

~~Burness Paull~~

[PARTY 1]

[PARTY 2]

and

[PARTY 3]

INTER-AUTHORITY AGREEMENT

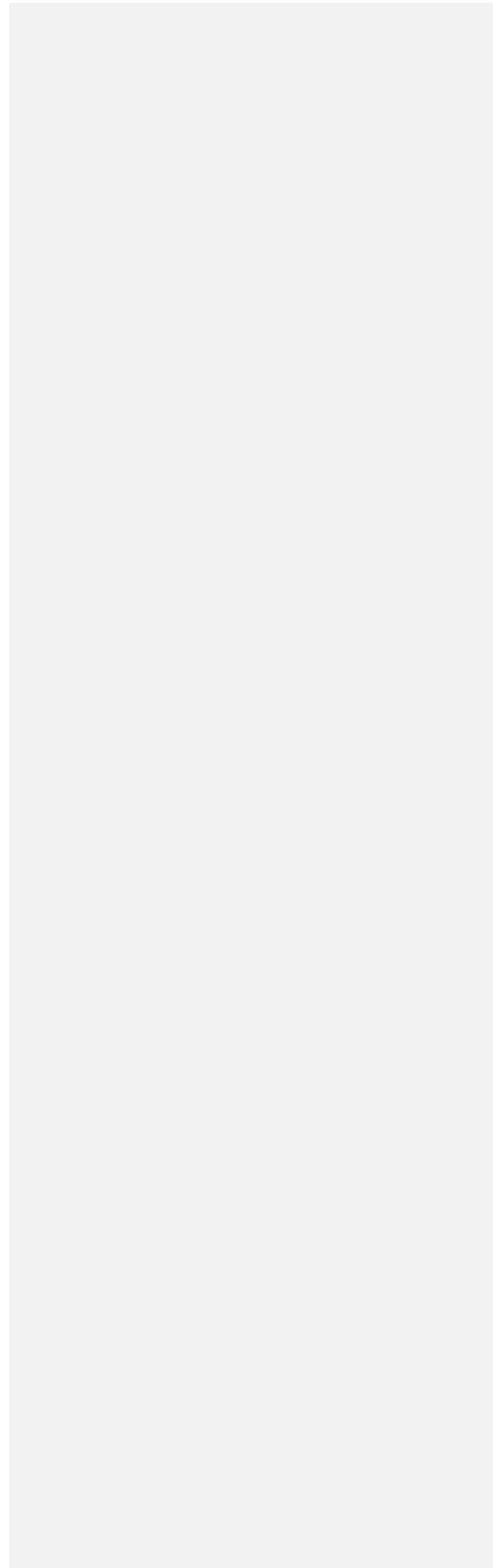
Management of Contract for EV Charging Infrastructure

[template to be developed as required to provide for project specifics]

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AGREEMENT

between

- (1) [PARTY 1];
- (2) [PARTY 2]; and
- (3) [PARTY 3]

together “the Authorities”

WHEREAS:

- (A) In terms of a Memorandum of Understanding between the Authorities dated [●] (the “MOU”), the Authorities have jointly procured and have agreed to manage a contract for a project involving the installation, operation and maintenance of an EV charging infrastructure network in [●] (the “Project”); and
- (B) In addition to the terms of the MOU, the Authorities have agreed to carry out the Project together in accordance with the terms of this Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**Authority Representative**” means a representative of an Authority for the purposes of the Project, appointed and acting in accordance with Clause 6;

“**Collaboration Principles**” means the principles set out in Part 1 of the Schedule to this Agreement.

“**Commencement Date**” means the last date of signing of this Agreement;

“**Concession Contract**” means the concession contract to be entered into with the Supplier relating to the Project on or around the Commencement Date;

“**Data Protection Laws**” means any law relating to data protection and the processing of personal data from time to time under this Agreement including, without limitation to the foregoing generality:

- the Data Protection Act 2018;

- the General Data Protection Regulation (EU) 2016/679 (in so far as retained in United Kingdom domestic law, and as amended, by virtue of the European Union (Withdrawal) Act 2018 (as amended), and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419); and
- the Privacy and Electronic Communications (EC Directive) Regulations 2003 (in so far as retained in United Kingdom domestic law, and as amended, by virtue of the European Union (Withdrawal) Act 2018 (as amended), and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419).

