt Termination Amount.
2. Such amount shall be determined and paid in accordance with Part 5 of this Schedule 11 (Calculation and Payment of Termination Payments).
3. On termination, the Scottish Ministers shall have the option to require the Company to transfer to the Scottish Ministers all of its rights, title and interest in and to the Assets.

PART 4
TERMINATION FOR COMPANY DEFAULT

1. On termination of this Agreement in accordance with Clause 42 (Termination on Company Default), the Scottish Ministers shall pay the Company Default Termination Sum, as determined under this Part 4 of Schedule 11, in accordance with Part 5 of this Schedule 11 (Calculation and Payment of Termination Payments).

2. Re-tendering Election

The Scottish Ministers shall be entitled to re-tender the provision of the New Works and/or the O&M Works in accordance with paragraph 3 (Re-tendering) and the provisions of paragraph 3 shall apply if:

2.1 the Scottish Ministers notify the Company on or before the date falling 20 Business Days after the Termination Date; and

2.2 there is a Liquid Market; and either

2.3 the Senior Creditors have not exercised their rights to step-in under paragraph 5 (*Representative*) of the Funders Direct Agreement; or

2.4 the Company or the Senior Creditors have not procured the transfer of the Company's rights and liabilities under this Agreement to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so;

but otherwise the Scottish Ministers shall not be entitled to retender the provision of the New Works and/or the O&M Works and paragraph 4 (No Re-tendering) shall apply.

3. Re-tendering

If the Scottish Ministers elect to re-tender the provision of the New Works and/or the O&M Works under paragraph 2 (Re-tendering Election), then the following provisions shall apply:

3.1 the objective of the re-tendering procedure shall be to establish the Highest Compliant Tender Price and pay to the Company the Adjusted Highest Compliant Tender Price, as a result of the Tender Process;

3.2 the Scottish Ministers shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable;

- 3.3 the Scottish Ministers shall notify the Company of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process but shall act reasonably in setting such requirements and terms;
- 3.4 the Company authorises the release of any information by the Scottish Ministers under the Tender Process which would otherwise be prevented under Clause 59 (Confidentiality) that is reasonably required as part of the Tender Process;
- 3.5 the Company may, at its own cost, appoint a person (the **Tender Process Monitor**) to monitor the Tender Process for the purpose of monitoring and reporting to the Company and the Senior Creditors on the Scottish Ministers' compliance with the Tender Process and making representations to the Scottish Ministers. The Tender Process Monitor will not disclose any confidential information to the Company or any other person (and shall provide an undertaking to the Scottish Ministers to such effect as a condition of its appointment) but shall be entitled to advise the Company as to whether it considers that the Scottish Ministers has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price;
- 3.6 the Tender Process Monitor shall enter into a confidentiality agreement with the Scottish Ministers in a form acceptable to the Scottish Ministers and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Scottish Ministers regarding compliance with the Tender Process. The Scottish Ministers shall give the Tender Process Monitor at least 48 hours' notice of any meetings that the Tender Process Monitor is entitled to attend. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Scottish Ministers shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Company in the event that the Company refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 61 (Dispute Resolution Procedure);
- 3.7 for all or any part of a month, falling within the period from the Termination Date to the Compensation Date, the Scottish Ministers shall pay to the Company:
- 3.7.1 the Post Termination Service Amount for that month, on or before the date falling 10 Business Days after the end of that month; and
- 3.7.2 the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling 20 Business Days after the Compensation Date;

