



Meeting:	Special Development Committee	13 December 2016
Report Title:	Shetland Telecom – End of Project Report	
Reference No:	DV-59-16-F	
Author/Job Title:	Douglas Irvine/Executive Manager – Economic Development	

1.0 Decisions/Action required:

1.1 The Committee is requested to:

- a) Note the performance of the SHEFA2 Interconnector/Shetland Telecom project (“the project”), as detailed in Appendix 1.
- b) Instruct the Executive Manager – Economic Development to establish a working group for the purpose of establishing the most cost-effective way to:
 - Maintain the assets of the project;
 - Maximise future sales from the project.

The working group is to include the Executive Manager - ICT, the Executive Manager - Estate Operations and the Executive Manager - Finance or their representatives.

2.0 High Level Summary:

- 2.1 The Council initiated the SHEFA2 Interconnector project, later called the Shetland Telecom project, in 2009 to connect the SHEFA2 fibre optic cable to a local fibre optic cable network. The cable project was developed because no progress had been made to persuade Telecom providers to connect to SHEFA2 since Føroyatele had installed it in 2005. The project resulted in links being made between the SHEFA2 cable at Sandwick and Lerwick, out to Scalloway, North to Sellaness with spurs to Vidlin and Tingwall. A resilient link back to Maywick completed the first phases.
- 2.2 The benefits derived from the project are described on page seven of Appendix 1. The project has contributed surplus revenue in excess of £200k in 2014/15 and 2015/16 (exclusive of recharges) to the Economic Development Service budget. Plans for further investment were dropped in 2013 when the Scottish Government announced the Digital Scotland Superfast Broadband project (DSSB). Since then the project team have been maximising the income that can be derived from the Shetland Telecom network. With further announcement of Scottish Government investment in fibre optic broadband expected, it is now time to evaluate the project, draw it to a conclusion and investigate how best to use the Shetland Telecom project within the Council’s structure. This work is essential to maintain the network in good condition and to promote services to more public and private sector customers. Any future Council investment in fibre optic cabling will be considered as

distinctive projects and will be prepared as such.	
3.0	Corporate Priorities and Joint Working:
3.1	“Improve high-speed broadband and mobile connections throughout Shetland” is one of the top priorities in the Council’s Plan 2016-20.”
3.2	“Ensuring that Next Generation Broadband is available to 75% of Shetland’s population by 2016 – helping to boost social connectivity and economic activity throughout Shetland and helping Economic Development and service delivery in some of Shetland’s remoter areas” is a key outcome in the Community Plan.”
4.0	Key Issues:
4.1	<p>The main issues associated with the report are to bring about a controlled Shetland Telecom project end by:</p> <ul style="list-style-type: none"> • Making sure that the benefits derived from the project are understood (page seven of Appendix 1). • Ensure that the project compliments other public sector investments to promote high speed broadband in Shetland. • Ensure that Council service skills are used effectively, without duplication of effort. • Ensure that the skills developed in delivering the project make a full contribution to future service delivery. • Maximise future earnings from the Council’s fibre optic network. • Maintain and protect Council assets. • Promote the integrity and resilience of the Council’s fibre optic network, meeting the continuing requirements of existing customers, and future customers.
5.0	Exempt and/or Confidential Information:
5.1	None.