“**Delegated Matter**” means a matter which the Lead Authority shall have authority to decide and carry out on behalf of the Authorities in accordance with Clause 8.1;

“**Financial Year**” means a period beginning on 1 April of any year and ending on 31 March of the following year;

“**Intellectual Property**” means any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them;

“**Lead Authority**” means [●];

“**Material**” means all data, text, graphics, images and other materials or documents created, used or supplied by an Authority in connection with this Agreement (unless before the first use or supply, the Authority notifies the others that the data, text supplied by it is not to be covered by this definition);

“**Reserved Matter**” means a matter which the Lead Authority shall not have authority to decide or carry out, but shall be reserved to the decision of the relevant Authority or Authorities in accordance with Clause 8.1; and

“**Supplier**” means [●] who, as the successful bidder appointed to enter into the Concession Contract, will install, operate and maintain the EV charging infrastructure network in relation to the Project; and

“**Transport Scotland**” means the executive agency of the Scottish Government providing funding for the Project under the Electric Vehicle Infrastructure Fund.

1.2 Unless a contrary intention is indicated, words, expressions and interpretational references as set out in the MOU shall have the same meanings in this Agreement.

1.3 References to Clauses and the Schedule are to clauses of, and the schedule to, this Agreement.

1.4 Headings in this Agreement are inserted for convenience only and shall be ignored in construing this Agreement.

1.5 Any reference in this Agreement to a document of any kind whatsoever (including this Agreement) is to that document as amended or varied or supplemented or novated or substituted from time to time.

2 **TERM**

2.1 This Agreement shall come into effect on the Commencement Date and shall continue in force in respect of the Authorities until the earliest of the following to occur:

2.1.1 the Authorities agree in writing to its termination;

2.1.2 the Agreement is terminated by a decision of [●] in line with Clause 14;

2.1.3 an Authority withdraws from the Agreement in accordance with Clause 15; or

2.1.4 the date of termination of the Concession Contract.

Commented [BurnPaull1]: DRAFTING NOTE – insert appointed arbitrator

3 **PRINCIPLES AND KEY OBJECTIVES**

3.1 The Authorities agree to work together to manage the delivery of the Project by the Supplier together in accordance with the terms of this Agreement.

3.2 Each of the Authorities hereby represents that it has obtained all necessary consents sufficient to ensure the delegation of functions provided for by this Agreement for the Project.

3.3 The Authorities shall use all reasonable endeavours to procure that all individuals acting on their behalf in relation to the Project shall at all times act in the best interests of the Project.

3.4 The Authorities commit to share data and knowledge relevant to the Project where appropriate and in accordance with their duties under the Data Protection Laws.

3.5 In working together, the Authorities agree that they will conduct the Project in accordance with the Collaboration Principles.

Commented [BurnPaull2]: DRAFTING NOTE – there may be authority-specific or project-specific objectives that authorities wish to express clearly and prominently here.

4 **COMMITMENT OF THE AUTHORITIES**

4.1 The Authorities agree and undertake to commit to the Project in accordance with the terms of this Agreement and not to commission and/or undertake any procurement and/or project that seeks or would procure the delivery of the same or similar services as those within the scope of the Project outside the terms of this Agreement unless:

4.1.1 this Agreement has terminated in accordance with Clause 2; or

Commented [BurnPaull3]: DRAFTING NOTE – Authorities should consider what they want to agree in terms of whether they may procure other EVI.

4.1.2 an Authority receives consent to do so in writing from the other Authorities

5 **COSTS, INCOME AND FUNDING**

Expenditure

5.1 Only the Lead Authority shall be authorised to incur expenditure or receive income on behalf of the Authorities pursuant to this Agreement, which shall be done in line with the Project Documents or as otherwise agreed between the Authorities from time to time.

5.2 The Authorities may agree from time to time to contribute [equal] financial contributions towards expenditure relating to the Project, such contributions being payable to the Lead Authority.

Income

5.3 All payments due from the Supplier to the Authorities under the Concession Contract shall be made to the Lead Authority.

5.4 The Lead Authority shall be entitled to draw down all Transport Scotland grant funding to which any of the Authorities are entitled in relation to the Project for and on behalf of each of the Authorities.

5.5 All income from the Project shall either be used for expenditure in accordance with Clause 5.1 above or shall be shared [equally] between the Authorities.

Accounts

5.6 The Lead Authority shall be required to prepare accounts including details of any expenditure incurred, income or grant funding from Transport Scotland received pursuant to this Agreement (the “**Accounts**”) in respect of each Financial Year during the course of the Project.

5.7 The Lead Authority shall:

5.7.1 in the Accounts make true and complete entries of all relevant payments made and received during the previous Financial Year; and

5.7.2 within [five] business days of the end of each Financial Year provide to the other Authorities:

(a) unaudited Accounts for such period together with certification that such Accounts comply with this Clause 5; and

Commented [BurnPaull4]: DRAFTING NOTE – this clause assumes a base position for expenditure, income and accounts.