- 3.8 if any Post Termination Service Amount is less than zero then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price;
- 3.9 the Scottish Ministers shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the Joint Insurance Account on the date that the New Contract is entered into;
- 3.10 as soon as practicable after tenders have been received, the Scottish Ministers shall (acting reasonably) determine the Compliant Tenders and shall notify the Company of the Adjusted Highest Compliant Tender Price;
- 3.11 if the Company refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with Clause 61 (Dispute Resolution Procedure) the Scottish Ministers shall be entitled to enter into a New Contract. The Scottish Ministers shall pay to the Company the Adjusted Highest Compliant Tender Price on or before the date falling 20 Business Days after it has been determined in accordance with Clause 61 (Dispute Resolution Procedure) and the Scottish Ministers shall pay interest to the Company at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which had been withheld, from the date specified in paragraph 3.12 below until the date specified in this paragraph 3.11. For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Scottish Ministers shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Company the agreed amount no later than the date specified in paragraph 3.12 below, with the disputed amount being dealt with in accordance with this paragraph 3.11;
- 3.12 subject to paragraphs 3.11, 3.15 and 3.19, the Scottish Ministers shall pay to the Company an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling 20 Business Days after the date of the New Contract;
- 3.13 the discharge by the Scottish Ministers of its payment obligation in paragraphs 3.11 and 3.12 above shall be in full and final settlement of all the Company's claims and rights against the Scottish Ministers for breaches and/or termination of this Agreement and the Project Documents whether under contract, delict, restitution or otherwise, save for any liability of the Scottish Ministers which arose prior to the Termination Date that has not already been taken into account in the Adjusted Highest Compliant Tender Price;

- 3.14 subject to paragraphs 3.15 and 3.18 below, if the Scottish Ministers have not paid an amount equal to the Adjusted Highest Compliant Tender Price to the Company on or before the date falling two years after the Termination Date then the following provisions of this paragraph shall not apply to that termination and the provisions of paragraph 4 (No Re-tendering) shall apply instead;
- 3.15 if the Adjusted Highest Compliant Tender Price is zero or a negative number then the Scottish Ministers shall have no obligation to make any payment to the Company and with effect from the time that the Scottish Ministers gives notice of that event to the Company, the Scottish Ministers shall be released from all liability to the Company for breaches and/or termination of this Agreement and any other Project Documents whether under contract, delict, restitution or otherwise save for any antecedent liability of the Scottish Ministers which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price;
- 3.16 if the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Company to the Scottish Ministers on the date of the New Contract;
- 3.17 the Scottish Ministers may elect at any time prior to the receipt of a Compliant Tender to follow the no re-tendering procedure under paragraph 4 (No Re-tendering) by notifying the Company that this election has been made;
- 3.18 if the Scottish Ministers have received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Company of this decision and pay to the Company an amount equal to the Adjusted Highest Compliant Tender Price within 20 Business Days of such notification;
- 3.19 in the event that the Adjusted Highest Compliant Tender Price exceeds the Maximum Termination Amount, the Adjusted Highest Compliant Tender Price shall be deemed to be equal to the Maximum Termination Amount.
- 4. No Retendering**
- 4.1 Subject to paragraph 4.2, if the provisions of this paragraph 4 (*No Retendering*) apply the Company shall not be entitled to receive any Post Termination Service Amount.
- 4.2 If the Scottish Ministers elect to follow the no retendering procedure in accordance with this paragraph 4 (*No Retendering*) after it has elected to follow the procedure under paragraph 3 (*Retendering*), then the Scottish Ministers shall continue to pay the Company each Post

Termination Service Amount until the Compensation Date, in accordance with paragraph 3 (*Retendering*).

4.3 In agreeing or determining the Estimated Fair Value of the Agreement the parties shall be obliged to follow the principles set out below:

4.3.1 all forecast amounts of revenues and costs should be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Agreement;

4.3.2 the total of all payments of the full Unitary Charge (without deductions) forecast to be made from the Termination Date to the Expiry Date shall be calculated and discounted at the Termination Date Discount Rate;

4.3.3 the total of all costs reasonably forecast to be incurred by the Scottish Ministers as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to paragraph 4.3.2 above, such costs to include (without double counting):

(a) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the relevant base case;

(b) the costs of providing the O&M Works reasonably forecast to be incurred by the Scottish Ministers from the Termination Date to the Expiry Date to the standard required to meet the O&M Requirements; and

(c) any rectification costs required to deliver the O&M Works to the standard required (including any costs reasonably forecast to be incurred by the Scottish Ministers to complete the Works) and additional operating costs required to restore operating service standards to meet the O&M Works Requirements less (to the extent that such sums are included in any calculation of rectification costs for the purposes of this paragraph) the aggregate of:

(i) any insurance proceeds received (or held in the Insurance Proceeds Account) or which will be received pursuant to policies maintained in accordance with Clause 53 (*Insurance*); and

(ii) amounts payable by the Scottish Ministers in respect of Capital Expenditure under this Agreement which have not been paid,

in each case such costs to be forecast at a level that will deliver O&M Works to the standards required by this Agreement.

