

# Standardisation of PFI Contracts, Northern Ireland

Version 3

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An Outline of Principal Changes

January 2009



### SoPCNI 3: An Outline of Principal Changes

SoPCNI 3 makes the following principal changes outlined below.

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
1.3 Assumptions Footnote 2	New	<ul style="list-style-type: none"> <li>Footnote 2 outlines changes needed where the Contractor is a limited partnership.</li> </ul>	
1.4 Application and Implementation	Revised  New	<ul style="list-style-type: none"> <li>Section 1.4 describes the application and implementation regimes for SoPC4.</li> <li>Section 1.4.3 outlines additional considerations for local public body projects.</li> </ul>	
1.8 (Clause) Definition of "Associated Company"	New note		<p><b>"Associated Company"</b></p> <p>means in respect of a relevant company, a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Contractor shall include [Holdco and] each of the Shareholders;</p> <p><b>[N.B. If a fund or limited partnership or "50:50" owned vehicle (which is not a "subsidiary") or similar is in the relevant ownership chain of the Contractor, this definition will need to be expanded to cover it. See further footnote 2 and Section 34].</b></p>

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1.8 (Clause) Definition of "Base Case"	New small change to Required Drafting		<p><b>"Base Case"</b> means the financial model agreed between the parties prior to the date of this Contract (as updated from time to time in accordance with the terms of this Contract) for the purpose of, <b>amongst other things</b>, calculating the Unitary Charge;</p>
1.8 (Clause) Definition of "Base Senior Debt Termination Amount"	New small change to Required Drafting	Specific provision is made in paragraphs (b) and (b) (iii) to the early termination of interest hedging arrangements.	<p><b>"Base Senior Debt Termination Amount"</b> means, subject to Clause 22.3 (Changes to Financing Agreements and Project Documents):</p> <ul style="list-style-type: none"> <li>(a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing) and</li> <li>(b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), <b>or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract</b>, subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible;</li> </ul> <p>less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):</p>

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			<ul style="list-style-type: none"> <li>(i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Contractor on the Termination Date;</li> <li>(ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;</li> <li>(iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), <b>or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and</b></li> <li>(iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have;</li> </ul>
1.8 (Clause) Definition of "Initial Financing Agreements"	New small change to Required Drafting		<p><b>"Initial Financing Agreements"</b></p> <p>means the Financing Agreements put in place upon signature of this Agreement as follows:</p> <p>[            ]</p>

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			<b>copies of which have been initialled by the parties for the purposes of identification;</b>
1.8 (Clause) Definition of "Project Documents"	New small change to Required Drafting		<p><b>"Project Documents"</b></p> <p>means the agreements entered into by the Contractor for the performance of the obligations under this Contract which are listed in [ ] <b>copies of which have been initialled by the parties for the purposes of identification;</b></p>
1.8 (Clause) Definition of "Revised Senior Debt Termination Amount"	New small change to Required Drafting	Specific provision is made in paragraphs (b) and (b) (iii) to the early termination of interest hedging arrangements.	<p><b>"Revised Senior Debt Termination Amount"</b></p> <p>means, subject to Clause 22.3 (Changes to Financing Agreements and Project Documents):</p> <p>(a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Contractor to the Senior Lenders in respect of Permitted Borrowing; and</p> <p>(b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Contractor to the Senior Lenders as a result of a prepayment in respect of Permitted Borrowing, <b>or, in the case of early termination or interest rate hedging arrangements only</b>, as a result of termination of this Contract, subject to the Contractor and the Senior Lenders mitigating all such costs to the extent reasonably possible,</p> <p>less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):</p>

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			<ul style="list-style-type: none"> <li>(i) all credit balances on any bank accounts (but excluding the Joint Insurance Account) held by or on behalf of the Contractor on the Termination Date;</li> <li>(ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;</li> <li>(iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Lenders to the Contractor as a result of prepayment of amounts outstanding in respect of Permitted Borrowing, <b>or, in the case of early termination of interest rate hedging arrangements only</b>, as a result of termination of this Contract;</li> <li>(iv) all other amounts received by the Senior Lenders on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have; and</li> <li>(v) all APB Distributions;</li> </ul>
1.8 (Clause) Definition of "Service"	New small change to Required Drafting		<p><b>"Service"</b></p> <p>means [the <b>services required to satisfy the services specification of the Authority contained in Schedule [ ]</b>];</p>
1.8 (Clause) Definition of "Sub-Contractors"	New small change to Required Drafting		<p><b>"Sub-Contractors"</b></p> <p>means <b>each of the counterparties of the Contractor to the Project Documents</b> or any person engaged by the Contractor from time to time as may be permitted by this Contract to procure the provision of the Works and/or Services (or any of them). <b>References to Sub-Contractors mean Sub-Contractors (of any tier) of the Contractor;</b></p>

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2.2 Factors to Consider	New	Further factors are specified to be taken into account when deciding on the duration of the Contract.	
3.8 Range of Services to be Provided	New	Guidance is given on the appropriateness of including soft services in the Contract.	
3.10 Early Works Agreements	New	Guidance is given on Early Works Agreements.	
5.2 (Clause) Delays in Service Commencement Due to a Compensation Event	New small change to Required Drafting		<p>(c) In the event that the Contractor has complied with its obligations under paragraph (b) above, then:</p> <p>(i) <b>in the case of a delay, the</b> Planned Service Commencement Date or, following the Planned Service Commencement Date, the Long Stop Date, shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;</p>
7 Price and Payment Mechanism	Substantially New	<p>This is a new Section providing new or substantially updated guidance on the development and calibration of payment mechanisms and on the use of user satisfaction surveys, setting out:</p> <ul style="list-style-type: none"> <li>the key features of a payment mechanism (s. 7.2.1)</li> </ul>	