6.0 Implications:	
6.1 Service Users, Patients and Communities:	Establishing the local provision of the Shetland Telecom fibre optic network within the Council's overall fibre optic network, or externally if that can work better, will provide a stable service for public bodies, social and commercial clients, as described in Appendix 1.
6.2 Human Resources and Organisational Development:	The two staff working in the Shetland Telecom project are skilled in fibre optic networks and the provision of wholesale high-speed broadband services. These skills will be required in whichever preferred delivery is identified. At the present time staff are working in the uncertain environment of a project which has not been concluded properly.
6.3 Equality, Diversity and Human Rights:	The provision of high speed broadband in remote places such as Shetland is an enabler that allows people to access better digital services and to have better employment opportunities.
6.4 Legal:	<p>The following is relevant:</p> <ul style="list-style-type: none"> • Abiding by the terms of the EU grant awarded for the project. • Meeting the terms of contractual obligations with suppliers, customers and staff.
6.5 Finance:	There are no direct financial implications arising from this report. In 2016/17 the Shetland Telecom project was budgeted to produce a surplus on controllable items of £174,000. However, reviewing the position for Quarter 2, a surplus on £194,000 is now projected. It is important at a time of budgetary constraints to maximise income wherever possible.
6.6 Assets and Property:	The report and Appendix 1 describes in detail how the infrastructure needs to be maintained to remain operational.
6.7 ICT and New Technologies:	The project has helped the introduction of superfast broadband into Shetland, which is already bringing significant benefits to the ICT sector.
6.8 Environmental:	Having good access to superfast broadband promotes working at distance and therefore cuts down on carbon emissions. A Strategic Environmental Impact Assessment is not required.
6.9 Risk Management:	The "Uncertain Direction of the Shetland Telecom Project" is listed as a risk on JCAD with a medium score of 9.
6.10 Policy and Delegated Authority:	This report has been prepared under policy 3.1 of the Economic Development Policy Statement 2013-17 (Development Committee Min Ref 37/13), which states "Provide High Speed Broadband in Shetland by the following outcomes/targets:-

	<ul style="list-style-type: none"> • 85% of Shetland households able to access Super Fast broadband (20 MB/s). • Develop technical and service needs cases for extensions of the Council broadband network to Unst and Fetlar. • Achieve net income of £140,000. • Develop campaign to promote benefits of high-speed broadband to communities, businesses and households.” <p>The Development Committee has delegated authority to implement decisions within its remit, in accordance with Section 2.3.1 of the Council’s Scheme of Administration and Delegations.</p> <p>As the subject of this report is covered by existing policy the Development Committee has delegated authority to make a decision.</p>	
6.11 Previously Considered by:	The Shetland Telecom Project Stakeholder Group	02 November 2016

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Appendices:

Appendix 1: Shetland Telecom – End of Project Report

Background Documents: None



END PROJECT REPORT

The End Project Report is a report given by the project manager to the project board, which confirms the handover of all products and provides an updated Business Case and an assessment of how well the project has done against the original Project Initiation Documentation.

Project:	Shetland Telecom
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Revision date	Previous revision	Summary of Changes	Changes by:marked
22/11/16	1.2.1	Reworked contractor refs in 2.x Removed ref to Capital Programme in 2.5 Deleted last sentence in 9.4	GS: No
4/11/16	1.1	Breakdown of public sector value in 3.4.2 Deletion from 4.7 Correction to name in 5.1 Addition of missing elements and renumbering in section 7.	GS: No
12/10/16	1.0	Update costs and economic benefit analysis and rewording for clarification	No
12/10/16	N/A	First Issue	N/A

1. End Project Report History

1.1 Approvals

This document requires the following approvals.

Name	Title	Date of Issue	Version
D Irvine	Executive Manager Economic Development	22/11/16	2.0

1.2 Distribution

This document has been distributed to:

Name	Title	Date of Issue	Version
	Director of Corporate Services	18/11/16	
	Director of Infrastructure Services	18/11/16	
	Executive Manager – ICT	18/11/16	
	Executive Manager – Finance	18/11/16	
	Executive Manager – Capital Programmes	18/11/16	
	Team Leader – Legal	18/11/16	
	Team Leader – Administration	18/11/16	
	Chief Executive	18/11/16	
	Insurance	18/11/16	
	Risk Management Officer	18/11/16	

2. Project Manager's Report

The projects original name was the SHEFA2 Interconnect Project and its objectives were to:

produce the design for a fibre optic cable link between Lerwick and Maywick via Sandwick including the start, intermediate and end points of the cable ...

tender for the installation of the cable in accordance with the agreed design ...

define, procure and install all necessary active equipment to activate the fibre optic cable.