It assumes that accounts will be reconciled between the authorities once a year.

Authorities may wish to add provisions for:

- more regular settlements;
- the Lead Authority receiving a fee/reimbursement to cover its reasonable costs and expenses for performing the Lead Authority role;
- the Lead Authority receiving money in advance of incurring expenditure; and/or
- other project specific elements

The agreement assumes below (Clause 5.4) that the Lead Authority will be able to draw down Transport Scotland funding for the Project. That will be a relevant consideration for how costs are settled between the parties.

(b) a reconciliation statement identifying the balance due from or owing to each Authority such that any net profits or losses in the Accounts are shared [equally] between the Authorities.

5.8 Within [thirty] business days of the receipt of the reconciliation statement in accordance with Clause 5.7.2(b), any Authority owed money in accordance with the reconciliation statement shall send out a relevant balancing invoice for that amount to the Authority or Authorities owing that balance.

5.9 An Authority receiving an invoice for payment in accordance with Clause 5.8 shall pay it in full within [thirty] business days.

5.10 The Authorities hereby agree that any disagreement relating to the Accounts including, but not limited to:

5.10.1 if the Lead Authority carries out any work or incurs any cost or expenses that is not envisaged by any other Authority to be an efficient use of time and/or resources; or

5.10.2 if any Authority believes it is likely to incur disproportionate costs in relation to the Project ;

shall be resolved by the Authorities in accordance with Clause 14.

6 **AUTHORITY REPRESENTATIVES**

6.1 Each Authority shall appoint an Authority Representative and shall notify the other Authorities of the identity of their Authority Representative prior to the Commencement Date and whenever any new Authority Representative is appointed.

6.2 Each Authority Representative shall have responsibility for:

6.2.1 communicating with the other Authorities on behalf of their Authority in relation to the Project;

6.2.2 championing the Project within their own Authority;

6.2.3 securing, as far as possible that any matter which is recommended to that Authority by the Lead Authority for decision shall be considered and determined expeditiously and having due regard to the benefits to each Authority of the joint implementation of the Project;

6.2.4 ensuring that their Authority provides the support, of whatever kind, necessary to secure the effective achievement of the Project.

Commented [BurnPaul15]: DRAFTING NOTE – the list at 6.2 should be expanded upon, as necessary, considering the specifics of the project. If adding more responsibilities, authorities may wish to consider whether one representative is suitable or there should be multiple reps per authority.

7 **THE LEAD AUTHORITY**

7.1 The Authorities, acting jointly and severally, appoint with effect from the Commencement Date [●] to be the Lead Authority for the discharge of functions related to the Delegated Matters, which functions shall be carried out for and on behalf of the Authorities. [●] agrees to act in that capacity subject to and in accordance with the terms and conditions of this Agreement.

7.2 The Lead Authority will be responsible for carrying out the Project, including:

- 7.2.1 ongoing operation and management of the Concession Contract;
- 7.2.2 communicating on behalf of the Authorities with the Supplier;
- 7.2.3 making payments, and receiving payments from, the Supplier under the Concession Contract;
- 7.2.4 communicating on behalf of the Authorities with Transport Scotland in relation to the Project;
- 7.2.5 drawing down funding from Transport Scotland for the purpose of the Project;
- 7.2.6 ongoing management of the relationship between the Authorities; and
- 7.2.7 any other matters that the Authorities shall agree from time to time.

8 **DECISION MAKING**

8.1 Decisions relating to the matters outlined in Part 2 of the Schedule to this Agreement shall be Delegated Matters or Reserved Matters as specified in that Part of the Schedule.

8.2 Where the relevant Authority or Authorities have made a decision relating to a Reserved Matter, they may then instruct the Lead Authority to carry out that decision in practice.

8.3 The relevant Authority or Authorities may declare by notice in writing to the other Authorities that any matter arising is to be treated as a Delegated Matter or a Reserved Matter for the purpose of this Agreement.

9 **PROJECT MANAGEMENT**

9.1 The Lead Authority shall prepare and keep up to date a project plan, work programme, resource plan and annual budget for the management of the Project (the “**Project Documents**”).

9.2 The Project Documents shall be sent to the Authorities in draft form for comment when first prepared and on the making of any update or amendment, who shall respond with any

Commented [BurnPaull6]: DRAFTING NOTE – the list at 7.2 should be expanded upon, as necessary, considering the specifics of the project.

