

Historic Environment Scotland

Àrainneachd Eachdraidheil Alba

«Recipient»
«Recipient Address1»
«Recipient Address2»
«Recipient Address3»
«Recipient Address4»
«Recipient Address5»
«Recipient Address6»
«Recipient Address7»

Longmore House
Salisbury Place
Edinburgh
EH9 1SH

Direct Line: 0131 668
Direct Fax: 0131 668 8788
Switchboard: 0131 668 8600
«email»@scotland.gsi.gov.uk

Our ref:
Your ref:
«Date»

Dear «Salutation»

«ONE»

HISTORIC ENVIRONMENT SCOTLAND ACT 2014

On behalf of **Historic Environment Scotland**, a non-departmental public body incorporated under the Historic Environment Scotland Act 2014 being a registered Scottish Charity (SC045925) and having its principal place of business and registered Charity address at Longmore House, Salisbury Place, Edinburgh, EH9 1SH ("**HES**"), I hereby offer to make to **you** a grant under Section 11 of the Historic Environment Scotland Act 2014 but that subject to following terms and conditions:-

1 Definitions and Interpretation

You will find a list of defined terms and rules of interpretation for this **Offer** in Clauses 23 and 24. Where defined terms have been used throughout this **Offer**, they have been highlighted in bold.

2 Preconditions

- 2.1 The obligations on **HES** under the **Grant Contract** (including, for the avoidance of doubt, the obligation to pay the **Grant**) shall not come into effect until **HES** has notified **you** that **HES** has received all of the **Completion Documents**.
- 2.2 **You** are responsible for all of the costs associated with obtaining and, where applicable, registering the **Completion Documents**.
- 2.3 If **you** have not delivered all of the **Completion Documents** to **HES** within three months of the date of this **Offer**, **HES** will be entitled to withdraw this **Offer** or, as the case may be, terminate the **Grant Contract**, by notice to that effect.
- 2.4 **You** must not commence the **Scheme Works** until **HES** gives its permission in writing, failing which **HES** will be entitled to terminate the **Grant Contract**.

3 The Grant

- 3.1 The **Grant** must be used solely for the purpose of (i) carrying out the **Scheme Works**; (ii) making the **Property** available for the **End Use**; and (iii) delivering the **Project Outcomes**.
- 3.2 The **Scheme Works** are to be funded in accordance with the **Scheme Funding**. If there is a variation to the **Scheme Funding**, **you** must notify **HES** in writing of the nature and extent of the variation within 7 days of becoming aware of it and **HES** will be entitled to reduce the amount of the **Grant**, as it considers appropriate, up to a maximum of the amount of the variation (the "**Revised Grant**").
- 3.3 If there is a change to the **Scheme Funding** and the amount of **Grant** already released in accordance with Clause 6 exceeds the amount of the **Revised Grant**, **you** will repay to **HES**, within 21 days of demand, any amount released to **you** in excess of the **Revised Grant**.
- 3.4 If there is a material change to the **Scheme Funding**, **HES** will be entitled to terminate the **Grant Contract** at its discretion.

4 The Scheme Works

In carrying out the **Scheme Works**, **you** must:-

- 4.1 appoint the **Professional Advisor** and retain his services until the **Scheme Works** have been completed in accordance with Clause 5;
- 4.2 procure that the **Scheme Works** are completed (i) in a good and workmanlike manner; (ii) using only good quality materials having regard to the historic fabric of the **Property**; (iii) in accordance with all **Legal Requirements**; (iv) using best industry practice having regard to the historic nature of the **Property**; (iv) in accordance with the **Scheme Guidance**; and (v) to a standard acceptable to **HES**;
- 4.3 procure that adequate works insurance cover is arranged to protect the historic fabric of the **Property** during the progress of the **Scheme Works** and deliver a copy of the policy to **HES** with, if requested by **HES**, its interest noted on the policy;
- 4.4 act as the client for the purposes of the Construction (Design and Management) Regulations 2015;
- 4.5 allow **HES** and its representatives access to the **Property** at all reasonable times for the purpose of inspecting the state and progress of the **Scheme Works** provided that **HES** (i) will comply with all safety precautions in force from time to time at the **Property**; and (ii) will not issue any directions to any contractor in respect of the **Scheme Works**, written or otherwise;
- 4.6 display at or near the **Property**, and in a prominent position, for the duration of the **Scheme Works**:-
 - 4.6.1 a sign supplied by **HES** publicising the support given by **HES** through the **Grant**; and

- 4.6.2 if required by **HES**, an interpretation board detailing the **Scheme Works** and the history of the **Property**, in a form to be approved by **HES**;
- 4.7 submit photographs of the **Property** and the **Scheme Works** at any time during the **Scheme Works** as are reasonably requested by **HES**; and
- 4.8 use **your** reasonable endeavours to complete the **Scheme Works** by the **Target Date** and notify **HES** in writing of any anticipated change to the **Target Date** as soon as reasonably practicable after becoming aware of it.

5 Completion of the Scheme Works

- 5.1 When the **Professional Advisor** believes that the **Scheme Works** are complete, **you** must inform **HES** in writing. **HES** will be entitled to inspect the **Property** and if it does not agree that the **Scheme Works** have been practically completed, they will consult with the **Professional Advisor** to draw up a list of outstanding works required to be carried out by **you** before **HES** will consider the **Scheme Works** to be practically complete. Once the outstanding works have been carried out, **HES** will be entitled to re-inspect the **Property** and the provisions of this Clause 5.1 will be repeated as often as is necessary until **HES** agree that the **Scheme Works** are practically complete.
- 5.2 In the event of a dispute between **you** and **HES** as to whether or not the **Scheme Works** have been practically completed, either **you** or **HES** will be entitled forthwith to refer the dispute to an **Expert**. The **Expert's** decision is to include a determination on expenses (failing which the fees will be borne equally by **you** and **HES**) and be final and binding for the purposes of this clause only.
- 5.3 **You** will, at **your** own cost, supply to **HES** colour photographs of the **Property** as at the **Completion Date** in a digital jpeg format, or such other format as may be reasonably specified by **HES** from time to time. The photographic material must be of publication quality and include all elevations of the **Property**.
- 5.4 **You** must ensure that the **Completion Date** has occurred on or before the **Final Account Deadline**.

6 Procedure for Release of the Grant

- 6.1 Payment of the **Grant** and any instalment of it, is suspensively conditional on **you**:-
 - 6.1.1 complying with the terms of the **Grant Contract**;
 - 6.1.2 submitting each **Monthly Valuation** and the corresponding grant payment request form, ARCH5, to **HES** within 15 **Working Days** of the date of the relevant **Monthly Valuation**;
 - 6.1.3 submitting each **Annual Valuation** by the date falling 15 **Working Days** after the end of each **Financial Year**.