The work was organised in four parts, initialisation and feasibility, begun in January 2010 followed by three build phases. During the program of work the project was extended to include two further build phases and the working title changed to the Shetland Telecom Project as the scope had expanded beyond a connection from Lerwick to SHEFA2 at Maywick.

2.1 Initiation and feasibility

- 2.1.1 In addition to creating an overall network design the initiation phase had to establish project costs and establish a source of funding.
- 2.1.2 While the Council had installed a large number of short fibre optic connections in Lerwick this was the first long range rural cable installation so estimating the cost for this new construction method was challenging. With invaluable assistance from the Council's roads engineers an overall figure of £1.4 Million was reached for phases I, II and III.
- 2.1.3 Based on this estimate the project team approached the European Regional Development Fund (ERDF) for financial support and also contacted the EU Directorate-General for Competition (DGCOMP) to ensure that the proposed investment would be compatible state aid.

A 25% ERDF grant was secured and following lengthy negotiations the project was notified of its state aid compatibility in December 2010.

- 2.1.4 Before embarking on a scheme which would radically alter the Shetland telecommunications sector the Council asked the project team to approach the incumbent communications provider (CP), British Telecommunications PLC (BT) to establish their willingness to work with the Council to achieve the goal of providing a resilient and reliable fibre optic path for telecommunications between Shetland and the UK mainland.

Following constructive dialogue a group of Senior Council and HIE officers travelled to BT's Adastral Park complex in Suffolk in April 2011. The meeting was largely positive and the group came away with broad agreement on a plan which would see BT invest in developing their Shetland network with Shetland benefiting from the introduction of BT's UK pricing model.

Unfortunately initial optimism was unfounded and the two sides were unable to reach a satisfactory agreement.

2.2 Phase I Lerwick to Maywick via Sandwich

Having prepared the tender documents in parallel with the discussions described in 2.1.4 above it was possible to award the contract for Phase I and rapid progress was made on the first link between Lerwick (Sound) and Sandwich Junior High School. Using an innovative micro trenching technique¹, developed by the Council's Roads Service in order to avoid existing pipes and cables on both sides of the carriageway, the contractor completed the 20km installation² in November 2011. The final section between Sound and the Council's point of presence (PoP) at Lystina House used existing ducts and was finished by the DLO in February 2012 with a link established from the Council's ICT Unit to Sandwich Junior High School the same month.

Faroese Telecom spliced³ the new fibre to its SHEFA2 cable where the fibres crossed in Sandwich at the end of April and in June 2012, following extensive testing, live streaming of the Sumburgh Head Puffin Cams became the first, all fibre optic, traffic between Shetland and the Internet via Telehouse North⁴, London.

2.3 Phase II Lerwick to Scalloway

The Phase II tender was awarded in May 2012. There were a number of issues with the programme and the work was eventually completed using the sub-contractors employed on Phase IV and V see 2.5 below. Scalloway eventually "went live" in December 2012.

2.4 Phase III Lerwick to Maywick Via Scalloway

The initial plan for a resilient loop to Maywick involved picking up the Phase II cable at East Voe, Scalloway and heading South on the Clift Sound seabed. The team made no headway whatsoever with the Crown Estate and eventually redesigned the link to run over the Clift Hills. This new route introduced a whole series of new factors, including land access agreements and it wasn't possible to tender the contract until the Spring of 2015. Using similar techniques to those applied when installing the SHEFA2 cable, the contractor was able to rapidly deploy the duct⁵.

During phases I and II the project team took the opportunity to develop its own knowledge and skills. These allowed the team to closely supervise and provide expert technical support during the installation of fibre optic cable into the duct also for splicing and testing the installation. This was completed in June 2015.

