[redacted]

5.2 CEC shall be bound to act reasonably and in a normal commercial manner in assessing all evidence produced by DHP in respect of the matters contemplated by [redacted] and agrees to be bound to keep confidential information of a commercially sensitive nature contained in materials provided to CEC under [redacted]

5.3 If the conditions in [redacted] and [redacted] are not satisfied (or waived by CEC at its sole discretion) on or prior to the Application Longstop Date then either Party may at any time thereafter resile from the Missives without incurring liability to the other in any manner of way, and that (without prejudice to any other competent method of service) by a letter (which need not be formal or self proving) in terms of the notice provisions contained in [redacted] at any time after the Application Longstop Date but prior to such conditions both being satisfied or waived.

5.4 Within fourteen (14) days after the Conclusion Date CEC must publish in the Official Journal of the European Union a notice in the form of the draft notice reproduced in Part 4 of the Schedule and otherwise in an Approved Form ("**CAN**") advising of the award of the contracts constituted by the Missives, the Development Agreement and (if applicable) the Lease pursuant to the Public Contracts (Scotland) Regulations 2012 (the **"Regulations"**) and for the foregoing purpose:

5.4.1 if there is a third party objection or challenge relating to the competitive process by CEC prior to the award to DHP of the contacts constituted or to be constituted by the Missives, the Development Agreement or the Lease **("Procurement Challenge")** after the CAN is published CEC shall advise DHP each time prior to the Challenge Expiry Date, (i) any Procurement Challenge is received (ii) CEC receives any summons or petition in respect of any Procurement Challenge and (iii) if any Procurement Challenge or court proceedings are then subsequently withdrawn, settled on terms acceptable to CEC, or finally determined in CEC's favour;

5.4.2 If any Procurement Challenge is received or court proceedings are commenced CEC shall take such reasonable steps as they consider appropriate to respond to or rebut any Procurement Challenge or court proceedings;

5.4.3 If prior to the Challenge Expiry Date CEC receives any summons or petition relating to the competitive process by CEC prior to the award to DHP of the contracts constituted or to be constituted by the Missives, the Development Agreement or the Lease either Party shall be entitled to resile from the Missives without penalty under and in accordance with [redacted] on not less than [redacted]eks written notice being given to the other;

5.4.4 If no summons or petition is served on CEC challenging the competitive process adopted by CEC prior to the award to DHP of the contracts constituted or to be constituted by the Missives, the Development Agreement or the Lease (whether in respect of any of the Procurement Challenges received or otherwise) prior to the expiry of thirty (30) days from the date of publication of the CAN by CEC in the Official Journal of the European Union as aforesaid, the Application Long Stop Date shall be the date of expiry of eighteen (18) months after the date which is thirty (30) days after the publication of the CAN by CEC in the Official Journal of the European Union as aforesaid;

5.4.5 [redacted]

[redacted]

[redacted]

5.4.6 For the purposes of [redacted] any periods of delay between the Conclusion Date and the Challenge Expiry Date shall be ignored all to the intent and effect that DHP shall not be deemed to be in breach of any of its obligations under such Clauses by reason of any delay or failure to perform the same, during such period notwithstanding any provision of the Missives to the contrary

6 **Development Agreement**

6.1 DHP and CEC will enter into and shall be respectively bound by the provisions of the Development Agreement at and from the Conclusion Date subject to the suspensive conditions in, and the whole other terms and conditions of, the draft Development Agreement reproduced in Part 2 of the Schedule.

6.2 DHP will procure that the Development Agreement is completed to the extent (if any) required so that the same shall be in an Approved Form and shall thereafter validly execute an engrossment in duplicate of the Development Agreement and deliver it to CEC all within [redacted] from the Conclusion Date.

6.3 CEC will validly execute the Development Agreement and shall deliver one engrossment in duplicate to DHP within [redacted] from receiving the same executed by DHP.

6.4 Even if the Development Agreement is for any time not completed or executed the Parties shall be bound from and after the Conclusion Date by the whole terms and provisions of the draft Development Agreement as if the same had been validly executed.