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		<ul style="list-style-type: none"> <li>• the structuring of the mechanism (s. 7.3)</li> <li>• usage based systems (s. 7.4)</li> <li>• calibration (s. 7.5)</li> <li>• financability (s. 7.6)</li> <li>• flexibility features (s.7.7)</li> <li>• remedies (s. 7.8) and</li> <li>• user satisfaction surveys (s. 7.9).</li> </ul>	
8 Availability Requirements and  9 Performance Requirements	Small Changes	These are substantially the same as Sections 7 and 8 of SoPCNI 2, but take into account some of the additional principles set out in Section 7 of SoPCNI 3.	
10 Payment Mechanism Management and Monitoring	Substantially Updated	<p>This Section provides some new or substantially updated guidance on:</p> <ul style="list-style-type: none"> <li>• Contract management (s. 10.1)</li> <li>• monitoring against the payment mechanism (s. 10.2)</li> <li>• commencement of monitoring (s. 10.3)</li> <li>• who does the monitoring (s. 10.4)</li> <li>• who pays for the</li> </ul>	



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		<p>monitoring (s. 10.5) and</p> <ul style="list-style-type: none"> <li>• reporting the results of the monitoring (s. 10.6).</li> </ul>	
13 Change in Service	Substantially New	<p>This is a new Section, replacing Section 12 of SoPCNI 2, setting out (in response to market demand) a new approach to Service change and providing guidance on:</p> <ul style="list-style-type: none"> <li>• the purpose of change procedures and an introduction to them (s. 13.1)</li> <li>• a typology of change procedures (s. 13.2)</li> <li>• the development of change protocols for Contracts (s. 13.3)</li> <li>• transparency of pricing and value for money (s. 13.4)</li> <li>• contract management (s. 13.5).</li> </ul>	
14.3 (Clause) Definition of "Change in Law"	New small change to Required Drafting	The word "published" is omitted from s. 14.3(a)(iv).	<p><b>14.3 "Change in Law"</b></p> <p>means the coming into effect after the date of this Contract of:</p> <p>(a) Legislation, other than any Legislation which on the date of this Contract has been published:</p>

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			<ul style="list-style-type: none"> <li>(i) in a draft Bill as part of a Government Departmental Consultation Paper;</li> <li>(ii) in a Bill;</li> <li>(iii) in a draft statutory instrument; or</li> <li>(iv) as a proposal in the Official Journal of the European Communities,</li> </ul> <ul style="list-style-type: none"> <li>(b) any Guidance, or</li> <li>(c) any applicable judgment of a relevant court of law which changes a binding precedent.</li> </ul>
14.8 (Clause) Definition of "Contractor's Share"	New small change to Required Drafting		<p><b>"Contractor's Share"</b></p> <p>means the percentage figure corresponding to <b>that part of the</b> Cumulative Capital Expenditure at the relevant time, shown in the first column of the table set out below.</p>
14.9.3 Changes in Tax Law	New	This further clarifies that Authorities should not provide tax indemnities to Contractors.	
15 Price Variations	Substantially Updated	Section 14 of SoPCNI 2 has been substantially updated to reflect the importance of market testing services over bench marking services.	
15.4.4 (Clause) Market Testing	New small changes to Required Drafting		<p><b>15.4.4 Market Testing</b></p> <ul style="list-style-type: none"> <li>(a) At least <b>[40] weeks</b> before each market testing date, the parties shall meet together as often as may be necessary in respect of all</li> </ul>

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			<p>market tested services to be market tested on that date:</p> <p>(iii) to discuss and seek to agree the tender requirements which must include:</p> <ul style="list-style-type: none"> <li>(A) a statement of the tender validity period;</li> <li>(B) details of the tender evaluation criteria;</li> <li>(C) the terms and conditions under which the services will be contracted;</li> <li>(D) information relating to employees and their conditions of employment;</li> <li>(E) the information that tenderers are required to provide;</li> <li>(F) how many tenders are required for the market testing to be valid; <b>and</b></li> <li><b>(G) whether or not an independent tender manager needs to be appointed by the Contractor to manage the tender process.</b></li> </ul>
16.11 Changes to Project Documents and Financing Agreements	New	This Section provides guidance on the Authority's scrutiny of changes to Project Documents and Financing Agreements.	
16.11.1 (Clause) Delivery of Initial and Changed Project Documents and Financing Agreements	New Suitable Drafting		<p><b>16.4.1 Delivery of Initial and Changed Project Documents and Financing Agreements</b></p> <p><b>(a) The Contractor has provided to the Authority copies of the Project Documents [(as listed in Part 1 of Schedule [ ])] and of the Initial Financing Agreements [(as listed in Part 2 of</b></p>

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			<p><b>Schedule [ ]]).</b></p> <p><b>(b) Without prejudice to the provisions of Clauses 16.11.2 or 16.11.3, or to the definition of Senior Financing Agreements in Clause 1, if at any time an amendment is made to any Project Document or Financing Agreement, or the Contractor enters into a new Project Document or Financing Agreement (or any agreement which affects the interpretation or application of any Project Document or Financing Agreement), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days of the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.</b></p>
16.11.2 (Clause) Changes to Project Documents	New Suitable Drafting		<p><b>16.4.2 Changes to Project Documents</b></p> <p><b>The Contractor shall perform its obligations under, and observe all of the provisions of, the Project Documents and shall not:</b></p> <p><b>(a) terminate or agree to the termination of all or part of any Project Document;</b></p> <p><b>(b) make or agree to any material variation of any Project Document;</b></p> <p><b>(c) in any material respect depart from its obligations, (or waive or allow to lapse any rights it may have in a material respect), or procure that any counterparty to a Project Document in any material respect departs from its obligations (or waives or allows to lapse any rights they may have in a material respect), under any Project Document; or</b></p> <p><b>(d) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise</b></p>