2.5 Phase IV and V

Following the award of Phase II and before finalising the new design for Phase III the Council agreed to extend its new fibre network to Sellaness via Brae (Phase IV) with spurs into Council premises in Gott and Vidlin (Phase V). Further spurs planned for Tingwall Airstrip, South Nesting and Mossbank were cut from the project.

This contract was awarded to a local contractor and the work was completed with the cable commissioned and handed over shortly before Phase II in December 2012.

¹ Often referred to as "Ditch Witching" after the machine used to saw a slot in the carriageway.

² The method used preinstalled cable in duct which removed the need to install the cable separately.

³ The term used to describe how fibre optic cables are connected by fusing together the glass cores.

⁴ Telehouse North is part of the London Internet Exchange. One of the worlds largest Internet hubs.

⁵ Phases I and II used preinstalled cable, phases III, IV and V installed duct and cable separately. See section 9 below.

2.6 Post contract

The Council's Digital Shetland strategy envisaged a fibre optic network spanning the isles however the March 2013 news of a national broadband initiative, later called the Digital Scotland Superfast Broadband project (DSSB), effectively halted any further investment by the Council.

There was some expectation that HIE and BT would publish details of the projects scope thereby allowing Shetland's investment to continue to those areas which would be missed off the DSSB network. In the meantime the Shetland Telecom project would maximise use and income from the Council's fibre network.

Despite repeated calls for clarity there has been no information on the final extent of DSSB. In light of this and with the extensive changes made by DSSB to date there is no realistic expectation of reviving the Digital Shetland strategy at this time.

Table 2-1 Project timeline (Green planned Red Actual Black Milestones)

Year Quarter	2010	2011	2012	2013	2014	2015
Project Start						
State Aid Notification						
Phase I Plan						
End of BT Negotiation						
Phase I Actual						
Phase II Plan						
Phase II actual						
Phase III Plan						
Phase III Actual						
Phase IV Plan						
Phase IV Actual						
Phase V Plan						
Phase V Actual						
DSSB Announced						
Project End						

3. Review of the Business Case

The Shetland Telecom project, as it is now known, was predicated on a service review and business case commissioned by the Council in 2009 from Analysys Mason Ltd.

Their report⁶ predicted cumulative revenue over the first five years of between £82,000 and £168,000 based on a capital investment of £1.1 Million. With operating costs estimated at £61,000 Analysys Mason advised that the potential profits were too small to justify the capital investment on a commercial basis and they considered the capital investment to be a non-recoverable cost.

The report identified a number of business models and recommended the establishment of a third party organisation to own and operate the infrastructure. This entity would be responsible for the provision of wholesale services selling to established operators in the retail market.

3.1 Adopted business model

Based on this report the Council established the project to install the interconnect cable, investigate the markets appetite for providing wholesale services on the asset and if necessary take on this role, provide services to Council premises passed by the new infrastructure and to develop the local market in high speed data communications.

3.2 Benefits achieved to date

The project has:

- 3.2.1 Delivered fully fibre optic resilience on the connections between Lerwick and the Scottish mainland removing the Islands reliance on aging microwave circuits and providing virtually unlimited bandwidth to and from Shetland.
- 3.2.2 Delivered two separate routes between a PoP in Lerwick and the SHEFA2 cable station at Maywick. To ensure alternative paths in the event of damage to one of the cables. This in turn provides a resilient link to Telehouse North in London's Canary Wharf.
- 3.2.3 Extended the Council's fibre optic network to the economically important business campus at Sella Ness.
- 3.2.4 Connected Council sites in Sandwick, Cunningsburgh, Scalloway, Tingwall, Voe, Vidlin, Brae and Sella Ness. These fibre links are used to reduce the length of wireless services to the North Isles. The network is also used by the Shetland Health Board to connect their surgeries in Scalloway and Brae as well as providing links between the GBH computer suit and the Council's Computer Centre.
- 3.2.5 Helped develop a thriving local high tech business community.
- 3.2.6 Overseen the successful development of two community broadband schemes in Vidlin and Fetlar.
- 3.2.7 Supported major business development at the Shetland Gas Plant.
- 3.2.8 Accelerated the roll out of 21st century networks from BT and Talk Talk.
- 3.2.9 Project gross income for the period April 2013 – March 2017 is £1.44 Million.