7 **VAT**

CEC has not opted to tax the Site and accordingly VAT is not currently chargeable on the Price or any part thereof. CEC undertakes that it will not make any voluntary election to charge VAT in respect of the Site or the Lease. For the avoidance of doubt however, in the event of CEC being compelled to charge VAT in respect of the Site by Statute or otherwise, DHP shall be responsible for payment of VAT on the Price or such part on which VAT is properly chargeable and in such event the Missives shall be construed on the basis that VAT is to be charged on the Price. In the event that

VAT is chargeable CEC will provide DHP with a VAT Invoice and evidence that CEC has made an option to tax

8 **Completion**

On the Date of Entry

8.1 DHP must

8.1.1 pay to CEC the Price (together with any VAT properly chargeable in exchange for a valid invoice) by bank transfer of cleared funds to such UK bank account in the name of CEC, as CEC may nominate on at least 24 hours notice in writing.

8.1.2 Subject to Clause 8.2 if the Price and any such VAT is not paid in full to CEC notwithstanding that DHP has not taken entry Interest will be due by DHP and DHP will pay to CEC Interest on the outstanding balance during the non payment of the Price or VAT as the case may be and that notwithstanding consignation.

8.2 Interest shall not be due by DHP in respect of any period of time while Completion has been delayed due to a failure or delay by CEC itself to perform the obligations of CEC to be performed at Completion (**"CEC Delay"**).

8.3 In the event that DHP fails to pay the Price (and any VAT chargeable on it) with Interest as set out in Clause 8.1.2 [redacted] (as extended by any period of delay due CEC Delay) after the Date of Entry CEC is entitled at any time thereafter but prior to receipt by CEC of the Price, Interest, and any VAT then due, to rescind the Missives and to claim damages from DHP for all of CEC's costs and losses (including loss of the Price) arising in respect of DHP's breach of contract.

8.4 In exchange for the Price CEC will comply with its obligations under Clause 9 and:

8.4.1 deliver to DHP copies of the title deeds to the Site;

8.4.2 deliver to DHP copies of all necessary links in title evidencing CEC's exclusive ownership of the Site;

8.4.3 deliver to DHP the remaining Disclosed Documents;

8.4.4 deliver to DHP Form 10/11 Reports brought down to a date as near as practicable to Completion and showing no entries adverse to CEC's interest in the Site or its ability validly to grant the Lease;

8.4.5 deliver to DHP a letter of obligation from CEC in the appropriate form published by The Property Standardisation Group (www.psglegal.co.uk)

8.4.6 deliver to DHP in terms of Clause 9.5 the Lease validly executed in accordance with Clauses 9.3 and 9.4 (subject to the performance by DHP of its obligations under Clause 9.4).

8.4.7 deliver to DHP any other deeds and documents to be delivered to DHP on or before Completion in terms of the Missives.

exhibit a valid and marketable title to the Property, or a Land Certificate containing no exclusion of indemnity in terms of Section 12(2) of the Land Registration (Scotland) Act 1979, and all necessary links in title evidencing CEC's exclusive ownership of the Property and if the Land Registration (Scotland) Act 1979 applies, exhibit any documents and plans and other evidence that the Keeper may require to enable her to

grant a Land Certificate in favour of the Tenant of its interest in the Lease including all rights of access granted under the Lease without exclusion of indemnity (disclosing no deed, decree or diligence prejudicial to the Tenant's interest other than any created by or against the Tenant or which have been disclosed to and accepted by the Tenant prior to the Date of Entry).

8.4.8 If requested by DHP exhibit a letter to the Keeper stating that the Lease referred to at item 8 of the Disclosed Documents is not continuing by tacit relocation and that the premises let thereunder are no longer occupied by the Tenant.

9 **Title and Lease**

9.1 Prior to the Date of Entry the Lease will be completed by inserting the relevant information required including the name and designation of the Tenant and by completing all sections in square brackets according to the directions therein [redacted] all so that the Lease is in an Approved Form and the Lease will be engrossed on the foregoing basis.

9.2 CEC and DHP shall both procure that an engrossment of the Lease is prepared in accordance with Clause 9.1 in sufficient time before the anticipated Date of Entry to allow the same to be fully executed prior to the Date of Entry and the Parties shall instruct their respective solicitors accordingly.

9.3 Unless prevented or delayed by delay on the part of DHP or DHP's Solicitors CEC must duly execute the Lease [redacted] from receipt of an engrossment and in any event not later [redacted] prior to the Date of Entry and shall give the same to DHP's Solicitors on behalf of DHP which DHP's Solicitors shall hold strictly to the order of CEC on an undelivered basis subject to the provisions of Clause 9.4.