6.2 Subject to the terms of Clause 2 and Clause 6.1, the **Grant** will be released to **you** as follows:-

- (a) 90% of the amount specified in each **Monthly Valuation** (up to a maximum of 90% of the Grant) 15 **Working Days** after **you** have (i) submitted the relevant **Monthly Valuation** to **HES**; and (ii) **HES** have approved the amounts set out in the **Monthly Valuation**;
- (b) 5% of the **Grant** 15 **Working Days** after the **Final Account Approval Date**; and
- (c) 5% of the **Grant** 15 **Working Days** after the last date of the defects liability period provided for in the **Scheme Contract**.

7 Final Accounts

7.1 **You** must submit the **Final Accounts** to **HES**, on or before the **Final Account Deadline**, failing which, any part of the **Grant** not paid as at that date shall be retained by **HES** and the **Grant** shall be reduced accordingly.

7.2 If a **Delay Event** occurs, **you** must give written notice to **HES** and **you** will be allowed an extension to the **Final Account Deadline** as **HES** deem reasonable in the circumstances.

7.3 **HES** shall notify **you** as soon as reasonably practicable after the date on which **you** submit the **Final Accounts**, if:-

- 7.3.1 the **Final Accounts** are approved;
- 7.3.2 whether any further information is required to be submitted before the **Final Accounts** can be approved, in which case **you** shall be obliged to submit such information to **HES**; or
- 7.3.3 whether the **Final Accounts** are not approved.

7.4 If, following inspection of the **Scheme Works** and/or the **Final Accounts**, **HES** determine (i) that the actual costs incurred by **you**, are less than the anticipated costs set out in the **Costed Profile**, or (ii) costs have been accounted for in the **Final Accounts** which are not **Grant Eligible Costs**; **HES** will be entitled to reduce the amount of the **Grant** as it considers appropriate and, in the event that the amount of the **Grant** already released exceeds the reduced amount, **you** will repay the excess to **HES** within 15 **Working Days** of demand.

8 Undertakings

8.1 End Use

Following the **Completion Date**, **you** must make the **Property** available for the **End Use** until the end of the **Monitoring Period**.

8.2 Repair and Maintenance

Following the **Completion Date**, until the end of the **Monitoring Period**, **you** must:-

- 8.2.1 repair and maintain the **Property** so as to keep it in good repair and condition to the reasonable satisfaction of **HES** who, in determining the standard of repair and maintenance required, will have regard to the historic and architectural importance of the **Property** as part of the Nation's heritage;
- 8.2.2 have the fabric of any building on the **Property** inspected every 5 years by a registered architect who is a member of the Royal Incorporation of Architects in Scotland or by a building surveyor who is registered with the Royal Institution of Chartered Surveyors in Scotland, and submit a copy of their report to **HES** as soon as possible after their inspection; and
- 8.2.3 submit photographs of the **Property** to **HES** showing the state of repair and condition of the **Property** as are reasonably requested by **HES**.

8.3 Not to Alter

Following the **Completion Date**, until the expiry of the **Monitoring Period**, **you** must not alter, extend or demolish the **Property** or any part of it without the prior written approval of **HES**.

8.4 Insurance

- 8.4.1 **You** must maintain the **Insurance Policy** throughout the **Monitoring Period** and exhibit to **HES** within 10 **Working Days** of demand a copy of the **Insurance Policy** and the current certificate of insurance in respect of the **Property** with, if requested by **HES**, its interest noted on the **Insurance Policy**.
- 8.4.2 **You** must use all money received under the **Insurance Policy** in making good the damage giving rise to the claim for which the money was paid.

8.5 Publicity

- 8.5.1 **You** must permit **HES** and the Scottish Government to publicise the **Property** in any publication or on the website of **HES** or that of the Scottish Government.
- 8.5.2 **You** must (i) publicise on **your** website; and (ii) ensure (as far as is possible and reasonable) that any press release, statement or publicity issued by **you** and relating to the **Property** or the **Scheme Works**; mentions the **Grant** from **HES**.
- 8.5.3 **You** must not make any announcement or issue any statement, press release or other publicity before **HES** has made public the award of the **Grant** to **you**.

8.6 Provision of Information

You must immediately provide any information required by **HES** to allow **HES** to assess whether there has been a breach of the **Grant Contract**.

8.7 Inspection

You must allow **HES** and its representatives access to the Property for the purpose of inspection in order for **HES** to check whether **you** are complying with the terms of the **Grant Contract**.

8.8 Public Access

8.8.1 Following the **Completion Date** until the end of the **Monitoring Period**, **you** must arrange for access to the **Property** to **[choose as appropriate]**:-

- a. [the interior of the **Property** for a minimum of 25 days each year between the months of May and September, at least 10 of which will be at weekends
- b. the **Property** by appointment
- c. the **Property** on doors open day or other similar scheme
- d. the **Property** by reason of its use for the **End Use**]¹

8.8.2 **You** must arrange for the access arrangements detailed in Clause 8.8.1 to be publicised **[choose one of the following]**:-

- i. [on **your** website; through specialist and historic buildings or tourist guides; and by written notification to the local tourist office;
- ii. in local or national newspapers at least once a year; through specialist historic buildings or tourist guides; and by written notification to the local tourist office;
- iii. by posters or leaflets displayed in the locality of the **Property** and by written notification to the local tourist office.]

8.8.3 **You** must not, without the prior written approval of **HES** (i) charge members of the public an admission fee to access the Property; (ii) increase any admission fee charged above the annual rate of inflation (being the rate of inflation indicated by the Consumer Price Index published in April of each year by the Office of National Statistics or such other rate nominated by **HES** acting reasonably) in any one year; and/or (iii) vary the parts of the **Property** for which an admission fee is charged.

8.9 Disposal

You must notify **HES** immediately if **you** intend to **Dispose** of the **Property**, or any interest in it, within the **Monitoring Period**.

8.10 Letting

You must not let or agree or allow any sub-letting of the **Property** for a term of 20 years or less, without the prior written consent of **HES**.

8.11 Fraud etc

You must have appropriate policies in place to reduce the risk of fraud, bribery and corruption within **your** organisation.

8.12 Living Wage

Unless otherwise approved by **HES**, **you** must ensure that **you** pay each of **your** employees at least the rate of the living wage published by the Living Wage Foundation from time to time;

8.13 Legal Requirements

You must comply with all **Legal Requirements** in relation to the **Property** or the **End Use** during the **Monitoring Period**.

8.14 Recovery Event

You must inform **HES** as soon as **you** become aware of the occurrence of an event listed in Clause 10.

9 **Monitoring Report**

You must submit the **Monitoring Report** annually to **HES** during the **Monitoring Period**.