Commented [BurnPaull7]: DRAFTING NOTE – authorities may already have “project documents” which they wish to incorporate or refer to. Authorities should consider which documents are necessary for their project (may be more or less than those listed here) and the appropriate process for reviewing and approving, including timescales.

comments within a period of [one month] [or as otherwise agreed in writing between the Authorities].

9.3 The Lead Authority shall receive and consider the comments of each of the Authorities on the Project Documents and shall prepare a proposed final version to be sent to the Authorities for approval, who shall respond within a period of [one month] [or as otherwise agreed in writing between the Authorities].

9.4 If the Project Documents, or any updated or amended version of the Project Documents, are not approved by all of the Authorities then the disagreement shall be resolved in accordance with Clause 14.

9.5 The Project Documents shall form an instruction from the Authorities to the Lead Authority to carry out the Project as detailed in the Project Documents. The Lead Authority shall act in accordance with the Project Documents at all times.

10 AUTHORITY TO ENTER CONTRACTS ETC.

10.1 No Authority shall have the authority to enter into any contracts on behalf of any other Authority unless agreed in writing between the Authorities.

10.2 The Lead Authority may communicate with third parties on behalf of the Authorities in respect of the Project in terms of this Agreement, but they must make clear in any such communication that they do so on behalf of the Authorities.

11 LIABILITIES

11.1 None of the Authorities shall have any liability to the other Authorities in respect of any loss which those other Authorities may suffer as a consequence of any action or omission by any officer of the Authority, whilst working on the Project.

12 INTELLECTUAL PROPERTY

12.1 Subject to [●], each Authority will retain all Intellectual Property in its Material.

12.2 Each Authority will grant all of the other Authorities a non exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its Material for any purpose resulting from Project whether or not the Authority granting the licence remains a party to this Agreement or the Project.

12.3 Without prejudice to Clause 12.1 if more than one Authority owns or has a legal or beneficial right or interest in any aspect of the Material for any reason (including that no one Authority can demonstrate that it independently supplied or created the relevant Material without the help of one or more of the other Authorities), each of the Authorities who contributed to the relevant Material will grant to all other Authorities to this Agreement a non-exclusive,

Commented [BurnPaull8]: DRAFTING NOTE: insert any documents by which IP is assigned or licensed (eg. Concession Contract, funding agreement with Transport Scotland) as appropriate

perpetual, non-transferable and royalty free licence to use and exploit such Material as if all the other Authorities were the sole owner of the Material.

12.4 For the avoidance of doubt, any Authority who has licensed any Intellectual Property under this Agreement will have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.

12.5 Each Authority warrants that it has or will have the necessary rights to grant the licences set out in Clauses 12.2 and 12.3 in respect of the Material to be licensed.

12.6 Each Authority shall indemnify the other Authorities against any loss arising out of any dispute or proceedings brought by a third party alleging infringement of its intellectual property rights by use of that Authority's intellectual property for the purpose of the Project.

13 **REMEDICATION**

13.1 At any time, any of the Authorities (the "**First Authority**") may serve on one of the other Authorities (the "**Second Authority**") a notice (a "**Default Notice**"), alleging that that Authority has failed to comply with its obligations under this Agreement, setting out any suggested remedial action and any damage which the Authority serving the notice has or is likely to suffer as a result of the alleged failure.

13.2 The Second Authority shall have fourteen days within which to serve on the First Authority a response (a "**Counternotice**"), setting out in respect of every matter contained in the Default Notice proposals for the remediation of the alleged failure and making good any loss which the First Authority has suffered or may suffer as a result of the failure or the reasons why that alleged failure is disputed.

13.3 Within fourteen days of receipt of a Counternotice, the First Authority shall serve on the Second Authority an acceptance (a "**Notice of Acceptance**") of any proposals contained in the Counternotice in so far as those proposals are accepted by the First Authority, and may send a notice of dispute (a "**Notice of Dispute**") of any proposal which is not accepted by the First Authority as contained in the Counternotice, setting out in respect of each proposal which is not accepted by the First Authority why it is considered to be unacceptable.

13.4 Where any proposal in a Counternotice is accepted in a Notice of Acceptance, the Second Authority shall implement that proposal as soon as reasonably practicable.

13.5 Where any matter is contained in a Notice of Dispute, or where a remediation contained within a Notice of Acceptance is not implemented, it shall be resolved by the Authorities in accordance with Clause 14.

14 **DISPUTE RESOLUTION**

14.1 Any disputes or disagreements arising under or in connection with this Agreement shall be resolved in accordance with this Clause 14.