⁶ 2009 Development Committee Report DV113-F

3.2.10 The paper income, including the value of “sales” to the Council and its public sector partners is:

Table 3-1 Value of services to public sector

	13/14	14/15	15/16	16/17	TOTAL
NHS Shetland	0	36000	61000	156000	253000
SIC	383000	383000	383000	383000	1532000
TOTAL	383000	419000	444000	539000	£1785000

There was some usage of services by the Council in 2012/13 but this was largely live testing and has been ignored.

It is important to understand that these are Shetland Telecom book prices for the services being used by the Council and the health service. Neither organisation would commit this level of expenditure to data communication services.

3.3 Residual benefits

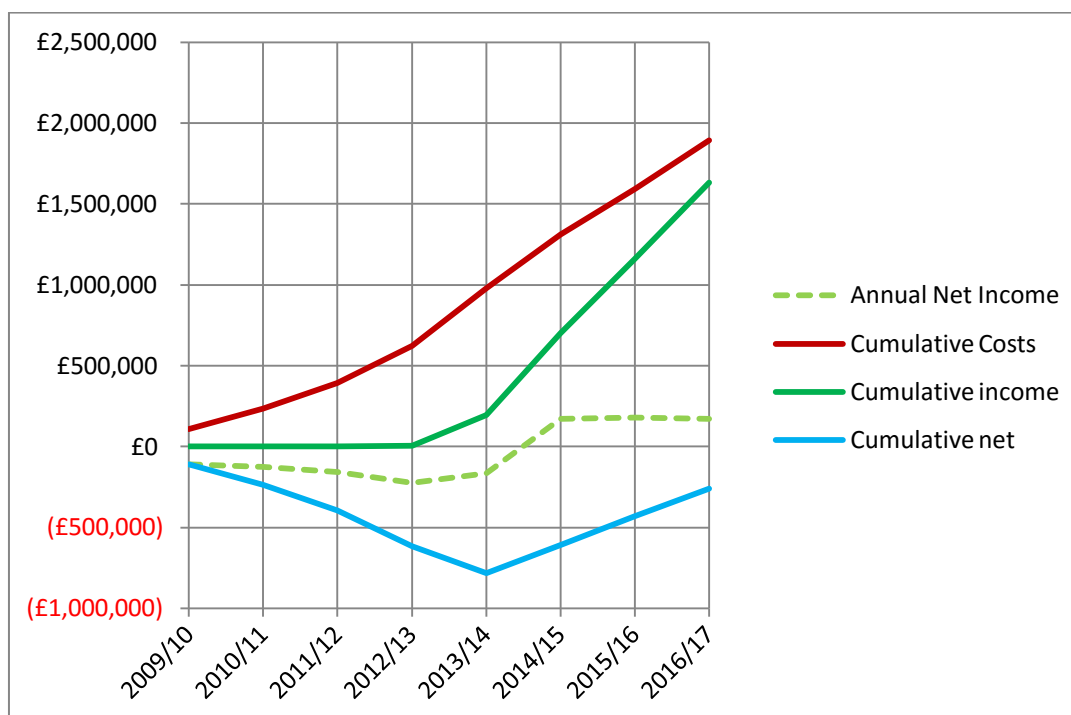
The life expectancy of the fibre optic cable and duct is over 25 years. During this period it will continue to provide interconnectivity for Council and other public sector customer's worth between £300,000 and £500,000 per annum.

While the Oil and Gas developments helped the project get established Shetland Telecom services will continue to be used by the industry to provide much needed resilience which would otherwise not be available. Despite contractions in oil and gas investment the asset built by the project should be able to maintain a good income for the foreseeable future.