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			<p><b>materially and adversely affecting the interpretation of) any Project Document, unless the proposed course of action (and any relevant documentation) has been submitted to the Authority for review and there has been no objection made by the Authority within [ ] Business Days of receipt by the Authority of such submission, or such shorter period as may be agreed by the parties, [and provided, in the circumstances specified in Clause 16.11.2 (a), that the Contractor has complied with the provisions of [Section 16 (Equality Legislation, Sub-Contracting, Employees and Documentary Changes)]. The Authority may only make objection on the following reasonable grounds [ ].</b></p>
<p>16.11.3 (Clause) Changes to Financing Agreements</p>	<p>New Suitable Drafting</p>		<p><b>16.4.3 Changes to Financing Agreements</b></p> <p><b>Without prejudice to the provisions of Clauses 16.11.1 (Delivery of Initial and Changed Project Documents and Financing Agreements), 22.3 (Changes to Financing Agreements and Project Documents), and 34 (Refinancing), the Contractor shall not, without the prior written consent of the Authority, enter into new Financing Agreements or terminate, amend, waive its rights or otherwise deal with its Financing Agreements if the same may reasonably be expected to have a material adverse effect on the ability of the Contractor to perform its obligations under the Project Documents or this Agreement.</b></p>
<p>18 Change of Ownership</p>	<p>Further changes following on from SoPCNI 2</p>	<p>This Section develops the principles set out in SoPCNI 2 and in particular:</p> <ul style="list-style-type: none"> <li>• sets out suitable drafting in Section 18.1.2 on ownership information and</li> </ul>	<p><b>18.1 Ownership Information</b></p> <p>(a) The Contractor represents and warrants to the Authority that at the date of the Contract the legal and beneficial ownership of the Contractor [and Holdco] is as set out in Schedule [ ] and that [, other than any Shareholder pre-emption rights,] no arrangements are in place that have or may have or result in</p>

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		<p>provides a definition of “Change in Ownership”</p> <ul style="list-style-type: none"> <li>• sets out guidance and suitable drafting for shareholder restrictions and flexibility (s. 18.4)</li> <li>• provides guidance on shareholder default (s. 18.6).</li> </ul>	<p>any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor [or Holdco].</p> <p>(b) The Contractor shall inform the Authority as soon as reasonably practicable (and in any event, within [30] days) of any Change of Ownership occurring.</p> <p>(c) The Authority may, not more than [twice] in any Contract Year, or at any time when a Contractor Default is outstanding, require the Contractor to inform it, as soon as reasonably practicable and in any event within 30 days of receipt of the Authority’s request for details, of any Change of Ownership.</p> <p>(d) The Contractor’s obligations under (b) and (c) above shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor’s awareness having made all reasonable enquiry.</p> <p><b>“Change of Ownership”</b></p> <p><b>means</b></p> <p>(a) <b>any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor and/or [Holdco] [and/or [ ]] (including the control over exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or</b></p> <p>(b) <b>any other arrangements that have or may have or which result in the same effect as paragraph (a) above.</b></p> <p><b>18.4 Change of Ownership</b></p>

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			<p>(a) <b>No Change of Ownership may occur during the [lock-in period].</b></p> <p>(b) <b>Any Change of Ownership arising as a consequence of:</b></p> <p>(i) <b>the grant or enforcement of security in favour of the Senior Lenders over or in relation to any of the shares of the Contractor [or Holdco], provided that any document conferring security over any shares has been approved by the Authority (such approval not to be unreasonably withheld or delayed); or</b></p> <p>(ii) <b>any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in [Section 285 of the Financial Services and Markets Act 2000]); [or]</b></p> <p><b>[(iii) any transfer by a Shareholder [or [ ] ] to an Affiliate of such transferor,]</b></p> <p><b>shall be disregarded for the purpose of paragraph (a) above.</b></p> <p><b>[Where sub-paragraph (iii) applies and subsequent to any such transfer (the “Original Transfer”) the transferee ceases to be an Affiliate of the original transferor, it shall be a breach of this Clause 18.4 if the shares or interests which were the subject of the Original Transfer are not within [20 days] of the transferee ceasing to be an Affiliate of the original transferor transferred to that original transferor or any Affiliate of such transferor.]</b></p>
19 Land, Equipment	Substantial rewrite of SoPCNI 2	This Section continues to be Northern Ireland specific and	

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and other Property Interests	Section 31	<p>has been substantially updated in the light of market experience in Northern Ireland (which is converging with what happens in England). In particular it:</p> <ul style="list-style-type: none"> <li>• advocates early analysis of the required nature of the Authority's interest in the relevant asset (whether land or equipment)</li> <li>• gives guidance on ways to handle the introduction of property to a Project, and on the disposal of property, and on the handling of residual values.</li> </ul>	
20 (and also Clauses) Treatment of Assets on Expiry of Service Period	Limited Update	<p>A limited number of changes are made in order to align this Section more closely with the principles in SoPCNI 2 Section 19, including:</p> <ul style="list-style-type: none"> <li>• a new Section 20.1.3 outlining the consequences of different types of</li> </ul>	<p><b>20.2 Treatment of Assets at Expiry Date</b></p> <p>(a) On or before a date falling no later than [12] months prior to the Expiry Date, the Authority shall notify the Contractor in writing whether it wishes to retender the provision of the Service.</p> <p>(b) If the Authority wishes to retender the provision of the Service then:</p> <p>(i) the <b>Contractor shall do all necessary acts (including entering into any contracts) to ensure that the successor</b></p>