Commented [BurnPaull9]: DRAFTING NOTE – particularly where authorities have worked together on other projects, they may have alternative remediation/disputes procedures that they wish to include.

Commented [BurnPaull10]: DRAFTING NOTE – authorities should agree on a suitable dispute resolution process for the and the specific project, including, for example, a party to act as an arbitrator if required.

- 14.2 If a dispute or disagreement arises in relation to the Agreement then each Authority Representative and such other persons as any Authority considers appropriate shall attend a meeting in relation to the dispute or disagreement within ten business days of notification of that dispute or disagreement and attempt to resolve the disputed matter in good faith.
- 14.3 If the Authorities fail to resolve a dispute or disagreement within ten business days of meeting pursuant to Clause 14.2, any Authority may refer the matter for resolution to [●].
- 14.4 Any dispute and/or disagreement to be determined by [●] under this Agreement shall be promptly referred to them for determination.
- 14.5 The Authorities shall on request promptly supply to [●] all such assistance, documents and information as may be required for the purpose of determination and the Authorities shall use all reasonable endeavours to procure the prompt determination of such reference.
- 14.6 The determination of [●] shall (in the absence of manifest error) be conclusive and binding upon the Authorities.
- 14.7 The costs of the resolution of any dispute and/or disagreement between the Authorities under this Agreement shall be borne equally by the Authorities to the dispute in question save as may be otherwise directed by [●].

15 **WITHDRAWAL**

- 15.1 Without prejudice to any other rights or remedies of the Authorities, this Agreement may be terminated by any Authority withdrawing from the Agreement by giving written notice to the other Authorities, which notice shall be effective 30 business days after receipt.
- 15.2 Each Authority acknowledges that, if it withdraws from this Agreement, that withdrawal is likely to cause additional cost to the other Authorities including, but not limited to, the cost of undertaking a separate procurement and the costs attendant upon the delayed availability of the services and/ or facilities which would enable it to secure an EV charging infrastructure network.
- 15.3 Each Authority agrees that in the event that it gives notice of withdrawal, it will indemnify the other Authorities against any loss which those other Authorities may suffer, acting reasonably, as a result of its withdrawal from this Agreement.
- 15.4 Where any Authority withdraws from this Agreement:
- 15.4.1 the obligations of that Authority in respect of the furtherance of the Project shall cease on such withdrawal;
 - 15.4.2 the Agreement shall continue in force as respect any financial liabilities which have arisen or may arise out of the performance of this Agreement ;

15.4.3 the Agreement shall remain in force in respect of any liability of any Authority to indemnify the other Authorities under this Clause 15 of the Agreement; and

15.4.4 Clause 14 of this Agreement shall remain in force in respect of any of the matters arising from the performance or withdrawal of any Authority under this Agreement.

16 **TERMINATION**

16.1 If the Agreement is terminated in accordance with Clause 2, save for the obligations set out in Clauses 5, 12, 13, 14, 15, 17, 18 and 27, the Authorities shall be released from their respective obligations described in this Agreement.

16.2 Where an Authority withdraws from the Project and this Agreement in accordance with Clause 15, the withdrawing Authority shall, if the other Authority or Authorities so require by notice given before the expiry of the period of two months' of the date of such withdrawal or the termination of this Agreement in respect of that Authority, transfer to any one or all of such other Authorities any property acquired and/or secured by such withdrawing Authority for the purposes of the Project at cost (taking into account any contribution already made to that cost to the withdrawing Authority from another Authority).

16.3 The Authorities acknowledge and agree that:

16.3.1 the Project has been modelled on the basis of participation by the Authorities and that there are considerable economic benefits to be achieved as a result of such joint working; and

16.3.2 accordingly, save for the circumstances described in Clause 2.1 or Clause 15, in the event that this Agreement is terminated by any Authority pursuant to Clause 15.1 such Authority shall, subject to Clause 16.4, be liable to the other Authorities for their consequential loss, including, but not necessarily limited to:

- (a) their reasonable and properly incurred abortive costs incurred in the Project (including but not necessarily limited to the costs of legal, financial and technical advice);
- (b) any costs, claims and damages payable by the other Authorities arising from claims from the Supplier in respect of their abortive costs;
- (c) costs of re-commissioning alternative provision to the Project,
- (d) loss of external funding; and
- (e) additional costs as a consequence of the delayed availability of the facilities which were proposed to be procured under the Project.

16.4 Notwithstanding the provisions of Clause 16.3, the Authorities shall not agree or enter into discussions with a view to agreeing with the Supplier that any of them is or will become liable to the Supplier at the time in question or in the future for any abortive or similar costs or damages of the Supplier or its advisers.