3.4 Expected net benefits

- 3.4.1 Net income from the projects investments is expected to be in excess of £100,000 per annum.
- 3.4.2 The benefit to Shetland businesses from access to the cable is estimated at £2.75 Million, based on Shetland Telecom's gross income x 1.687, the Economic Development Units multiplier for communications investment.
- 3.4.3 The Council retains ownership of an asset with a residual value of at least the capital cost of installation, probably several times more.

Figure 1 Project finance overview excluding public sector



3.5 Deviations from the approved business case

The primary change from the original business case has been a longer than anticipated period developing and marketing wholesale products.

The project should have been wound up in 2015 but the possibility the DSSB project finalising its position has allowed Shetland Telecom to limp forward month by month. The recent announcement that the DSSB project will continue beyond 2017 has allowed the project board to reconsider this and bring about a controlled project end.

4. Review of Project's Objectives

The original PID, dated January 2010 outlined the scope to include:

- Agreeing fibre beginning, intermediate and end points
- Defining the composition of the fibre optic cable
- Definition and procurement of active fibre termination equipment
- SHEFA2 connections
- Management of tender advertisement and expressions of interest, including RFI, financial and technical checks
- Composition and compilation of tender
- Tender analysis, evaluation and short listing
- Award of contract
- Client side project management for the installation
- Quality review and acceptance of installed fibre
- Installation and testing of active equipment
- Interconnection signoff

The same document excluded:

- Sales and marketing
- Customer recruitment, contracts and SLA's
- Any other fibre optic connections

Following completion of the fibre installation the management board altered the scope to include sales, contracts and SLA's. Marketing and customer recruitment were not specifically included in the scope and little effort has been expended in these areas.

4.2 Performance against time targets

Phases I and II were badly delayed by last minute negotiations with BT and a longer than expected resolution of state aid compatibility.

The project plan scheduled handover of phase I by the end of November 2010. In reality state aid approval was not granted until December 2010 and negotiations with BT finally collapsed in June 2011.

Phase I was completed in November 2011 however final connection to the Lystina PoP did not happen until February 2012, 14 months later than planned.

Phase III was even more delayed. Originally scheduled for completion in October 2011, failure to reach agreement with the Crown Estate, route redesign and associated land access contracts delayed final handover until the summer of 2015, nearly 4 years behind schedule. It should be noted that while this delay compromised the redundancy aspect of the network for several years it did not delay commissioning and live running.

Phase IV and V planning benefited from the lessons learned in the earlier phases and both were completed in December 2012, 4 months ahead of schedule.

4.3 Performance against cost targets

- 4.3.1 Project costs for Phases I, II and III were estimated at £1.4 Million of which £300,000 was ERDF grant aid. Phases IV and V were estimated at £0.9 Million. The final cost of all phases was £1.79 Million.
- 4.3.2 All phases came in under budget this was a possible issue for the grant received for phases 1 – III as ERDF is considered funding of last resort so an underspend should reduce the ERDF grant as a lump rather than a percentage, leaving the Council to make up the shortfall. Following excellent work by the Council's EU Project Manager and SIC Finance this paradoxical situation was avoided.

4.4 Performance against quality targets

The tender documents quality criteria for the installations were met in full.

4.5 Performance against benefits targets

The Council's PID template, as used in 2010, was less assiduous in its definition of benefits that is now considered necessary, particularly since the introduction of the better business case method. Reviewing the benefits which Analysys Mason identified in its report the project has exceeded all targets. While no formal analysis of the value of the project to local business has been undertaken it is safe to say that this has been considerable.

- 4.5.1 Using the Economic Development communications multiplier, currently 1.687, applied to the projects revenue since 2010 the value to Shetland's economy as a whole is in the order of £2.75 Million.

4.6 Performance against identified risk

Risk were identified in four areas, technical, operational, financial and political.