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		termination <ul style="list-style-type: none"> <li>• amendments to Clause 20.2 dealing with the treatment of assets at Expiry</li> <li>• guidance on the use of Terminal Payments in Section 20.3.1</li> <li>• reference to Terminal Payment in Clause 20.5(a)(i) and (ii)</li> <li>• a new Section 20.5.8 on the treatment of assets in different termination scenarios.</li> </ul>	<p><b>contractor obtains all of its rights, title and interest in and to the Assets with effect</b> on and from the Expiry Date; and</p> <p>(ii) the Authority will bear all costs of any retendering of the Contract on expiry.</p> <p>(c) <b>If the Authority does not wish to retender the Service then the Assets shall transfer to the Authority on the Expiry Date and the Contractor shall do any necessary acts (including entering into any contracts) to ensure that the Authority obtains all of its rights, title and interest in the Assets with effect on and from the Expiry Date.</b></p> <p><b>20.5 Assets with an Alternative Use</b></p> <p>(a) On or before the date falling [six] months before the Expiry Date, the Authority shall notify the Contractor in writing whether it wishes to:</p> <ul style="list-style-type: none"> <li>(i) purchase the Assets by paying to the Contractor an amount equal to <b>the Terminal Payment;</b></li> <li>(ii) retender the provision of the Service; or</li> <li>(iii) do neither (i) nor (ii) above.</li> </ul>
21.1.3 (and Clause) Compensation on Termination for Authority Default	New guidance on mezzanine debt at s. 21.1.3.4  New small changes to Required Drafting	Reference is made to the classification of mezzanine debt for the purposes of the Contract.  Footnote 297 provides guidance on caps on losses of profit for Sub-Contractors.	<p><b>"Sub-Contractor Breakage Costs"</b></p> <p>means Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract, but only to the extent that:</p> <p>(a) the Losses are incurred in connection with the Project and in</p>

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			<p>respect of the provision of <b>Services</b> or the completion of <b>Works</b>, including:</p> <ul style="list-style-type: none"> <li>(i) any materials or goods ordered or <b>Sub-Contracts</b> placed that cannot be cancelled without such Losses being incurred;</li> <li>(ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future;</li> <li>(iii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; and</li> <li>(iv) redundancy payments; and</li> </ul> <p>(b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms <b>[and [ ]]</b>; and</p> <p>(c) the Contractor and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;</p>
21.2.3 (Clause) Termination for Persistent Breach by the Contractor	Small new changes to Required Drafting		<p><b>“Persistent Breach”</b></p> <p>means a breach for which a final warning notice (referred to in paragraph (b) of Clause 21.2.3 (Persistent Breach)) has been issued, which has continued <b>for more than [ ] days or recurred in [ ] or more months within the [six] month</b> period after the date on which such final warning notice is served on the Contractor;</p> <p><b>21.2.3 Persistent Breach</b></p> <p>(a) If a particular breach, other than any breach for which performance point deductions could have been awarded and/or</p>

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			<p>availability deductions could have been made, <b>has continued for more than [ ] days</b> or occurred more than [ ] times in any [ ] month period then the Authority may serve a notice on the Contractor:</p> <ul style="list-style-type: none"> <li>(i) specifying that it is a formal warning notice;</li> <li>(ii) giving reasonable details of the breach; and</li> <li>(iii) stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.</li> </ul> <p>(b) If, following service of such a warning notice, the breach specified has continued beyond 30 days or recurred <b>in [ ] or more months</b> within the [ ] month period after the date of service, then the Authority may serve another notice on the Contractor:</p> <ul style="list-style-type: none"> <li>(i) specifying that it is a final warning notice;</li> <li>(ii) stating that the breach specified has been the subject of a warning notice served within the [twelve] month period prior to the date of service of the final warning notice; and</li> <li>(iii) stating that if such <b>breach continues for more than [ ] days</b> or recurs in [ ] or more <b>months</b> within the [six] month period after the date of service of the final warning notice, the Contract may be terminated.</li> </ul> <p>(c) A warning notice may not be served in respect of any breach which has previously been counted in the making of a separate warning notice.</p>
21.2.4 (Clause) Rectification	Small new changes to Required Drafting	The drafting is expanded to cover rectification programmes (as previously outlined in footnote 310 to SoPCNI 2	<p><b>21.2.4 Rectification</b></p> <ul style="list-style-type: none"> <li>(a) If a Contractor Default has occurred and the Authority wishes to terminate the Contract, it must serve a termination notice on the</li> </ul>

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		Section 20)	<p>Contractor.</p> <p>(b) The termination notice must specify:</p> <ul style="list-style-type: none"> <li>(i) the type and nature of Contractor Default that has occurred, giving reasonable details; and</li> <li>(ii) that <b>in the case of any Contractor Default falling within the limbs (a), (g), (h), (i) and (o) of the definition of Contractor Default this Agreement will terminate on the day falling [sixty] days after the date of the date the Contractor received the termination notice, unless:</b> <ul style="list-style-type: none"> <li>(A) <b>in the case of a breach under limb (a) of the definition of Contractor Default</b> the Contractor puts forward an acceptable rectification programme within <b>[thirty] days after the date the Contractor receives the Termination Notice</b> (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or</li> <li>(B) <b>in the case of any Contractor Default falling with the limbs (a), (g), (h), (i) and (o) of the definition of Contractor Default the Contractor rectifies the Contractor Default within [sixty] days after the date the Contractor receives the Termination Notice; or</b></li> </ul> </li> <li>(iii) that in the case of any other Contractor Default</li> </ul>