10 **Recovery Events**

HES is entitled to (i) re-assess, vary, make a deduction from, withhold or recover the **Grant** (or such proportion of it as **HES** thinks fit or as is set out in Clause 11.1); (ii) charge **Interest** on any sums recovered from the date of payment of the **Grant** to **you** until repaid; and/or (iii) to terminate the **Grant Contract**; if:-

10.1 during the **Monitoring Period**, **you Dispose** of **your** interest in the **Property**;

10.2 at any time any condition of the **Grant Contract**, the **Conservation Burden** and/or the **Standard Security** is contravened or not complied with and, if the breach is capable of remedy, **you** have been given notice of it and have failed to remedy it within the period of time specified in the notice;

10.3 the **Completion Date** has not occurred by the **Final Account Deadline**

10.4 if **HES** do not approve the **Final Accounts** in accordance with Clause 7.3;

10.5 **you** cease to trade or are sequestrated, become apparently insolvent or enter into a trust deed for behoof of **your** creditors or being a company **you** go into liquidation whether voluntary or compulsory (otherwise than a voluntary liquidation of a solvent company for the purposes of amalgamation

or reconstruction) or appoint a receiver or have a receiver appointed or have an administration order made;

- 10.6 there is a significant change in **your** circumstances, status (including charitable status) and/or **your** organisational structure;
- 10.7 a heritable creditor validly serves a Calling Up Notice or a Notice of Default in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970 and **you** fail to comply with the terms specified in such Calling Up Notice or Notice of Default or **you** otherwise fail to make a successful application to the Court for warrant under Section 24 of the said 1970 Act;
- 10.8 where **you** are a company but not a public company, either (a) a person (other than **your** shareholders at the date of **your** Application) alone or together with any associated person(s) becomes the beneficial owner of shares in **your** issued share capital carrying the right to exercise more than 25% of the votes exercisable at **your** general meeting or (b) the shareholders at the date of **your** Application cease to hold legally and beneficially at least 50% of the issued share capital and voting rights in **your** company;
- 10.9 **HES** agree that the **Property** cannot be reinstated following damage by a risk covered by the **Insurance Policy**;
- 10.10 **HES** considers that any information provided by **you** in the **Application** and/or in terms of the **Grant Contract** is fraudulent, incorrect or misleading or **you** have failed to provide information which would have been relevant to **HES** in approving the **Grant** or determining any matter in terms of the **Grant Contract**;
- 10.11 **HES** are not satisfied with any of amounts specified in the **Monthly Valuations**;
- 10.12 the **Property** ceases to be used for the **End Use**; or
- 10.13 **you** are a tenant under a long lease, **you** renounce **your** interest in the **Property**, or the lease terminates in any other way.

11 Recovery Process

- 11.1 Subject to the provisions of Clause 11.2, where **HES** is entitled to recover all or any part of the **Grant** under Clause 10.1, **HES** shall calculate the amount due on the following basis (or such other basis as **HES** shall notify from time to time):-

Years from commencement of the Monitoring Period	Percentage of Grant or Supplementary Grant to be recovered
0-1	100%
1-2	93%
2-3	86%
3-4	79%
4-5	72%
5-6	65%

6-7	58%
7-8	51%
8-9	44%
9-10	37%
10-11	30%
11-12	24%
12-13	18%
13-14	12%
14-15	6%
15+	0%

- 11.2 If **you Dispose** of the **Property** without the prior written consent of **HES**, **HES** will be entitled, at their option, to either recover the **Grant** in accordance with the table set out in Clause 11.1 or require **you** to pay to **HES** the **Relevant Percentage** of the net proceeds achieved from the **Disposal**.
- 11.3 A certificate by **HES** as to the amount of the **Grant** due to be repaid will, in the absence of manifest error, be conclusive evidence of the sum to be repaid.
- 11.4 Any sums to be recovered from **you** in terms of Clause 10 and Clause 11 shall be paid by **you** to **HES** within 15 **Working Days** of demand.

12 Intellectual Property Rights

- 12.1 **You**, by **your** acceptance of this **Offer**, grant the **Licence** to **HES** for such purposes as **HES** reasonably require from time to time, including (i) safeguarding Scotland's built heritage; (ii) promoting the understanding and enjoyment of Scotland's built heritage; and (iii) maintaining a public record of the **Scheme Works**.
- 12.2 At the request of **HES**, **you** will promptly provide (i) copies of all **Data** covered by the **Licence**; and (ii) a clear written explanation of any **Use** of any **Third Party Data** which would infringe the intellectual property rights of any third party or breach any obligation of confidence owed by **you**.
- 12.3 **You** warrant that **Use** by **HES** (and appointed sub-licensees) of any **Data** will not breach the intellectual property rights of any third party, other than to the extent specifically disclosed in accordance with Clause 12.2(ii).
- 12.4 Nothing in this **Offer** is intended to transfer any intellectual property rights to **you** and, unless otherwise stated, **you** will **Use Data** provided to **you** by **HES** solely for the purpose of carrying out the **Scheme Works** and for the future conservation of the **Property**.

13 HES Capacity

- 13.1 No approval of any plans, specifications, drawings or other documents (including the **Scheme Specification**) will impose or be deemed to impose any liability whatsoever on **HES** as to their accuracy or otherwise and this **Offer** is made purely in **HES's** capacity as a grant funder under Section 11 of the Historic Environment Scotland Act 2014.

13.2 Inspection of the **Property** in terms of the **Grant Contract** by **HES** is purely for its own purposes and shall not be deemed to be any approval of the **Scheme Works** and cannot be relied on by **you** for any purpose.

14 Notices

Any notice under this **Offer** or the **Grant Contract** must be in writing. Any notice to **HES** will be deemed to be effectively given if it is sent through the post by recorded delivery to Historic Environment Scotland, Longmore House, Salisbury Place, Edinburgh EH9 1SH or otherwise as directed in writing by **HES**. Any notice to **you** will be deemed to be effectively given if it is sent through the post by recorded delivery to **you** at the **Property** or at **your** registered office or such other address as **you** have notified to **HES** in writing in advance. Any such notice served by post will be deemed to have been served at the expiration of 2 **Working Days** after it has been posted and in proving service of a notice it will be sufficient to prove that the envelope containing the notice was properly addressed, stamped and posted.

15 Arbitration

Without prejudice to any specific provision of the **Grant Contract**, if a dispute or disagreement arises as to the interpretation of any provision of the **Grant Contract**, it shall within 10 **Working Days** be referred to the decision of a single arbitrator mutually agreed for that purpose or, failing agreement, to be appointed at the request of either party by the Scottish Arbitration Centre and the arbitration shall be carried out under the Scottish Arbitration (Scotland) Act 2010. The seat of the arbitration shall be Scotland and the language of the arbitration shall be English.

16 Expenses

16.1 **You** will pay to **HES** within 10 **Working Days** of demand all costs, charges and expenses incurred by **HES** in the enforcement of the conditions of the **Grant Contract**, the **Conservation Burden** and/or the **Standard Security**.