17 **CONFIDENTIALITY AND ANNOUNCEMENTS**

17.1 Each Authority shall, both during the term of this Agreement and at all times following its termination or expiry, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any confidential information about the business of and/or belonging to any other Authority which has come to its attention as a result of or in connection with this Agreement or the Project.

17.2 The obligation set out in Clause 17.1 shall not apply to:

17.2.1 information which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 17;

17.2.2 any disclosure to enable a determination to be made under Clause 14;

17.2.3 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental regulatory authority concerned;

17.2.4 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

17.2.5 any disclosure of information by any Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Project; or

17.2.6 any provision of information to the Authorities' own professional advisers or insurance advisers.

17.3 Where disclosure is permitted under Clause 17.2.3 or 17.2.4, the disclosing Authority shall ensure that the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 17.

17.4 No Authority shall make any public statement or issue any press release or publish any other public document relating, connected with or arising out of this Agreement and/or the Project which is not in accordance with the Project Documents without the prior agreement of the other Authorities (excluding any disclosure required by legal or regulatory requirements).

18 **FREEDOM OF INFORMATION**

- 18.1 Each Authority acknowledges that all of the Authorities are subject to the provisions of the Freedom of Information (Scotland) Act 2002 (the “**FOI(S)A**”) and the Environmental Information (Scotland) Regulations 2004 (the “**EI(S)R**”) and each Authority shall where reasonable, at their own expense, assist and co-operate with any other Authority to enable that other Authority to comply with these information disclosure obligations.
- 18.2 Where an Authority receives a request for information under either the FOI(S)A or the EI(S)R in relation to information which it is holding on behalf of any of the other Authorities in relation to the Project, it shall (and shall procure that its consultants and/or sub-contractors shall):
- 18.2.1 transfer the request for information to the other Authority as soon as practicable after receipt and in any event within two business days of receiving a request for information;
 - 18.2.2 provide the other Authority with a copy of all information in its possession or power in the form that the Authority requires within ten business days (or such longer period as the Authority may specify) of the Authority requesting that information; and
 - 18.2.3 provide all necessary assistance as reasonably requested by the other Authority to enable the Authority to respond to a request for information within the time for compliance set out in the FOI(S)A or the EI(S)R.
- 18.3 Where an Authority receives a request for information under the FOI(S)A or the EI(S)R which relates to the Agreement or the Project, it shall inform the other Authorities of the request for information as soon as practicable after receipt and in any event at least two business days before disclosure and shall use all reasonable endeavours to consult with the other Authorities prior to disclosure and shall consider all representations made by the other Authorities in relation to the decision whether or not to disclose the information requested.
- 18.4 The Authorities shall be responsible for determining in their absolute discretion whether any information requested from them under the FOI(S)A or the EI(S)R:
- 18.4.1 is exempt from disclosure under the FOI(S)A or the EI(S)R; or
 - 18.4.2 is to be disclosed in response to a request for information.
- 18.5 Each Authority acknowledges that the other Authorities may be obliged under the FOI(S)A or the EI(S)R to disclose information:
- 18.5.1 without consulting the other Authorities where it has not been practicable to achieve such consultation; or

18.5.2 following consultation with the other Authorities and having taken their views into account.

19 **WARRANTIES**

19.1 Each of the Authorities warrants and represents to the others that:

19.1.1 it has all necessary power and authority to enter into and perform its obligations under this Agreement;

19.1.2 its entry into and performance under the terms of this Agreement will not infringe the intellectual property rights of any third party or cause it to be in breach of any obligations to a third party;

19.1.3 so far as it is aware, all information, data and materials provided by it under this Agreement will be accurate and complete in all material respects, and it is entitled to provide the same to the other without recourse to any third party; and

19.1.4 this Agreement includes valid obligations which shall be binding upon it in accordance with its terms.

19.2 Except as expressly provided in this Agreement, there are no conditions, warranties or other terms binding on the parties with respect to the actions contemplated by this Agreement. Any condition, warranty or other term in this regard that might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is, to the extent that it is lawful to do so, excluded by this Agreement.

20 **NO AGENCY OR PARTNERSHIP**

20.1 Save as expressly provided otherwise in this Agreement or where a statutory provision otherwise requires, the Authorities shall not in any way whatsoever:

20.1.1 be, act or hold themselves out as an agent of the others;

20.1.2 make any representations or give any warranties to third parties on behalf or in respect of the others; or

20.1.3 bind or hold themselves out as having authority or power to bind the others.