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			<p><b>(not being limbs (a), (g), (h), (i) or (o)), this Agreement will terminate on the date falling [thirty] days after the date the Contractor receives the termination notice.</b></p> <p>(c) If the Contractor either rectifies the Contractor Default within the time period specified in the termination notice, or implements the rectification programme, if applicable, in accordance with its terms, the termination notice will be deemed to be revoked and the Contract will continue.</p> <p>(d) If:</p> <ul style="list-style-type: none"> <li>(i) <b>in the case of a Contractor Default within limb (a) of the definition of that term no acceptable rectification programme has been put forward pursuant to clause 21.2.4(b) (ii) (A) and the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice; or</b></li> <li>(ii) <b>in the case of a Contractor Default falling within limbs (g), (h), (i), or (o) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the termination notice,</b></li> </ul> <p><b>the Authority may give notice stating that the Contract will, subject to the terms of the Direct Agreement, terminate on the date falling [seven] days after the date of receipt of such notice.</b></p> <p>(e) If the Contractor fails to implement any rectification programme in accordance with its terms, the Contract will, subject to the terms of the Direct Agreement, terminate on the date falling <b>[seven]</b> days after the date of notification <b>by the Authority</b> to the Contractor of</p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			<b>such failure to implement the rectification programme in accordance with its terms.</b>
21.2.7(b)(i) (Clause) Retendering Election	Small changes to Required Drafting	The drafting makes explicit the nature of the notification by the Authority.	(b) The Authority shall be entitled to retender the provision of the Project in accordance with Clause 21.2.8 (Retendering Procedure) if:  (i) the Authority notifies the Contractor on or before the date falling 20 Business Days after the Termination Date <b>that it intends to retender</b> ; and
21.2.9.11 (Clause) Definition of Termination Date Discount Rate: “f”	New small change to Required Drafting		<b>“f”</b> is the agreed assumed forecast rate of increase in the <b>[indexation formula]</b> set out in the Contract for the <b>remaining term of the Contract</b> ;
21.2.9.11 (Clause) Definition of Termination Date Discount Rate: “Gilt A”	New small change to Required Drafting		<b>“Gilt A”</b> is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the <b>Base Case</b> at Financial <b>Close</b> ; and
21.2.9.11 (Clause) Definition of Termination Date Discount Rate “Gilt B”	New small change to Required Drafting		<b>“Gilt B”</b> is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt as shown in the <b>Base Case</b> as on the date of Termination.
21.5.1 (Clause) Voluntary Termination by the Authority	New small change to Required Drafting	Small changes are made to the notice provisions on voluntary termination.	<b>21.5.1 Voluntary Termination by the Authority</b>  (a) The Authority may terminate the Contract at any time on or before its Expiry Date by complying with its obligations under paragraphs (b) to (d) below.  (b) If the Authority wishes to terminate the Contract under this Clause, it must give notice to the Contractor stating:

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			<ul style="list-style-type: none"> <li>(i) that the Authority is terminating the Contract under this Clause 21.5.1 (Voluntary Termination by Authority);</li> <li>(ii) that the Contract will terminate on the date <b>specified in the notice, which must be a minimum of [30]</b> days after the date of receipt of the notice; and</li> <li>(iii) whether the Authority has chosen to exercise its option under paragraph (c) below.</li> <li>(c) On termination, the Authority shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets <b>to the Authority or as directed by the Authority.</b></li> <li>(d) The Contract will terminate on the date <b>specified in</b> the notice referred to in paragraph (b) above;</li> </ul>
21.5.4 Authority Break Points	New guidance and Suitable Drafting for Authority Break Points		<p><b>21.5.4 Termination on an Authority Break Point Date</b></p> <ul style="list-style-type: none"> <li>(a) <b>Without prejudice to its rights under Clause 21.5.1 (Voluntary Termination by the Authority), the Authority may terminate the Contract on any of the Authority Break Point Dates by complying with its obligations under paragraphs (b) to (d) below.</b></li> <li>(b) <b>If the Authority wishes to terminate the Contract under this Clause, it must give notice to the Contractor stating:</b> <ul style="list-style-type: none"> <li>(i) <b>that the Authority is terminating the Contract under this Clause 21.5.4 (Termination on an Authority Break Point Date);</b></li> <li>(ii) <b>that the Contract will terminate on the specified Authority Break Point Date; which must be a minimum of [30] days after the date of receipt of the notice; and</b></li> <li>(iii) <b>whether the Authority has chosen to exercise its</b></li> </ul> </li> </ul>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			<p style="text-align: center;"><b>option under paragraph (c) below.</b></p> <p><b>(c) On termination, the Authority shall have the option to require the Contractor to transfer its right, title and interest in and to the Assets to the Authority or as directed by the Authority.</b></p> <p><b>(d) Provided the notice has been provided in accordance with paragraph (b) above, the Contract will terminate on the specified Authority Break Point Date.</b></p> <p><b>21.5.5 Compensation on Termination on an Authority Break Point Date</b></p> <p><b>(a) On termination under Clause 21.5.4(d) above, the Authority shall pay the Contractor, in accordance with [Section 22 (Calculation and Payment of Early Termination Payments) ], an amount equal to the amount payable under Clause 21.1 (Authority Default), save that in calculating such amount, the amount specified in Clause 21.1.3 (a) (iii) shall be substituted by:</b></p> <p><b>[(A) in the case of termination on the first Authority Break Point Date,] £[ ]; [or]</b></p> <p><b>(B) [in the case of termination on the second Authority Break Point Date, £[ ];]</b></p> <p><b>“Authority Break Point Date” means [ ];</b></p>
22.2.1 (Clause) Gross up of Termination Payment	Small changes to Suitable Drafting		<p>If any amount of compensation payable by the Authority under Clauses 21.1.3 (Compensation on Authority Default), 21.3.2 (Compensation on Termination for Force Majeure), 21.4.4 (Compensation for Termination for Corrupt Gifts and Fraud), 21.5.2 (Compensation on Voluntary Termination), <b>[21.5.4 (Compensation on Termination on an Authority Break Point Date)]</b> and 21.6.2 (Compensation on Termination for</p>



SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			Breach of the Refinancing Provisions) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been had the payment not been subject to Tax, taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.
22.4 (Clause) Set-off on Termination	Small changes to Required Drafting	In line two it is made explicit that the set off may apply whether payment is made in a lump sum or in instalments.	<p><b>22.4 Set-off on Termination</b></p> <p>Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation (<b>whether payable as a lump sum or in instalments</b>) under Clauses 21.1.3 (Compensation on Authority Default), 21.3.2 (Compensation on Termination for Force Majeure), 21.4.3 (Compensation on Termination for Corrupt Gifts and Fraud), 21.5.2 (Compensation on Voluntary Termination) [, 21.5.4 (Compensation on Termination on an Authority Break Point Date)] and 21.6.2 (Compensation on Termination for Breach of the Refinancing Provisions), save to the extent that after such an amount has been set off, the termination payment made would be in an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.</p>
22.5 (Clause) Method of Payment	Small addition to Required Drafting	A definition of Senior Credit Agreement is provided.	<p><b>22.5 Method of Payment</b></p> <p>(a) The Authority shall pay to the Contractor the Termination Sum, together with interest on any <b>Base</b> Senior Debt Termination <b>Amount</b> or Revised Senior Debt Termination <b>Amount</b> element of the Termination Sum at the Senior Debt Rate, on or before the date falling 60 days after the Notice Date provided that it may elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the <b>Revised</b> Senior</p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			<p>Debt Termination Amount (as relevant) element of the Termination Sum in accordance with paragraph (b) below.</p> <p>(b) The Authority may, other than on an Authority Default, elect to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum:</p> <p>(i) in instalments as follows:</p> <p>(A) <b>where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) is greater than or equal to the Outstanding Principal:</b></p> <p>(i) in respect of that element of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant) representing the Outstanding Principal, on the dates (the "Instalment Dates") and in the amounts that the Contractor would have been required to pay principal to the Senior Lenders under the terms of the Senior <b>Credit Agreement</b> had the Termination Date not occurred; and</p> <p>(ii) <b>in respect of the Sum (if any)</b> remaining after deducting the Outstanding Principal from the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the Adjusted Estimated Fair Value of the Contract (as relevant), in equal instalments on the Instalment Dates;</p> <p>(B) where the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount or the</p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			<p>Adjusted Estimated Fair Value of the Contract (as relevant) is less than the Outstanding Principal, on the Instalment Dates pro rata to the amounts that the Contractor would have been required to pay as principal to the Senior Lenders <b>on each Instalment Date</b> under the terms of the Senior <b>Credit</b> Agreement had the Termination Date not occurred; or</p> <p>(ii) as the parties may otherwise agree.</p> <p>(c) From the Notice Date until the date of payment, interest shall accrue on any unpaid element of the Termination Sum at the Senior Debt Rate and be payable on the next occurring Instalment Date.</p> <p>(d) If the Authority has elected to pay in accordance with paragraph (b) above, it may (on 28 days prior written notice to the Contractor) elect to pay the <b>outstanding part of the</b> Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) element of the Termination Sum in full on any Instalment Date.</p>
22.5.4 (Clause) Certificate Reliance	Small addition to Required Drafting	A small addition is made at the end to cover explicitly payment by instalments.	<p>The Authority shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount outstanding at any relevant time. The receipt <b>by the Agent</b> of the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount <b>or elements thereof as relevant shall discharge the Authority's obligations to pay such sums to the Contractor.</b></p>
23.5 (Clause) Surveys on Termination	Small change to Required Drafting	The first part of paragraph (a) from SoPCNI 2 is moved to paragraph (e) and the order of set-off against instalments of	<p><b>23 Surveys on Termination</b></p> <p>(a) [18] months prior to the Expiry Date, [the Authority] shall be entitled to carry out a final survey of the assets to assess whether</p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
		Unitary Charge is made explicit.	<p>they have been and are being maintained by the Contractor in accordance with its obligations under Clause 11.1 (Maintenance).</p> <p><b>(b)</b> [The Authority] shall notify the Contractor in writing a minimum of [7] days in advance of the date it wishes to carry out the final survey. [The Authority] shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least [2] days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on notified date would materially prejudice the Contractor's ability to provide the Service.</p> <p><b>(c)</b> When carrying out the final survey, [the Authority] shall use reasonable endeavours to minimise any disruption caused to the provision of the Service by the Contractor. The Contractor shall afford [the Authority] (free of charge) any reasonable assistance required by [the Authority] during the carrying out of the final survey. The cost of the final survey shall be borne by the Authority.</p> <p><b>(d)</b> If the final survey shows that the Contractor has not complied with or is not complying with its obligations under Clause 11.1 (Maintenance), the Authority shall:</p> <ul style="list-style-type: none"> <li>(i) notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the assets to the standard they would have been in if the Contractor had complied or was complying with its obligations under Clause 11.1 (Maintenance);</li> <li>(ii) specify a reasonable period within which the Contractor must carry out such work; and</li> <li>(iii) recover the cost of the survey from the Contractor by means of [a withdrawal from the Retention Fund Account]</li> </ul>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			<p>[a deduction from the next Unitary Charge] [other means of reimbursement].</p> <p>(e) If the Contractor has been notified under Clause 23(d)(i) that rectification and/or maintenance work is required, <b>[twelve]</b> months prior to the Expiry Date the Authority shall deduct the costs of that work as quantified by that survey from the <b>next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary)</b> of Unitary Charge and pay such amount into an interest bearing account (the "Retention Fund Account").</p>