9.4 On behalf of DHP DHP's Solicitors shall procure that the Lease is duly executed by the Tenant within [redacted] from their receipt of the same in terms of Clause 9.3 validly executed by CEC and that it is held and will remain held as undelivered, and that it shall be returned to CEC on demand pending Completion unless the Parties otherwise agree for the purpose of the practicalities of achieving Completion and the performance of their respective obligations under Clause 8 and this Clause 9.

9.5 The duly executed Lease will be delivered to the Tenant or deemed to be held as delivered on the Date of Entry in exchange for payment to CEC of the Price subject always to the delivery to DHP of the items referred to in Clause 8.4.

9.6 The DHP will submit or procure that the Tenant submits to HM Revenue and Customs within 21 days of the effective date of the transaction a completed and signed SDLT1 form (with the Agent's address selected as the response to Question 58) together with any applicable supplementary forms and the stamp duty land tax (if any) arising from the land transaction contemplated by the Missives (or other relevant tax return in relation to the land transaction to be effected in terms of these Missives).

9.7 If, prior to the issue of the Land Transaction Return Certificate (SDLT5) HM Revenue and Customs rejects the SDLT application DHP will without delay (i) provide CEC with a copy of any such rejection and other relevant correspondence and (ii) correct the application and resubmit it and a remittance for the correct amount of the stamp duty land tax (or other tax due in relation to the land transaction to be effected in terms of these Missives to HM Revenue and Customs.

9.8 Subject to receipt DHP will procure that within 5 Working Days of receipt of the SDLT 5 from HM Revenue and Customs a copy is delivered to CEC.

9.9 Subject upon receipt of the Lease at Completion in terms of Clause 9.4 DHP will procure that the Tenant will submit the Lease, and the SDLT 5 to the Books of Council and Session for registration for preservation and execution and will deliver two extracts to CEC.

9.10 DHP acknowledges that if they breach the terms of their obligations in terms of this clause 9 or other requirements they may have to HMRC in relation to any tax due on the land transaction to be effected in terms of these Missives they will indemnify CEC in respect of loss suffered by CEC by virtue of such delay or breach.

9.11 DHP will procure that the necessary Land Registration forms are duly signed and completed (including the direct debit box in order to pay the registration dues) in relation to the registration of the Lease in the Land Register of Scotland and will deliver to CEC (i) within 14 days of receipt of the Form 4 a copy of the same; (ii) within 7 Working Days of receipt by DHP of the Land Certificate a copy of the same.

9.12 In the event that during any time from the Date of Entry the Lease has not been validly executed and delivered the Parties will be and will remain bound by the terms of the draft Lease and the Missives to the same extent and effect as if the same had been fully executed and delivered.

[redacted]

12 **Disclosed Documents**

12.1 DHP is deemed to have examined the Disclosed Documents and accepts that it is leasing the Site on the basis that it has satisfied itself on all matters disclosed in them and on the validity and marketability of CEC's title to the Site subject to the Sub-station Lease;

12.2 Property Enquiry Certificates from the City of Edinburgh Council dated 17 March 2014 (**"PEC"**) have been exhibited and DHP is deemed satisfied with the terms of the same. An updated Property Enquiry Certificate will be provided by CEC at the Date of

Entry, and which shall disclose no entry (other than those in the PEC), which would adversely affect the Development or the Lease;

12.3 Clause 12.1 will override any other provision of the Missives apparently to the contrary and any confirmation given by CEC in the Missives is given subject to the Disclosed Documents whether or not that is expressly stated.

13 **Burdens**

13.1 CEC confirms that, in so far as CEC is aware, there are no overriding interests, servitudes, rights of way or similar rights affecting the Site other than as referred to in the Disclosed Documents.

13.2 The Site is leased with and under the real burdens, reservations, restrictions, servitudes, rights of way or similar rights, overriding interests, and other conditions affecting the Site on the Conclusion Date whether specified or referred to in the Disclosed Documents or not.

14 **Outstanding Disputes**

During the period of the CEC's ownership of the Site there have been no disputes which remain outstanding with neighbouring proprietors or third parties about the Site, items common to the Site and adjacent premises, access to or from the Site, the title to the Site or similar matters.

15 **Local Authority and other Statutory Matters**

15.1 **Local Authority matters**

The Site is leased to and accepted by the DHP subject to any notice, orders, proposals, demands or others (as to all of which the DHP is deemed to have satisfied itself) served or made by any local or other public authority issued whether prior to, on or after the Conclusion Date.