20.2 Nothing in this Agreement shall create, or be deemed to create, a partnership between the Authorities.

21 **ENTIRE AGREEMENT**

21.1 This Agreement constitutes the entire agreement and understanding between the Authorities in relation to its subject matter and supersedes all prior representations, arrangements,

understandings, agreements, statements, representations or warranties (whether written or oral) relating to the same.

22 **INCONSISTENCY**

22.1 This Agreement and its Schedules shall be read and taken together. In the event of any inconsistency or conflict between these terms and conditions in this Agreement and the contents of any of the Schedules these terms and conditions shall prevail.

23 **SEVERANCE**

23.1 In the event of any provision of this Agreement being or becoming legally ineffective or unenforceable the remaining provisions of this Agreement shall not be invalidated.

24 **WAIVER**

24.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute and shall not be construed as a waiver of the right or remedy or a waiver of other rights or remedies nor effect the validity of this Agreement.

24.2 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

24.3 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

25 **AMENDMENTS**

25.1 No amendment to this Agreement shall be valid unless it is in writing and signed by the duly authorised representatives of each of the Authorities and expressed to be for the purpose of such amendment.

26 **GOVERNING LAW AND JURISDICTION**

26.1 This Agreement shall be governed by and construed in accordance with the Laws of Scotland and the Authorities irrevocably submit to the exclusive jurisdiction of the Scottish courts.

27 **NOTICES**

27.1 Any notice required to be given by any Authority pursuant to or in connection with this Agreement shall not be effective unless given in writing and sent by first class post or by email to the relevant Authority Representative.

27.2 A notice served in accordance with Clause 27.1 shall be deemed to have been duly served when received except that if it is received between 5pm on a business day and 9am on the immediately following business day it shall be deemed to have been served at 9am on the second of such business days.

27.3 Each Authority shall notify the other in writing within five business days of any change in its addresses for service.

28 **GENERAL**

28.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and powers, duties and obligations in the exercise of their functions as Local Authorities and/or in any other capacity and all rights, powers, discretions, duties and obligations of the Authorities under all Laws may at all times be fully and effectually exercised as if the Authorities were not a party to this Agreement and as if the Agreement had not been made.

28.2 This Agreement is personal to the Authorities and no Authority shall assign, transfer or purport to assign or transfer to any other persons any of its rights or sub-contract any of its obligations under this Agreement.

28.3 Each Authority shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Authority is entitled to bring a claim against another Authority pursuant to this Agreement.

28.4 Save where otherwise provided, the Authorities will pay interest on any amount payable under this Agreement not paid on the due date from that date to the date of payment at a rate equal to 4% above the base rate from time to time of the Bank of Scotland.

29 **COUNTERPARTS**

29.1 This Agreement may be executed in any number of counterparts each of which so executed will be an original but together will constitute one and the same instrument.

30 **COSTS**

30.1 The Authorities shall be responsible for paying their own respective costs and expenses in relation to the preparation, execution and implementation of this Agreement, except as expressly provided in this Agreement.

IN WITNESS WHEREOF these presents consisting of this and the preceding [●] pages [together with the schedule in [●] parts annexed hereto are executed in counterpart as follows and DELIVERED on [●]:

SUBSCRIBED for and on behalf of the said [●]

at

on

by

Print Full name

before this witness:

Authorised Signatory

Print Full Name

Address:

Witness

SUBSCRIBED for and on behalf of the said [●]

at

on

by

Print Full name

before this witness:

Authorised Signatory

Print Full Name

Address:

Witness

SUBSCRIBED for and on behalf of the said [●]