24.3 Indemnities (and Clause 24.3 also)	Change to guidance drafting	Amendments are made to the guidance (at Section 24.3.4) and drafting (Clause 24.3(b)(ii)) dealing with caps on liability, statutory duty and property damage.	<p><b>24.3 Indemnity</b></p> <p>(a) The Contractor shall, subject to paragraph (b), be responsible for, and shall release and indemnify the Authority, its employees, agents and contractors on demand from and against, all liability for:</p> <ul style="list-style-type: none"> <li>(i) death or personal injury;</li> <li>(ii) loss of or damage to property (including property belonging to the Authority or for which it is responsible "Authority Property");</li> <li>(iii) breach of statutory duty; and</li> <li>(iv) actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis),</li> </ul> <p>which may arise out of, or in consequence of, the design, construction, operation or maintenance of the assets or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Authority's property of the Contractor, a <b>sub-contractor</b> of the Contractor, their employees or agents.</p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
		<p>In Clause 24.3(b)(iii) the words “in respect of Authority Property or 23.3(a)(iv)” from SoPCNI 2 have been omitted.</p>	<p>(b) The Contractor shall not be responsible or be obliged to indemnify the Authority for:</p> <ul style="list-style-type: none"> <li>(i) any of the matters referred to in paragraphs (a)(i) to (iv) above which arises as a direct result of the Contractor acting on the instruction of the Authority;</li> <li>(ii) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority, its employees, agents or contractors or by the breach by the Authority of its obligations under this Contract; [or</li> <li>(iii) any claims made under Clause <b>24.3(a)</b><del>[(iii)]</del> in excess of [ ].]</li> </ul>
25 (Clause) Insurance	Small Changes	<p>A small change has been made to SoPCNI 2 provisions at Clause 25.2 (d).</p> <p>In Clause 25.6(c) the words “the same figure as in paragraph (b) above” from SoPCNI 2 have been omitted.</p>	<p><b>25.2 Insurance</b></p> <p>(d) <b>With the exception of any insurances required by law, the insurances referred to in paragraphs (a) and (b) shall:</b></p> <p><b>25.6 Reinstatement</b></p> <p>(c) [Subject to Clause 25.7 (Economic Test)], where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the (“Relevant Incident”) in an amount in excess of £[ ] (Indexed):</p>
26 (and Clauses also)	Consolidation and one change	This Section:	<b>26.2 Contractor’s Records and Provision of Information</b>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
Information and Confidentiality		<ul style="list-style-type: none"> <li>• provides for further information rights at Clause 26.2(g) and (h) (as required drafting) and</li> <li>• consolidates the data and records provisions previously at Section 29 of SoPCNI 2, into this Clause, and provides for them to be required drafting.</li> </ul>	<p>(a) The Contractor shall:</p> <ul style="list-style-type: none"> <li>(i) <b>at all times</b> maintain a full record of particulars of the costs of performing the Service, including those relating to the design, construction, maintenance, operation and finance;</li> <li>(ii) when requested by the Authority, provide a summary of any of the costs referred to in paragraph (i), including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract; and</li> <li>(iii) provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause.</li> </ul> <p>(b) Compliance with the above shall require the Contractor to keep (and where appropriate <b>to procure that the sub-contractors</b> shall keep) books of account in accordance with best accountancy practice with respect to the Contract showing in detail:</p> <ul style="list-style-type: none"> <li>(i) administrative overheads;</li> <li>(ii) payments made to <b>Sub-Contractors</b> and to sub-contractors;</li> <li>(iii) capital and revenue expenditure;</li> <li>(iv) such other items as the Authority may reasonably require to conduct cost audits for verification of</li> </ul>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			<p>cost expenditure or estimated expenditure, for the purpose of Clause 5.2 (Delays in Service Commencement due to a Compensation Event), [Section] 13 (Change in Service), Clause 14.8 (Qualifying Change in Law), Clause 15.4 (Market Testing) and [Section 15.5] (Benchmarking),</p> <p>and the Contractor shall have (and procure that the sub-contractors shall have) the books of account evidencing the items listed in paragraphs (i) to (iv) available for inspection by the Authority (and any expert) upon reasonable notice, and shall present a report of these to the Authority as and when requested.</p> <p>(c) The Contractor shall maintain or procure that the following are maintained.</p> <p>(i) a full record of all incidents relating to health, safety and security which occur during the term of the Contract; and</p> <p>(ii) full records of all maintenance procedures carried out during the term of the Contract,</p> <p>and the Contractor shall have the items referred to in paragraphs (i) and (ii) available for inspection by the Authority upon reasonable notice, and shall present a report of them to the Authority as and when requested.</p> <p>(d) The Contractor shall permit records referred to in this Clause to be examined and copied by the Controller and other representatives of the Authority, and by [the Comptroller and Auditor General for Northern Ireland and his representatives].</p> <p>(e) The records referred to in this Clause shall be retained for a period of at least [5] years after the Contractor's</p>



SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
		The previous Section 29.8(a)(iv) has been moved to Clause 26.2(g).	<p>obligations under the Contract have come to an end.</p> <p>(f) Upon termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the Project, the Contractor shall (and shall ensure that the <b>sub-contractors</b> will) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Project.</p> <p><b>(g) The Contractor shall:</b></p> <p>(i) <b>provide to the Authority on 31 March, 30 June, 30 September and 31 December each year a document listing all information provided by it to the Senior Lenders during the preceding three month period and, at the request of the Authority, provide to the Authority any information provided by it to the Senior Lenders during the term of the Contract and any other information relating to the Project that the Authority may reasonably require;</b></p> <p>(ii) provide to the Authority copies of its annual report and accounts within 30 days of publication;</p> <p>(iii) provide to the Authority a copy of the [Senior Lenders' Financial Model] at Financial Close and (as the same may be amended) within 30 days of any amendment thereto;</p> <p><b>(iv) promptly upon the occurrence of a [Financing Default] notify the Authority of such Financing Default; and</b></p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			<p>(v) use all reasonable endeavours to assist the Authority in its preparation of any report required by SIB, from time to time;</p> <p>(h) The Authority may, in the circumstances referred to in paragraph (g) (iv) above (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Financing Agreements) require the Contractor to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Lenders attend, such meetings as the Authority may convene to discuss such Interim Project Report and the circumstances giving rise to it.</p>
28.4.3 and 28.4.4 The Construction Contracts (Northern Ireland) Order	Updated	This (and the related footnote 519) is updated to take into account "pay when paid" provisions.	
29.4.4 (Clause) Step-in on Contractor Breach	Changed to Required Drafting	This is now required drafting.	
30.7 (Clause) Continuing Obligations	New small change to Required Drafting	Cross reference is now included to amounts taken into account in the calculation of any Termination Sum.	<p><b>30.7 Continuing Obligations</b></p> <p>Save as otherwise expressly provided in this Contract <b>or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract:</b></p> <p>(a) termination of the Service Period shall be without prejudice to any accrued rights and obligations under this Contract as at the Termination Date; and</p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
			<p>(b) termination of the Service Period shall not affect the continuing rights of the Authority and the Contractor under Clauses [ ] or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.</p>
31.6 (Clause) Direct Agreement	New small change to Required Drafting	At Clause 1 of the Direct Agreement, the Definition of “Event of Default” has changed.	<p><b>1 INTERPRETATION</b></p> <p><b>“Event of Default”</b></p> <p>shall have the meaning given to it in the Credit Agreement.</p>
32 (and related Clauses) The Competitive Dialogue and Commitment Letters	New and updated provisions	<p>This Section is updated to take account of the competitive dialogue procedure and in particular:</p> <ul style="list-style-type: none"> <li>• Section 32.1 (EU Procurement Law) is new</li> <li>• Section 32.2 (Ensuring Commitment) is updated and</li> <li>• the Commitment Letter in Section 32.3 has minor changes (some deletions and some additions) so as to read as set out opposite.</li> </ul>	<p style="text-align: center;"><b><u>Commitment Letter</u></b></p> <p>Following our letter to you of [ ] [and our subsequent conversations] I am writing to you to set out the position which has now been agreed between us.</p> <p>Subject to receiving confirmation from you [and [LENDER]] <b>and [Sub-Contractors]</b> on the points addressed in this letter, the decision has been taken by the Authority to appoint [BIDDER] as its selected bidder.</p> <p><b>1. The Unitary Charge</b> set out within your bid is fixed by reference to your design and services proposals and on the assumption that financial close occurs on or before [•] (“Expected Date of Financial Close”). If financial close occurs after that date then your construction price will be increased only by movements in the [•] index from (but excluding) the Expected Date of Financial Close up to (but including) [•] and thereafter increased in accordance with your proposal included in [REFERENCE] of your Bid submission of [DATE]. The Authority will take the risk of any movement in [LIBOR][applicable interest rates] [relevant index] between [DATE OF BID SUBMISSION] and financial close. The benefit of any</p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
		<p>At the end of paragraph 3, the words “so that the only issues which will require negotiation between now and contract signature are matters of detail which are project specific and</p>	<p>reduction in [LIBOR] [applicable interest rates] [relevant index] including the buffer) will be passed in full to the Authority.</p> <p>2. (a) Subject to paragraph (b) below the <b>Unitary Charges</b> set out within your bid as representing the price payable for taking out and maintaining the [Required Insurances] as that term is used in the draft contract terms (“Insurance Costs”) is fixed up to and including the Expected Date of Financial Close. From but excluding the date of Expected Financial Close Insurance Costs may be increased but only to the extent required as a consequence of any increase in the sum insured following any increase in the construction price allowed in accordance with paragraph 1 above. Any adjustment will be at the following rate [Bidder to specify].</p> <p>(b) Insurance Costs may also be revised if (i) any risk to be insured under the Required Insurances becomes Uninsurable (as such terms are used in the draft <b>Contract terms</b>).</p> <p>3. As regards the draft <b>Contract terms</b>, we are pleased that, [subject to the points of clarification and confirmation specified at <b>paragraph 4</b> below], you have confirmed your acceptance to these terms. Again, we would ask for your confirmation by way of countersignature of this letter that, subject to <b>the points of clarification and confirmation specified at paragraph 4</b> below, you have accepted the draft Project Contract [<i>refer to version and date</i>] [and [<i>refer to other relevant project documents</i>]] as issued to you.</p> <p>4. <b>The points of clarification and confirmation that remain are set out below:</b></p> <p>5. As regards the draft payment mechanism, we would ask you to confirm, again by counter signature of this letter, that you have accepted the current draft in its entirety [subject only to <b>any points specified at paragraph 4</b> above].</p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
		<p>which remain to be agreed” from SoPCNI 2 have been omitted.</p> <p>Square brackets have been omitted from paragraph 5 of the Commitment Letter.</p>	
33 Due Diligence over Sub-Contracts and Financing Documents	Updated	New guidance is given on breakage costs at Section 33.3.1.	
34.4.6 Qualifying Bank Transactions	New Section	Further clarification has been provided on Qualifying Bank Transactions.	
34 (Clause) Refinancing	New changes to Required Drafting	<p>New Clause 34.8 on provision of information.</p> <p>New Definition of “Notifiable Financings”.</p>	<p><b>34.8 Without prejudice to the other provisions of this Clause 34, the Contractor shall (a) notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same and (b) include a provision in the Financing Agreements whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements.</b></p> <p><b>“Notifiable Financings”</b></p> <p><b>Shall mean any Refinancing described in paragraph (a) or (c) of the definition of Refinancing and any other arrangement put in place by the Contractor or another person which has an effect which is similar to those described in paragraphs (a) or (c) or which has the effect of limiting the Contractor’s or any Associated Company’s ability to carry out any such arrangement described in paragraphs</b></p>

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
		Small change to Definition of "Refinancing" paragraph (d).	<p><b>(a) or (c).</b></p> <p><b>"Refinancing"</b></p> <p>(d) any other arrangement put in place by the Contractor or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting the Contractor's <b>or any Associated Company's</b> ability to carry out any of (a)-(c) above.</p>
35 Financial Robustness: Contractor Distress	New Section	<p>This is a new Section providing guidance on Contractor distress and in particular:</p> <ul style="list-style-type: none"> <li>• Section 35.1 looks at structural protections from Contractor distress</li> <li>• Section 35.2 looks at Project robustness</li> <li>• Section 35.3 looks at contractual robustness</li> <li>• Section 35.4 looks at managing Contractor distress.</li> </ul>	
36 Bond Finance	New Section	<p>This is a new Section providing an introduction to the use of bond finance in PFI transactions and setting out permitted revisions to the standard drafting which may be made where bond finance is used.</p>	

SoPC Section (or Clause)	Nature of Revision	Description of Revision	Drafting Change (shown in bold)
37 Corporate Finance	Substantially new	The old corporate finance Section (Section 32) has been substantially updated.	