16.2 If **HES** consents to any variation of the **Grant Contract**, the **Standard Security** and/or the **Conservation Burden**, **you** will be responsible for meeting all costs properly incurred (including any internal administration charge of **HES**) in documenting the variation.

16.3 **You** will be responsible for all costs incurred by **HES** (including any internal administration charge of **HES**) properly incurred in dealing with the grant of a discharge of the **Standard Security** and/or the **Conservation Burden** either at the end of the **Monitoring Period** or in the event of earlier repayment of the **Grant**.

17 Interest

You will pay to **HES Interest** on any sum which becomes due and payable to **HES** from the date the sum becomes due and payable until paid.

18 Discharge

In the event that **you** opt to repay the whole of the **Grant**, **HES** will discharge (i) the **Standard Security** and (ii) the **Conservation Burden**, in return for full repayment of the **Grant** together with **Interest** incurred from the date of payment of the **Grant** by **HES** until repaid.

19 Data Protection, Freedom of Information and the Public Reform (Scotland) Act

- 19.1 The data **you** provide to **HES** pursuant to **your Application** and the **Grant Contract** is subject to the provisions of the Freedom of Information (Scotland) Act 2002 (FOISA), the Data Protection Act 1998 (DPA) and the Environmental Information (Scotland) Regulations 2004 (EI(S)R).
- 19.2 **HES** shall be entitled to share relevant data, including historical data, that is held about **you** and **your** organisation with other organisations for legitimate purposes and when required to do so in terms of any **Legal Requirement**.
- 19.3 **HES** shall be entitled to release relevant data under FOISA and EI(S)R unless a relevant exemption or exception applies.
- 19.4 **HES** shall be entitled to release information held about **you**, including **your** identity, the amount of the **Grant** and information provided as part of **your** Application.

20 Post Settlement

- 20.1 Where the **Standard Security** and/or **Conservation Burden** are to be registered in the Land Register of Scotland, **you** will deliver to **HES**, on demand from time to time and at **your** expense, such documents and evidence as the Keeper may require to enable the Keeper to update or create (as the case may be) the Title Sheet of the **Property** to disclose (i) **you** as the registered proprietor of the whole of the **Property**; and (ii) **HES** as security holder over the whole of the **Property**. The updated or newly created Title Sheet of the **Property** will (a) contain no exclusion or limitation of warranty in terms of Section 75 of the Land Registration etc (Scotland) Act 2012; (b) disclose no entry, deed or diligence prejudicial to the interest of **HES** other than such as are created by or against **HES** or have been disclosed to, and accepted in writing by, **HES** prior to settlement; and (c) show **HES** as the first ranking security holder over **your** interest in the **Property**, save as otherwise agreed by **HES** in writing prior to settlement.
- 20.2 Within 2 months after settlement the searches detailed in paragraph 2.7 of Part 1 of the **Schedule** will be delivered brought down to a date not less than 22 days after the date of registration of the **Standard Security** and/or **Conservation Burden** disclosing no entries prejudicial to the granting and registration of the **Standard Security** and/or **Conservation Burden**.

21 State Aid

HES and **you** acknowledge that the **Grant** is being made available to **you** by **HES** under the provisions of the Historic Scotland Culture and Heritage Infrastructure Scheme 2014-2020 SA.41194.

22 Registration

HES and **you** consent to registration of the **Grant Contract** and any contract for **Supplementary Grant** for preservation and execution.

23 Definitions

Unless the context otherwise requires, in this **Offer** the following expressions shall have the following meanings and, where used throughout the **Offer**, they have been highlighted in bold:-

- 23.1 "**Annual Valuation**" means a certified valuation from the **Professional Advisor** setting out the cost of the **Scheme Works** (carried out in the relevant **Financial Year**) as are eligible for grant funding in terms of the **Scheme Guidance**, as at the last date of each **Financial Year**;
- 23.2 "**Application**" means **your** application for grant in respect of the **Scheme Works** and approved by **HES**;
- 23.3 "**Completion Date**" means the date that **HES** considers the **Scheme Works** to be practically complete in terms of Clause 5.1 or such later date as agreed between **you** and **HES**, or as determined under Clause 5.2;
- 23.4 "**Completion Documents**" means the documents listed in Part 1 of the Schedule;
- 23.5 "**Conservation Burden**" means the deed of conservation burdens to be granted by **you** to **HES** substantially in the form of the draft **Conservation Burden** (with the relevant information inserted therein) forming Part 4 of the **Schedule**;
- 23.6 "**Costed Profile**" means the costed profile of the **Scheme Works** showing the programme of works to be carried out on a monthly basis, anticipated income, payments and cash flow;
- 23.7 "**Data**" means any data, text, drawings, diagrams, images, and sounds recorded in any electronic or tangible medium;
- 23.8 "**Delay Event**" means any event which causes a delay in completion of the **Scheme Works** attributable to (i) exceptionally inclement weather; (ii) civil commotion or labour disputes; (iii) shortage of materials; or (iv) any other matter which in the reasonable opinion of **HES**, is beyond **your** control or the control of **your** contractor appointed under the **Scheme Contract**;
- 23.9 "**Dispose**" means any disposal relating to the whole or part of the **Property** by way of transfer, gift, sale, exchange, lease or sub-lease for a term of more than 20 years or, assignation of any lease or sub-lease;
- 23.10 "**End Use**" means [²] or such other use as is consented to by **HES** from time to time;
- 23.11 "**Expert**" means an independent architect agreed between the parties, or in the absence of agreement, to be appointed by the President of the Royal Incorporation of Architects in Scotland on the application of either party, and who will act as an expert and not an arbitrator.
- 23.12 "**Final Accounts**" means the final accounting under the **Scheme Contract**;
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- 23.13 "**Final Account Approval Date**" means the date on which the **Final Accounts** are approved by **HES** pursuant to Clause 7.3;
- 23.14 "**Final Account Deadline**" means [] or such later date as **HES** determine under Clause 7.2;
- 23.15 "**Financial Year**" means from 1 April to 31 March (or such other annual period specified by **HES**) until payment of the last instalment of the **Grant**;
- 23.16 "**Grant**" means [] Pounds (£[]) Sterling;
- 23.17 "**Grant Contract**" means this **Offer** and any other formal letters following on from this **Offer** comprising a concluded contract between **you** and **HES**, and which shall include any offer and acceptance of **Supplementary Grant**;
- 23.18 "**Grant Eligible Costs**" means that proportion of the cost of implementing the **Scheme Works** as is deemed by **HES** to be eligible for grant assistance;
- 23.19 "**Insurance Policy**" means a policy of insurance over the **Property** to cover the risks of fire, civil commotion, explosion, impact by aircraft, flood, storm, tempest, lightning, heave, subsidence, public liability and such other risks as **HES** may require provided that such other risks are available on normal commercial terms and conditions in the UK insurance market, but expressly providing that the risks of storm, tempest, heave and subsidence are only to be insured against once enough repairs have been carried out to the **Property** to render them in a condition where cover for such risks is reasonably obtainable by **you**, and that for such sums as **HES** shall from time to time consider sufficient to cover the full cost of rebuilding or reinstating the **Property** together with an amount to cover architects', engineers' surveyors' and other professional fees, the cost of demolition, site clearance, temporary hoarding and other works that may be required in law and incidental expenses and all Value Added Tax on such costs and others;
- 23.20 "**Interest**" means interest at a rate of 4 per centum above the base lending rate from time to time of the Royal Bank of Scotland PLC or such other rate as specified by **HES** from time to time acting reasonably;
- 23.21 "**Legal Requirement**" means any requirement in respect of or affecting the **Property** or its use under all European Community regulations and directives, common law, statute, statutory provision (including any subordinate legislation), instrument, rule or regulation under or in pursuance of any Act of Parliament, by-law, regulation, public or local policy or order made by, or any requirement of any competent statutory, public or local authority or the decision of any court of competent jurisdiction;
- 23.22 "**Licence**" means a perpetual, irrevocable, transferable, worldwide, non-exclusive, royalty-free licence to **Use** (and to authorise any third parties to **Use**) (i) all **Third Party Data** (except to the extent that **you** are not entitled to grant such a licence); and (ii) all of **Your Data**;
- 23.23 "**Mid-Point**" means the date identified by **HES** as the mid point of the **Scheme Works**;