- 4.6.1 Technical risks included those from the design itself. The delays previously discussed allowed the design team to fine tune the technical specification of the contracts and to test some of the new techniques. Major resurfacing work at Gremista allowed the contractor to test the plant and method in a real world situation and also allowed the roads engineers to take sample cores through the duct and cable to see whether the system was working as designed. This provided invaluable information which mitigated design risks almost completely.
- 4.6.2 Operation risks covered problems arising during the installation. The biggest problem for phase I was the extent of other services, pipes and cables, on both sides of the carriageway. This influenced the design to such an extent that an innovative slot cutting technique was used thereby avoiding both verges.
- One environmental issue did emerge that was not identified during planning. The slot cutting process generated significant amounts of dust. The contractor was obliged to add a large vacuum system to the slot cutting plant to manage this.
- 4.6.3 Financial risks were largely concerned with the accuracy of the financial modelling. Again the delays and ability to test the technique assisted this and the project came in without any major financial issues.

The team were also unaware of the ERDF financier of last resort issues.

These are further discussed in section 9 below.

- 4.6.4 One of the main issues, identified as a political risk very early in the Shetland Telecom project was one of Council and public expectation. The project was never designed to provide access networks for improving business or private broadband. While this was repeated at every opportunity there have still been questions and challenges over what Shetland Telecom is doing to resolve poor broadband in area X or Y.

When the Shetland Telecom project began there was no notion of a national program for broadband improvement. Since then the Broadband Delivery UK programme in the Highlands and Islands has committed over £150 Million through the Digital Scotland Superfast Broadband project (DSSB). Over the last three years the Shetland Telecom project has been massively impacted by the DSSB investment. DSSB has been managed in the Highlands and Islands by HIE with the best of intentions but it has undermined the business case for Shetland Telecom and has effectively halted any further expansion of the Council's network and reduced the value of the investment to date.

4.7 Strategies and controls

The Shetland Telecom project was initiated at the request of the Chief Executive and managed through the Council's Economic Development service. A steering group of Councillors and senior officers was formed, originally comprising the Council's political leader, the chair of the Development Committee, an independent councillor, the Council's Head of Finance, the Executive Manager Development Services and the head of the Council's Roads Service.

Following a clear lead from the Chief Executive this management team provided an ideal basis on which to build a project with significant financial and reputational risk.

One of the early tasks set for the project team was to consolidate the Council's various references to broadband into a single coherent strategy document. The Digital Shetland report was a high level aspirational document which set out a staged approach to delivering community hubs throughout Shetland.

The project continued to function well until a major restructuring of the Council's top two tiers of management and the UK Government's announcement of DSSB funding changed the Council's focus and the broadband landscape. The Council's financial pressures combined with the expectation of significant broadband investment from other agencies left the Shetland Telecom project with no access to Council capital.

Since 2013 the Digital Shetland strategy has been parked and the Shetland Telecom project stalled, awaiting the outcome of the DSSB rollout.

5. Review of Team Performance

The Shetland Telecom project team has included staff from across the Council changing as dictated by circumstance.

5.1 2009 – 2010

During this period the primary focus for the team was on design of the installation and obtaining state aid compatibility status for the investment.

Particular mention should be made of the Council's Roads Service who played a key part in developing the innovative slot cutting method deployed throughout phase I and II and used strategically in phases IV and V. The Roads team were also vital in drawing up and assessing the tenders.

During this period invaluable support was also provided by the Council's Legal Services team.

5.2 2011-2013

During the construction phase the Roads Service ensured that any onsite issues were addressed and helped ensure that the work continued smoothly.

During this period the team also involved two independent advisors to support the development of the network. Of these Patrick Haynes, who has previously managed the Pathfinder North contract on behalf of Thus PLC, provided technical support to the team as well as promoting the project in the wider Scottish technical and political communities.

Invaluable EU Funding expertise was provided by the EU Project Manager and financial advice and support from Capital Programmes staff.

6. Review of Products

The Council's implementation of Prince2 is lacking in detailed product management. The Shetland Telecom project identified products at a very high level, essentially the installation phases.