- 4.4 If the parties cannot agree on the Adjusted Estimated Fair Value of the Agreement on or before the date falling thirty (30) days after the date on which the Scottish Ministers elected to require an expert determination in accordance with this paragraph 4, then the Estimated Fair Value of the Agreement shall be determined in accordance with Clause 61 (Dispute Resolution Procedure).
- 4.5 The Scottish Ministers shall pay to the Company an amount equal to the Adjusted Estimated Fair Value of the Agreement on the date falling 60 days after the date on which the Adjusted Estimated Fair Value of the Agreement has been agreed or determined in accordance with this paragraph 4.
- 4.6 The discharge by the Scottish Ministers of its obligation in paragraph 4.6 is in full and final settlement of all the Company's claims and rights against the Scottish Ministers for breaches and/or termination of this Agreement or other Project Documents whether in contract, delict, restitution or otherwise save for any liability which arose prior to the Termination Date (but not from the termination itself) which has not been taken into account in determining the Adjusted Estimated Fair Value of the Agreement.
- 4.7 To the extent that the Adjusted Estimated Fair Value of the Agreement is less than zero, an amount equal to the sum by which the Adjusted Estimated Fair Value of the Agreement falls below zero shall be due and payable by the Company to the Scottish Ministers on the Compensation Date.
- 4.8 In the event that the Adjusted Estimated Fair Value of the Agreement exceeds the Maximum Termination Amount, the Adjusted Estimated Fair Value of the Agreement shall be deemed to be equal to the Maximum Termination Amount.
5. On termination, the Scottish Ministers shall have the option to require the Company to transfer to the Scottish Ministers all of its rights, title and interest in and to the Assets.

PART 5
CALCULATION AND PAYMENT OF TERMINATION PAYMENTS

1. Application

The provisions of this Part 5 of Schedule 11 (Calculation and Payment of Termination Payments) shall apply in respect of any termination payment payable under the Agreement.

2. Grossing up of Termination Payment

If any amount of compensation payable by the Scottish Ministers pursuant to Part 1 of this Schedule 11 (Termination on Scottish Ministers Default or Voluntary Termination by the Scottish Ministers), Part 2 of this Schedule 11 (Termination for Force Majeure), Part 3 of this Schedule 11 (Termination for Corrupt Gifts and Fraud, Breach of Refinancing or Breach of NPD Requirements) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Scottish Ministers shall pay to the Company such additional amount as will put the Company in the same after Tax position as it would have been had the payment not been subject to Tax, taking account of any relief, allowance, deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Company to reduce the Tax to which the payment is subject.

3. Set-Off on Termination

3.1 Except where expressly stated otherwise, the Scottish Ministers are not entitled to set off any amount against any payment of termination compensation (whether payable as a lump sum or in instalments) under Part 1 of this Schedule 11 (Termination on Scottish Ministers Default or Voluntary Termination by the Scottish Ministers), Part 2 of this Schedule 11 (Termination for Force Majeure), Part 3 of this Schedule 11 (Termination for Corrupt Gifts and Fraud, Breach of Refinancing or Breach of NPD Requirements), save to the extent that after such an amount has been set off, the termination payment made would be in an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.

4. Method of Payment

4.1 Subject to paragraph 4.2, the Scottish Ministers shall pay to the Company the Termination Sum, together with interest on any Base Senior Debt Termination Sum or Revised Senior Debt Termination Sum element of the Termination Sum at the Senior Debt Rate on or before the date falling 60 days after the Notice Date provided that it may elect to pay the Adjusted

Estimated Fair Value of the Agreement, or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in accordance with Paragraph 4.2 below.

4.2 The Scottish Ministers may, other than on a Scottish Ministers Default, elect to pay the Adjusted Estimated Fair Value of the Agreement or Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:

4.2.1 in instalments as follows:

- (a) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant) is greater than or equal to the Outstanding Principal;
 - (i) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant) representing the Outstanding Principal on the dates (the "Instalment Dates") and in the amounts that the Company would have been required to pay principal to the Senior Creditors (under the terms of the Senior Financing Agreements) had the Termination Date not occurred and;
 - (ii) in respect of the sum (if any) remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant) shall be paid in equal instalments on the Instalment Dates; or
- (b) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Company would have been required to pay as principal to the Senior Creditors under the terms of the Senior Financing Agreements had the Termination Date not occurred; or

4.2.2 as the Parties may otherwise agree.