- 23.24 “**Monitoring Period**” means the period of 15 years from the later of (i) the last date of execution of the **Grant Contract**; or (ii) the date of registration/recording of the **Conservation Burden** in the property registers;
- 23.25 “**Monitoring Report**” means an annual report detailing (i) the public access arrangements for the **Property**, (ii) the publicity given to the public access arrangements; (iii) where appropriate, the number of visitors to the **Property** during the period of the report; and (iv) **your** progress (or otherwise) in meeting the **Project Outcomes**;
- 23.26 “**Monthly Valuation**” means a certified valuation from the **Professional Advisor** setting out the cost of the **Scheme Works** (carried out in the relevant month) as are eligible for grant funding in terms of the **Scheme Guidance**, as at the last date of each calendar month prior to the payment of the last instalment of the **Grant**;
- 23.27 “**Offer**” means this **Offer**, including the **Schedule**;
- 23.28 “**Professional Advisor**” means a suitably accredited professional in building conservation appointed by **you** and approved by **HES** to manage and oversee the carrying out of the **Scheme Works**;
- 23.29 “**Project Outcomes**” means the outcomes specified in **your** Application;
- 23.30 “**Property**” means the subjects known as and forming [];
- 23.31 “**Relevant Percentage**” means the percentage that the **Grant** bears to the total amount set out in the **Scheme Funding**;
- 23.32 “**Schedule**” means the schedule of 6 parts annexed and executed as relative to this **Offer**;
- 23.33 “**Scheme Contract**” means the building contract entered into between **you** and **your** contractor to carry out the **Scheme Works** with a defects liability period of not less than 6 months and operating an appropriate retention until rectification of defects at the end of that period;
- 23.34 “**Scheme Funding**” means the scheme of funding approved by **HES** and which is detailed in Part 2 of the **Schedule**;
- 23.35 “**Scheme Guidance**” means the guidance published by **HES** from time to time in relation to the relevant **HES** scheme to which **your Application** relates;
- 23.36 “**Scheme Specification**” means the documents and plans relating to the specification of materials and techniques to be used in carrying out the **Scheme Works** and referred to and specified in the ARCH 3 forming Part 3 of the **Schedule** and such other documents, plans or amendments approved by **HES** from time to time in its absolute discretion;
- 23.37 “**Scheme Works**” means the scheme of work to repair the **Property** as specified and detailed in the **Scheme Specification** and to be carried out in accordance with the terms of this **Offer**, the **Grant Contract** and the **Scheme Contract**;

- 23.38 “**Standard Security**” means a **Standard Security** to be granted by **you** in favour of **HES** substantially in the form of the draft **Standard Security** (with the relevant information inserted therein) forming Part 5 of the **Schedule**. A copy of the Standard Conditions referred to in the **Standard Security** forms Part 6 of the **Schedule**;
- 23.39 “**Supplementary Grant**” means any award of grant under Section 11 of the Historic Environment Scotland Act 2014 made by **HES** to **you** after the date of this **Offer**, for use in defraying the cost of repair and maintenance of the **Property**;
- 23.40 “**Target Date**” means the date identified by **you** as the anticipated date of completion of the **Scheme Works** in accordance with the programme of works forming part of the **Costed Profile**;
- 23.41 “**Third Party Data**” means **Data** which relates to the **Scheme Works** and to which **you** have access, but in which third parties own intellectual property rights;
- 23.42 “**Use**” means, in relation to any **Data**, accessing, using, copying, translating, redeveloping (or otherwise modifying) disclosing or distributing (whether in original or derivative form and whether via the internet or otherwise) that **Data**;
- 23.43 “**validly executed**” means executed in a manner presumed to be valid for the purposes of Sections 3 and/or 7 and/or Schedule 2 of the Requirements of Writing (Scotland) Act 1995;
- 23.44 “**Working Day**” means any day on which **HES** is open for business;
- 23.45 “**you**” means [] and “**your**” shall be interpreted accordingly; and
- 23.46 “**Your Data**” means **Data** relating to the **Scheme Works** which **you** have access to and which is not **Third Party Data**.

24 Interpretation

Save to the extent that the context or the express provisions of this **Offer** otherwise requires, in this **Offer**:-

- 24.1 words importing any gender shall include all other genders;
- 24.2 words importing the singular number only shall include the plural and vice versa;
- 24.3 obligations contained in this **Offer** undertaken by more than one person shall be binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order;
- 24.4 words importing individuals include corporations and vice versa;
- 24.5 references to the **Offer** or to any other document shall be construed as reference to the **Offer** or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;

- 24.6 any reference to a clause, **Schedule** or Part of the **Schedule** is to the relevant clause, **Schedule** or Part of the **Schedule** of or to the **Offer**;
- 24.7 reference to any statute or statutory provision (including any subordinate legislation) or any **Legal Requirement** includes any provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision; and
- 24.8 any phrase introduced by the words “including”, “include”, “in particular” or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.

25 Time Limit for Acceptance

Unless previously withdrawn, the **Offer** is open for acceptance in writing within one month after the date of the **Offer** and failing acceptance on or before that date **HES** will be entitled to withdraw.

..... Signed Witness
..... Full Name Full Name
..... Designation Address
..... Address
.....