15.2 **Statutory Matters**

DHP is deemed to have satisfied itself as to all statutory provisions, regulations and other matters affecting the Site;

The rates and any other periodic charges shall be apportioned as at the Date of Entry. As soon as reasonably practicable after the Date of Entry, CEC shall notify the assessor of the Lease.

[redacted]

[redacted]

[redacted]

[redacted]

17 **Insurance and maintenance**

17.1 CEC shall keep the Buildings insured against the Insured Risks (as defined in the draft Lease) and maintain insurance against property owner's liability in respect of the Site for at least [redacted] in each case from the Conclusion Date until Completion.

17.2 The foregoing insurances shall be maintained by CEC at CEC's cost until Completion.

17.3 [redacted]

17.4 Notwithstanding and without prejudice to the foregoing provisions of this Clause 17 risk of damage or destruction to the Buildings shall not pass to DHP until Completion and i[redacted]

17.4.1 [redacted]

17.4.2 [redacted]

[redacted]

not covered by insurance) and (b) completes such reinstatement (or other agreed works) within [redacted] from the date on which such damage or destruction has occurred

17.5 CEC shall use reasonable endeavours to have the interest of DHP under the Missives endorsed or noted on the policies of insurance and on reasonable request shall exhibit the same to DHP.

17.6 From and after Completion DHP shall procure that the Site and the Buildings are insured and kept insured at DHP's cost in accordance with Clause 19 of the Lease except only and to the extent that insurance cover for the same is being effected under the building contract for the Development.

18 **Supersession**

None of the obligations of the Missives shall be capable of a supersession simply by the lapse of a period of time and accordingly the whole obligations of the Missives shall continue until implemented according to their terms or until a party validly resiles from the Missives, whichever shall be the earlier.

19 **Dispute Resolution**

Save whether otherwise specified n the event of any dispute arising relating to or under the terms of the Missives, the same shall be referred at the request of either party for decision to a single Arbitrator to be appointed by the agreement of the Parties hereto or, in the absence of such agreement, depending upon the nature of the dispute on the application of either party by the Chairman for the time being of the Scottish Branch of the Royal Institution of Chartered Surveyors or the President for the time being of the Law Society of Scotland, which Arbitrator shall have power to award expenses to or against either party. Such person shall be a single Arbitrator and the decision of the Arbitrator shall be final, it being agreed that neither party shall invoke the provisions of the Arbitration (Scotland) Act 2010 to state a case to the Court and the Arbitrator's decision is final and the parties may not appeal the decision to the courts except in the case of manifest error.

20 **Moveables**

CEC will at its own cost prior to the Date of Entry clear out the Buildings and remove all moveable items other than and excepting (a) electrical wiring and switchgear as existing and the heating plant and equipment and (b) the debating chamber fittings and will procure that the Buildings and the exterior parts of the Site are all in a reasonable state of tidiness and are clear of all moveable items. For the avoidance of doubt CEC do not warrant the condition of the electrical writing, switchgear, heating plant and equipment nor the debating chamber fittings with the Buildings.

21 **Signage**

DHP will be permitted but only with the prior agreement of CEC to erect upon the Site in such position or positions as to be readily visible by the general public, a sign or signs advertising the proposed development. Such signage will be in a style to be agreed between the Parties and shall clearly reflect the involvement of each Party. DHP shall be responsible for obtaining all consents necessary for the erection of such signs. DHP shall not erect any signs whatsoever until all consents are obtained and agreed with CEC.

22 **Confidentiality**

22.1 Subject always to the terms of the Freedom of Information (Scotland) Act 2002 ("FOISA") or the Environmental Information (Scotland) Regulations 2004 ("EIR"), but subject to the proviso below CEC shall not and shall ensure that it/or its employees do not without the written consent of DHP at any time during the duration of the Missives divulge to any third party any information concerning the commercial terms of the Missives, or in relation to the design of the Development which comes into its or their possession unless and until such information is already in the public domain (other than and excepting information which has come into the public domain due to a breach by CEC or its employees of the foregoing obligations in this clause) and PROVIDED ALWAYS THAT: (a) it is acknowledged by CEC that certain terms of the Missives are commercially sensitive and that disclosure of such terms, including the identity of the Funder, the Price and, during the period prior to the Planning Submission Date, the Suspensive Conditions (in particular Clause 2.1 above), are, in DHP's view, exempt from disclosure under FOISA or EIR and as such need not be disclosed by CEC; (b) CEC shall give notice to DHP of each request for disclosure relative to these Missives which they receive as soon as reasonably practicable after receipt and (c) prior to any disclosure being made in respect of any such request under FOISA or EIR, CEC shall afford to DHP a reasonable opportunity to make representations about whether and to the extent that the terms of the Missives ought properly to be disclosed and CEC shall pay due regard to any reasonable representations made by DHP but that without prejudice to the provisions of Clause 1.2(j) above and to CEC's ultimate discretion on any matters of disclosure under FOISA or EIR.