4.3 From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.

4.4 If the Scottish Ministers have elected to pay in accordance with paragraph 4.2 above, it may (on 28 days prior written notice to the Company) elect to pay the outstanding part of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant) element of the Termination Sum in full on any Instalment Date.

4.5 If the Scottish Ministers:

4.5.1 fail to make a payment to the Company in accordance with paragraphs 4.1 and/or 4.2 and/or 4.3 above; or

4.5.2 breach Clause 65.1 (Restrictions on Transfer of the Agreement by the Scottish Ministers),

the Company may issue a notice to the Scottish Ministers declaring any unpaid and outstanding element of (as applicable) the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Agreement (as relevant) element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

4.6 **Ongoing Payments**

From the Termination Date until the earlier of:

4.6.1 the payment by the Scottish Ministers of any sum due as a lump sum pursuant to paragraph 4.1; and

4.6.2 the last Instalment Date,

(the **Relevant Period**) the Scottish Ministers shall indemnify the Company, Holdco and the Issuer (without double counting) within ten (10) Business Days of written demand (such demand to be accompanied by reasonable supporting evidence) against any costs, claims, proceedings, actions, expenses, damages or liabilities incurred by the Company or Holdco or the Issuer:

- (a) for the preparation, audit (if required) and filing of all tax and information returns that are required to be filed by it in any jurisdiction in the period after the Termination Date (to the extent that such returns were not overdue as at the Termination Date);
- (b) in order to maintain the listing for the Bonds on the Official List maintained by the Luxembourg Stock Exchange or such other recognised stock exchange as defined in Section 1005 of the Income Tax Act 2007 and the admission to trading of the Bonds by the Luxembourg Stock Exchange or such other recognised stock exchange as defined in Section 1005 of the Income Tax Act 2007 in the period after the Termination Date;
- (c) for furnishing to the Luxembourg Stock Exchange such information as the Luxembourg Stock Exchange may be required to be furnished to it in the period after the Termination Date;
- (d) in respect of fees, costs or expenses (if any) payable by it to EIB (as defined in the Common Terms Agreement), the Bond Trustee (as defined in the Common Terms Agreement), the Principal Paying Agent (as defined in the Common Terms Agreement), the Monitoring Adviser (as defined in the Common Terms Agreement), the Intercreditor Agent, the Security Trustee, any receiver acting as trustee or receiver under the Senior Financing Agreements, the Account Bank (as defined in the Common Terms Agreement), any bond custodian and/or any rating agencies in each case as contemplated by the Senior Financing Agreements;
- (e) in connection with the corporate management, operation and administration of the Company, Holdco of the Issuer; and
- (f) in respect of any legal or other adviser fees incurred in connection with any of the above,

any such costs and expenses to be reasonably and properly incurred (and, in the case of (b), (c) and (d), to pertain to requirements which have first fallen due within the Relevant Period) and, where applicable, any such services provided to the Company, Holdco or the Issuer to be procured in a cost effective manner.

5. **Certificate of Intercreditor Agent**

- 5.1 The Scottish Ministers shall be entitled to rely on the certificate of the Intercreditor Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at any relevant time. The receipt by the

Intercreditor Agent of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or elements thereof as relevant shall discharge the Scottish Ministers obligations to pay such sums to the Company.

6. Exclusivity of Remedy

- 6.1 Any payment of compensation shall be in full satisfaction of any claim which can be made against the Scottish Ministers by the Company in relation to termination of this Agreement or any Project Document. The compensation payable under Part 1 of this Schedule 11 (Termination on Scottish Ministers Default or Voluntary Termination by the Scottish Ministers), Part 2 of this Schedule 11 (Termination for Force Majeure), Part 3 of this Schedule 11 (Termination for Corrupt Gifts and Fraud, Breach of Refinancing or Breach of NPD Requirements) shall be the sole remedy of the Company against the Scottish Ministers in respect of termination of the Agreement.