Dated

We, [.....] hereby accept the terms and conditions contained in the foregoing offer of grant by **HES** dated [.....]
[need to remember to insert enough signing schedules where there are more than one Grantee/trustees etc.]

..... Signed Witness
..... Full Name Full Name
..... Designation Address
..... Address
.....

Dated

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING OFFER OF GRANT ON BEHALF OF HISTORIC ENVIRONMENT SCOTLAND DATED []

PART 1

COMPLETION DOCUMENTS

1 Definitions

In this Part of the Schedule the following words and phrases shall be given the following meanings:-

"Advance Notice" means an advance notice as defined in Section 56 of the Land Registration (Scotland) Act 2012; and

"Transaction" means the grant of the Standard Security and, if applicable, the Conservation Burden.

2 Completion Documents

2.1 copies of all building warrants, planning and listed building consents and all other consents and approvals required in connection with the **Scheme Works**;

2.2 the **Costed Profile**;

2.3 if required by **HES**, a validly executed **Standard Security** together with particulars of execution;

2.4 where **you** are the proprietor of the **Property**, a validly executed **Conservation Burden** by **you** or, if **you** are a tenant under a lease of more than 20 years by the proprietor of the **Property**;

2.5 a valid marketable title to the **Property**, subject to no servitudes and containing no onerous or unusual real burdens affecting the **Property** and, where registered in the Land Register of Scotland, containing no exclusion of the Keeper's indemnity or warranty, as the case may be, all in terms entirely satisfactory to **HES**;

2.6 where **your** interest in the **Property** is being registered in the Land Register of Scotland for the first time, either (i) as a consequence of; or (ii) simultaneously with; settlement of the **Transaction**, deliver to **HES** at settlement, the following items:-

2.6.1 a plan or bounding description sufficient to enable the **Property** to be identified on the cadastral map;

2.6.2 evidence (such as a Plans Report) that the description of the **Property** as contained in the title deeds is habile to include the whole of the occupied extent and that there is no conflict between the extent of the **Property** and any registered cadastral unit; and

- 2.6.3 where **you** are simultaneously acquiring an interest the **Property** at the same time as settlement of the **Transaction**, a validly executed disposition of the **Property** in **your** favour, together with a signed Land Registration Application Form providing for payment of registration dues by **your** solicitor by Direct Debit;
- 2.7 a Legal Report brought down to a date as near as practicable to settlement which report will show:-
- 2.7.1 no entries adverse to **your** interest in the **Property**;
- 2.7.2 where **you** are simultaneously acquiring an interest in the **Property** at the same time as settlement of the **Transaction**, an **Advance Notice** in respect of the disposition in **your** favour (in a form adjusted with **HES**);
- 2.7.3 where **your** interest in the Property is either already registered in the Land Register of Scotland or will be so registered as a result of settlement of the **Transaction**, an **Advance Notice** in respect of the **Standard Security**; and
- 2.7.4 no other **Advance Notices** in respect of the **Property**;
- 2.8 where **your** title to the **Property** is to remain in the General Register of Sasines notwithstanding settlement of the **Transaction**, deliver to **HES** at settlement a letter of obligation issued by **your** solicitor in the PSG standard form for the grant of a security over a Sasine registered interest;
- 2.9 in all circumstances, deliver a letter of obligation from **your** solicitor, in a form acceptable to **HES**, undertaking to clear the register of all deeds, decrees or diligence that may be prejudicial to the registration of the **Conservation Burden**;
- 2.10 at settlement, deliver a search in the Register of Community Interests in Land brought down to as near as practicable to settlement disclosing no entries affecting the **Property**;
- 2.11 at settlement, where **you** are a company, exhibit to **HES** searches in **your** Register of Charges and company file confirming that there is no notice regarding the appointment of a receiver, administrator or liquidator, winding-up, striking-off or change of name affecting **you** and disclosing the full names of the present directors and secretary of **you**. If such searches disclose any floating charge affecting the **Property** deliver a certificate of non-crystallisation of such floating charge granted by the charge-holder, dated not more than 2 days before settlement confirming that the charge has not crystallised and that the charge-holder has taken no steps to appoint a receiver; and
- 2.12 unless otherwise agreed by **HES** in advance, validly executed discharges of any heritable securities over the **Property** with all items required for their registration.

PART 2
SCHEME FUNDING

PART 3
SCHEME SPECIFICATION

PART 4
CONSERVATION BURDEN

CONSERVATION BURDENS

by

[•]

in favour of

HISTORIC ENVIRONMENT SCOTLAND

Subjects: [•]

Ref: [•]

DRAFT

MORTON FRASER 
SOLICITORS

FAS4958

I/WE, [*Enter details of the Grantee(s)*], hereby grant in favour of **HISTORIC ENVIRONMENT SCOTLAND**, a non-departmental public body incorporated under the Historic Environment Scotland Act 2014 being a registered Scottish Charity (SC045925) and having its principal place of business and registered Charity address at Longmore House, Salisbury Place, Edinburgh, EH9 1SH ("**HES**") the following conservation burdens over ALL and WHOLE [*Enter property description*] Together with [*Enter details from last Disposition*] which subjects are herein referred to as ("the Property"); I/We bind myself/ourselves and my/our successors as owners of the Property for a period of 15 years from the later of (i) the recording or registration of this Deed with the Registers of Scotland, or (ii) the date of our acceptance of any supplementary offer of grant made by HES in our favour to defray the cost of repair and maintenance of the Property to (First) repair and maintain the Property so as to keep the Property in good repair and condition to the reasonable satisfaction of HES who, in determining the standard of repair and maintenance required will have regard to the historic and architectural importance of the Property as part of the Nation's heritage; (Second) not to alter, extend or demolish the Property or part thereof without the prior written approval of HES; (Third) allow HES or -its representatives access to the Property for the purpose of inspection in order to ensure compliance with the terms hereof; (Fourth) have the fabric of any building on the Property inspected every 5 years from the date of registration of this deed by a registered architect who is a member of the Royal Incorporation of Architects in Scotland or by a buildings surveyor who is registered with the Royal Institution of Chartered Surveyors in Scotland, and submit a copy of their report to HES as soon as possible after their inspection; In the event that we breach any of the obligations detailed at (First) to (Fourth) above, HES shall be entitled to serve notice on us detailing the action required to be taken to remedy the breach within such period as they consider reasonable in the circumstances: IN WITNESS WHEREOF

PART 5
STANDARD SECURITY

STANDARD SECURITY

by

[]

in favour of

HISTORIC ENVIRONMENT
SCOTLAND

DRAFT

MORTON FRASER 

STANDARD SECURITY

by

(1) [] and includes successors and representatives ("**Grantee**")

in favour of

(2) **HISTORIC ENVIRONMENT SCOTLAND**, a non-departmental public body incorporated under the Historic Environment Scotland Act 2014 being a registered Scottish Charity (SC045925) and having its principal place of business and registered Charity address at Longmore House, Salisbury Place, Edinburgh, EH9 1SH ("**HES**")