at

on

by

Print Full name

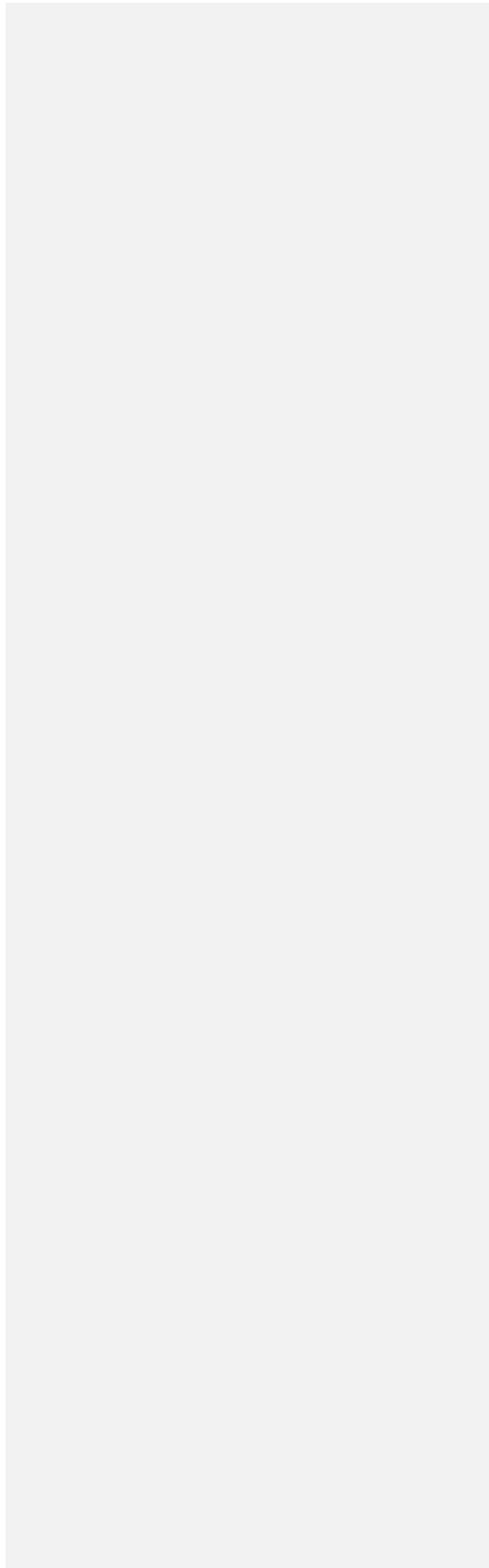
before this witness:

Authorised Signatory

Print Full Name

Address:

Witness



This is the Schedule referred to in the foregoing Inter-Authority Agreement between [●], [●] and [●] dated [●]

SCHEDULE

PART 1- COLLABORATION PRINCIPLES

1 Openness and Trust

The Authorities undertake to act in accordance with a duty of good faith to each other; to be open and trusting in their dealings with each other; to make information, data, knowledge and analysis available to each other; to use such information to support the Project; to discuss and develop ideas openly; and to contribute fully to all aspects of the successful achievement of the Project.

While respecting the mutual need for commercial confidentiality, the Authorities undertake to be transparent in their dealings with each other and, without prejudice to the foregoing, the Authorities undertake to respect matters of commercial confidentiality and potential sensitivity.

2 Commitment and Drive

The Authorities undertake to be committed fully to the Project; to seek to motivate their respective employees, officers and members involved in or attached to the Project; and to address the challenges of the Project with drive, enthusiasm and a determination to succeed.

3 Skills and Creativity

The Authorities acknowledge and agree that each brings complementary skills and knowledge which they will apply creatively to achieving their respective objectives, resolution of difficulties and the development of the Project and the personnel working within it.

The Authorities acknowledge and agree that to achieve their respective objectives, will involve the appreciation and adoption of common values by each of them.

4 Effective Relationships

The Authorities undertake to develop and maintain clear roles and responsibilities for each of them and to develop relationships at the appropriate levels within each Authority providing direct and easy access for the others' representatives.

5 Developing and Adapting

The Authorities acknowledge and agree that they are engaged in a long term relationship for their mutual benefit through the achievement of the Project, which relationship needs to develop and adapt. The Authorities undertake to use reasonable endeavours to develop and

Commented [BurnPaull11]: DRAFTING NOTE – these principles are included as illustrative. Authorities will want to consider and update per their own policies/objectives. Principles of this nature are very difficult to rely on or enforce – the primary benefit of including such principles is the process of developing and agreeing on them.

maintain an effective joint process to ensure that the Project develops appropriately and in line with the principles set out in this Agreement.

6 Reputation and Standing

The Authorities undertake to pay the utmost regard to the standing and reputation of one another and not to do (whether by act or omission) anything which may bring the standing or reputation of any of the other Authorities into disrepute or attract adverse publicity to any of the other Authorities.

7 Reasonableness of Decision Making

The Authorities agree as between each other that all decisions made in relation to this Agreement and the Project generally shall be made by them acting reasonably.

PART 2 – DELEGATED AND RESERVED MATTERS

1 Delegated Matters

The following matters shall be Delegated Matters for the purpose of this Agreement:

-
-
-

2 Reserved Matters

The following matters shall be Reserved Matters for the purpose of this Agreement:

-
-
-

Commented [BurnPaull12]: DRAFTING NOTE - Authorities should consider what they are happy to delegate to the Lead Authority. Much of the detail here will depend on the terms of the contract with the supplier, and what will be involved practically in managing that contract (serving notices, enforcement, input to tariffs, granting of access licences for works, etc.)