22.2 CEC is committed to meeting its responsibilities under FOISA and EIR. Accordingly, all information submitted may require to be disclosed or published by CEC. If DHP considers that specific information provided to CEC is potentially exempt from disclosure under FOISA or EIR (where for example it is considered commercially confidential) DHP should indentify exactly which information it considers to be exempt, state the period of sensitivity and provide justification for its assertions (for example identify what harm may result from disclosure). DHP should note that CEC is not bound by DHP's view and may in its absolute discretion disclose and/or publish any such information in order to comply with FOISA or EIR.

22.3 The provisions of this Clause 22 shall apply during the continuance of the Missives and after their termination howsoever arising.

22.4 Any press release after Completion relating to this transaction and the Lease are to be agreed in writing between DHP and CEC prior to its publication (the Parties acting reasonably)

23 **Notices**

23.1 Any notice required by the Missives must be in writing and may be sent by the Party or its Solicitors to the other Party or the other Party's solicitors and any notice to be given by CEC to DHP must be copied to the Funder at the same time.

23.2 The notice may be delivered personally or sent by post or transmitted by fax to the relevant party or its solicitors.

23.3 Any notice will be deemed to be received:

23.3.1 If delivered personally, (with proof of delivery) at the time of delivery;

23.3.2 If sent by recorded delivery post, 48 hours after the date of posting; and

Provided that if, in the case of personal delivery such delivery occurs outwith normal business hours on a Working Day or on a day which is not a Working Day, delivery will be deemed to occur on the next Working Day

24 **General and Miscellaneous**

24.1 **Formal Documentation Required**

Neither CEC nor DHP is bound by any acceptance of this Offer or any other letter purporting to form part of the Missives or any amendment or variation of the Missives unless it is duly executed.

24.2 **Complete Agreement**

24.2.1 The Missives will, as at the Conclusion Date, represent and express the full and complete agreement between the CEC and DHP relating to this Offer and any other letter forming part of the Missives or any amendment or variation of the Missives and will supersede any previous agreements, representations or others between CEC and DHP relating to the lease and development of the Property, it being declared for the avoidance of doubt that the Missives do not constitute a contract for the procurement of works or services for CEC, or any form of partnership or joint venture between CEC and DHP.

24.2.2 No variations of any of the terms or conditions of this Agreement shall be effective and varied unless constituted in writing and validly executed by or on behalf of both CEC and DHP.

24.3 **Agreements to prevail**

In the event of any conflict or inconsistency between or among any term or provision of the Missives the Development Agreement and the Lease:

24.3.1 the provisions of the Missives shall prevail until the Date of Entry;

24.3.2 the provisions of the Development Agreement shall prevail (and in particular over any term or provision of the Lease apparently to the contrary) from the Date of Entry until Practical Completion (as defined in the Development Agreement);

24.3.3 from and after Practical Completion the provisions of the Lease shall prevail.

25 **Good Faith**

CEC and DHP will each act in good faith in relation to their rights and obligations in the Missives.

26 **Proper Law and Prorogation**

The Missives and the rights and obligations of CEC and DHP and any dispute arising out of or in connection with the Missives or the subject matter or formation of the Missives (including non-contractual disputes or claims) are governed by and will be construed in accordance with the law of Scotland. CEC and DHP agree to submit to the exclusive jurisdiction of the Scottish courts to settle any dispute or claim that arises out of or in connection with the Missives or its subject matter or formation (including non-contractual disputes or claims).

27 **Time Limit**

This offer, if not previously withdrawn, will fall unless a binding written acceptance has been received by us by 12 noon on Wednesday 2 April 2014.

Yours faithfully

[redacted]

Partner
for Pinsent Masons LLP

Email david.bankier@pinsentmasons.com
Direct tel +44 (0)141 567 8656

[redacted]
.....Witness
Full Name
.....Address
.....
.....

We, The City of Edinburgh Council hereby accept the terms of the foregoing offer between us and the said Duddingston House Properties Limited dated 28th March 2014

[redacted]
.....Full Name

.....Witness
.....Full Name
.....Address
.....
.....