WHEREAS:-

(A) The Grantee has undertaken or is about to undertake the Secured Obligations to HES;

(B) The Parties have agreed that the Secured Obligations shall be secured over the Property;

THEREFORE the Grantee hereby agrees and undertakes as follows:-

1 Definitions and Interpretation

1.1 Definitions

In this Standard Security:-

"**Monitoring Period**" means the period of fifteen years commencing on the later of (i) the date of registration of this Standard Security (ii) the latest date of execution of the Secured Documentation;

"**Parties**" means the Grantee and HES and "Party" refers to either of them as the context requires;

"**Property**" means ALL and WHOLE •;

"**Secured Documentation**" means any and all of:-

- (i) the grant agreement constituted by the offer of grant made by HES dated • and the Grantee's acceptance thereof dated •;
- (ii) any supplementary offer of grant to be made by HES and accepted by the Grantee;
- (iii) the Constitutive Deed granted by the heritable proprietor of the Property in favour of HES and presented to the Registers of Scotland for recording/registration simultaneously with the presentation of this Standard Security;

"**Secured Obligations**" means all sums advanced or to be advanced to the Grantee, and other sums or obligations due or to become due or payable or to become payable by the Grantee to HES, and interest on such sums advanced or to be advanced including without prejudice to the foregoing generality sums and obligations due by the Grantee in terms of the Secured Documentation;

"**Standard Conditions**" means the Standard Conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970 and any lawful variation

thereof operative for the time being and “**Standard Condition**” means any one of them having regard to the context in which it is used;

1.2 Interpretation

Save to the extent that the context or the express provisions of this Standard Security otherwise requires, in this Standard Security:-

- 1.2.1 words importing any gender shall include all other genders;
- 1.2.2 words importing the singular number only shall include the plural number and vice versa;
- 1.2.3 obligations contained in this Standard Security undertaken by more than one person shall be binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order and all obligations imposed on the Grantee in this Standard Security shall bind the Grantee and the Grantee's successors all jointly and severally;
- 1.2.4 words importing individuals include corporations and vice versa;
- 1.2.5 references to this Standard Security or to any other document shall be construed as reference to this Standard Security or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- 1.2.6 any reference to a Clause is to the relevant Clause of this Standard Security;
- 1.2.7 reference to any statute or statutory provision (including any subordinate legislation) includes any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, legislation, instruments or other subordinate legislation made under the relevant statute or statutory provision; and
- 1.2.8 any phrase introduced by the words "including", "include", "in particular" or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words.

1.3 Headings

The headings in this Standard Security are included for convenience only and are to be ignored in construing this Standard Security.

2 Grant of Security

The Grantee, in security of the Secured Obligations, GRANTS a Standard Security in favour of HES over the Property [and hereby affirms that the Property is not a matrimonial home or a family home in relation to which a spouse or a civil partner of the Grantee has occupancy



rights, all within the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (as amended) and the Civil Partnership Act 2004 (as amended)]/ [with the consent, as evidenced by his/her subscription hereof, of [], residing at [], [my spouse / civil partner], for the purposes of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (as amended)/Civil Partnership Act 2004 (as amended)].

3 **Monitoring Period**

The terms of this Standard Security will subsist for the Monitoring Period.

4 **Standard Conditions**

Except as otherwise varied by the Secured Documentation, the Standard Conditions shall apply.

5 **Restrictions Relating to the Property**

During the Monitoring Period, the Grantee shall not without the consent of the HES:-

- 5.1 part with occupation of the Property or any part of it or grant any servitude, wayleave, real burden or water or drainage rights or other continuing rights upon or affecting the Property or any part of it;
- 5.2 create a subsequent security over the Property or any part of it or convey or otherwise transfer the Property or any part of it (otherwise than by mortis causa deed);
- 5.3 make directly or indirectly any application for planning permission in relation to the Property or any part of it;
- 5.4 accept a surrender, vary the terms or consent to an assignation of any lease of the Property or any part of it
- 5.5 where the Grantee is a tenant under a long lease, (i) the Grantee shall observe and perform the tenant's obligations and enforce the due performance and observance of the landlord's obligations under the lease; (c) the Grantee shall not vary nor waive or release any obligations incumbent on the landlord under the lease without the prior written consent of HES; and (d) the Grantee shall not surrender its interest in the lease nor serve a termination notice on the landlord without the prior written consent of HES.

6 **Ultimate Loss Clause**

The security created by this Standard Security shall be a security to HES for any balance which may remain due to HES after applying any payments received by HES from any person (including any liquidator, receiver, administrator, trustee in sequestration or trustee under any trust deed for creditors) in respect of the obligations secured by this Standard Security and the Grantee shall not be entitled to require from HES any assignation of those obligations or any part of them or to rank in any liquidation, receivership, administration or sequestration or under any trust deed in respect of any payment made by the Grantee to HES or to have the benefit of any securities held by HES until the whole amount secured by this Standard Security has been paid or settled in full.



And the Grantee grants warrandice: IN WITNESS WHEREOF these presents printed on this and the • preceding pages are executed as follows:-



INVESTOR IN PEOPLE
BR Offer letter - Standard Security



PART 6
STANDARD CONDITIONS

1 Maintenance and repair.

It shall be an obligation on the debtor—

- a) to maintain the security subjects in good and sufficient repair to the satisfaction of the creditor
- b) to permit, after seven clear days notice in writing, the creditor or his agent to enter upon the security subjects at all reasonable times to examine the condition thereof;
- c) to make all necessary repairs and make good all defects in pursuance of his obligation under head (a) of this condition within such reasonable period as the creditor may require by notice in writing.

2 Completion of buildings etc. and prohibition of alterations etc.

It shall be an obligation on the debtor—

- a) to complete, as soon as may be practicable, any unfinished buildings and works forming part of the security subjects to the reasonable satisfaction of the creditor;
- b) not to demolish, alter or add to any buildings or works forming part of the security subjects, except in accordance with the terms of a prior written consent of the creditor and in compliance with any consent, licence or approval required by law;
- c) to exhibit to the creditor at his request evidence of that consent, licence or approval.

3 Observance of conditions in title, payment of duties, charges, etc., and general compliance with requirements of law relating to security subjects.

It shall be an obligation on the debtor—

- a) to observe any condition or perform any obligation in respect of the security subjects lawfully binding on him in relation to the security subjects;
- b) to make due and punctual payment of any ground burden, teind, stipend, or standard to charge, and any rates, taxes and other public burdens, and any other payments exigible in respect of the security subjects;
- c) to comply with any requirement imposed upon him in relation to the security subjects by virtue of any enactment.

4 Panning notices, etc.

It shall be an obligation on the debtor—

- a) where he has received any notice or order, issued or made by virtue of the Town and Country Planning (Scotland) Acts 1947 to 1969 or any amendment thereof, or any proposal so made for the making or issuing of any such notice or order, or any other notice or document affecting or likely to affect the security subjects, to give to the creditor, within fourteen days of the receipt of that notice, order or proposal, full particulars thereof;
- b) to take, as soon as practicable, all reasonable or necessary steps to comply with such a notice or order or, as the case may be, duly to object thereto;
- c) in the event of the creditor so requiring, to object or to join with the creditor in objecting to any such notice or order or in making representations against any proposal therefor.



5 Insurance

It shall be an obligation on the debtor—

- a) to insure the security subjects or, at the option of the creditor, to permit the creditor to insure the security subjects in the names of the creditor and the debtor to the extent of the market value thereof against the risk of fire and such other risks as the creditor may reasonably require;
- b) to deposit any policy of insurance effected by the debtor for the aforesaid purpose with the creditor;
- c) to pay any premium due in respect of any such policy, and, where the creditor so requests, to exhibit a receipt therefor not later than the fourteenth day after the renewal date of the policy;
- d) to intimate to the creditor, within fourteen days of the occurrence, any occurrence which may give rise to a claim under the policy, and to authorise the creditor to negotiate the settlement of the claim;
- e) without prejudice to any obligation to the contrary enforceable against him, to comply with any reasonable requirement of the creditor as to the application of any sum received in respect of such a claim;
- f) to refrain from any act or omission which would invalidate the policy.

6 Restriction on letting

It shall be an obligation on the debtor not to let, or agree to let, the security subjects, or any part thereof, without the prior consent in writing of the creditor, and “to let” in this condition includes to sub-let.

7 General power of creditor to perform obligations etc. on failure of debtor and power to charge debtor.

- (1) The creditor shall be entitled to perform any obligation imposed by the standard conditions on the debtor, which the debtor has failed to perform.
- (2) Where it is necessary for the performance of any obligation as aforesaid, the creditor may, after giving seven clear days notice in writing to the debtor, enter upon the security subjects at all reasonable times.
- (3) All expenses and charges (including any interest thereon), reasonably incurred by the creditor in the exercise of a right conferred by this condition, shall be recoverable from the debtor and shall be deemed to be secured by the security subjects under the standard security, and the rate of any such interest shall be the rate in force at the relevant time in respect of advances secured by the security, or, where no such rate is prescribed, shall be the bank rate in force at the relevant time.

8 Calling-up.

The creditor shall be entitled, subject to the terms of the security and to any requirement of law, to call-up a standard security in the manner prescribed by section 19 of this Act.

9 Default.

- (1) The debtor shall be held to be in default in any of the following circumstances, that is to say
 - a) where a calling-up notice in respect of the security has been served and has not been complied with;
 - b) where there has been a failure to comply with any other requirement arising out of the security;



- c) where the proprietor of the security subjects has become insolvent.
- (2) For the purposes of this condition, the proprietor shall be taken to be insolvent if:-
- a) he has become notour bankrupt, or he has executed a trust deed for behoof of, or has made a composition contract or arrangement with, his creditors;
 - b) he has died and a judicial factor has been appointed under section 11A of the Judicial Factors (Scotland) Act 1889 to divide his insolvent estate among his creditors, or his estate falls to be administered in accordance with an order under section [421 of the Insolvency Act 1986;
 - c) where the proprietor is a company, a winding-up order has been made with respect to it, or a resolution for voluntary winding-up (other than a members' voluntary winding-up) has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

10 Rights of creditor on default

- (1) where the debtor is in default, the creditor may, without prejudice to his exercising any other remedy arising from the contract to which the standard security relates, exercise, in accordance with the provisions of Part II of this Act and of any other enactment applying to standard securities, such of the remedies specified in the following sub-paragraphs of this standard condition as he may consider appropriate.
- (2) the may proceed to sell the security subjects or any part thereof.
- (3) he may enter into possession of the security subjects and may receive or recover the rents of those subjects or any part thereof.
- (4) where he has entered into possession as aforesaid, he may let the security subjects or any part thereof.
- (5) where he has entered into possession as aforesaid there shall be transferred to him all the rights of the debtor in relation to the granting of leases or rights of occupancy over the security subjects and to the management and maintenance of those subjects.
- (6) he may effect all such repairs and may make good such defects as are necessary to maintain the security subjects in good and sufficient repair, and may effect such reconstruction, alteration and improvement on the subjects as would be expected of a prudent proprietor to maintain the market value of the subjects, and for the aforesaid purposes may enter on the subjects at all reasonable times.
- (7) he may apply to the court for a decree of foreclosure.

11 Exercise of right of redemption

- (1) The debtor shall be entitled to exercise his right (if any) to redeem the security on giving notice of his intention so to do, being a notice in writing (hereinafter referred to as a "notice of redemption").
- (2) Nothing in the provisions of this Act shall preclude a creditor from waiving the necessity for a notice of redemption, or from agreeing to a period of notice of less than that to which he is entitled.



- (3)
- (a) A notice of redemption may be delivered to the creditor or sent by registered post or recorded delivery to him at his last known address, and an acknowledgment signed by the creditor or his agent or a certificate of postage by the person giving the notice accompanied by the postal receipt shall be sufficient evidence of such notice having been given.
 - (b) If the address of the creditor is not known, or if the packet containing the notice of redemption is returned to the sender with intimation that it could not be delivered, a notice of redemption may be sent to the Extractor of the Court of Session and an acknowledgment of receipt by him shall be sufficient evidence of such notice having been given.
 - (c) A notice of redemption sent by post shall be held to have been given on the day next after the day of posting.
- (4) When a notice of redemption states that a specified amount will be repaid, and it is subsequently ascertained that the whole amount due to be repaid is more or less than the amount specified in the notice, the notice shall nevertheless be effective as a notice of repayment of the amount due as subsequently ascertained.
- (5) Where the debtor has exercised a right to redeem, and has made payment of the whole amount due, or has performed the whole obligations of the debtor under the contract to which the security relates, the creditor shall grant a discharge in the terms prescribed in section 17 of this Act.

12 The debtor shall be personally liable to the creditor for the whole expenses of the preparation and execution of the standard security and any variation, restriction and discharge thereof and, where any of those deeds are recorded, the recording thereof, and all expenses reasonably incurred by the creditor in calling-up the security and realising or attempting to realise the security subjects, or any part thereof, and exercising any other powers conferred upon him by the security.

13 Interpretation

In this Schedule, where the debtor is not the proprietor of the security subjects, "debtor" means "proprietor", except

- (a) in standard conditions 9(1), 10(1) and 12, and
- (b) in standard condition 11, where "debtor" includes the proprietor.