Quality, approval and handover were mandated in the tender documents. Any off specification products were managed by the team on site and controlled through the tenders day works elements.

7. Follow-on actions

The Shetland Telecom project has delivered fibre optic network infrastructure which has enabled the Council to improve its own connectivity, allow public sector partners to develop services in remote areas and encouraged communication providers to service customers in areas of Shetland which were previously unviable. These provisions, physical and contractual, will need to be managed into the future using the knowledge and skills already available across the Council.

7.1 Maintenance

7.1.1 Fibre cable and duct

The life expectancy of fibre and duct is in excess of 25 years and during this time little maintenance is needed or indeed can be done.

Points of weakness are at chambers and cabinets where the fibre is jointed or terminated to connectors. These areas need regular inspection, this work would involve.

- 1.i Annual inspection of cabinets for stability, weathering and water accumulation. Locks and door mechanisms should be greased and seals replaced as necessary.
- 1.ii Annual inspection of all closures for water ingress. Seals greased and or replaced and new desiccant added as necessary.
- 1.iii Ensuring that all unused fibre optic connectors have dust caps fitted.
- 1.iv Ongoing inspections as per other road surfaces and verges involving visual inspection of routes looking for exposure of cables / ducts and any erosion.

7.1.2 Active equipment

The range and quantity of active equipment used on the network has been minimised however there is an ongoing maintenance and replacement requirement for any computer equipment. Life expectancy of a switch / router in a controlled environment is 7 to 10 years, customer premise equipment (CPE) in an office or workshop cabinet has a life of 5 – 8 years while equipment housed in an external cabinet may last 5 years or less.

Management of active equipment would involve:

- 2.i Switch / router operating systems to be upgraded as per manufacturers' recommendations. This is critical for core services.
- 2.ii Equipment housed in uncontrolled environments to be checked and cleaned annually.
- 2.iii Hot swap replacements for core and CPE to be maintained at all times.
- 2.iv Un-interruptible power supplies to be monitored and tested, using automated features, once a month and batteries replaced as necessary.

7.2 Operation

The network requires little in the way of operational intervention. Network monitoring is used by the Shetland Telecom team and by the Council's ICT service to assess network usage and notify the help desk in the event of system faults. Only when customers' requirements change is any reconfiguration needed.

7.3 Ongoing issues and risks

Beyond any ongoing maintenance issues the principle risk to the network is through third party interference, usually by means of heavy plant or cutting equipment. In these instances a rapid response team and equipment needs to be available to effect repairs with a minimum downtime for users / customers. Key to this are timeous reporting of any issues and the development of a rapid response team with all the appropriate resources to repair any damage.

- 7.3.1 There is need for a point which would take responsibility for the management of incidents and to ensure that there is a suitably trained and equipped response team.
- 7.3.2 There is a need for a 24 hour fault reporting centre for incidents.
- 7.3.3 There is a need for a designated incident response team.
- 7.3.4 There is a need for a trailer, fitted with all the equipment required to effect repairs to a damaged cable, cable blowing plant and spare cable. This equipment is all in place. The fault reporting centre and incident response team need to be aware of how this can be accessed.

7.4 Customer services

Several communications providers use the new fibre optic cables in support of their customers. These contracts will need to be maintained and developed if income from the investment is to continue.

- 7.4.1 Dark fibre has been leased to Faroese Telecom between Maywick and Lerwick and to Sodexo at various sites in the Sella Ness Business Park. By their nature dark fibre circuits require no monitoring or maintenance beyond that describes in 7.1.1 above. Dark fibre is also in use by the Councils ICT Service and NHS Shetland.
- 7.4.2 Leased lines, at various bandwidths, have been sold to Faroese Telecom, T Systems, Shetland Broadband, Telecomputing A/S and Udata. These require customer premise equipment (CPE) which needs to be monitored, maintained and replaced as necessary.
- 7.4.3 Cloud services are used solely by Shetland Broadband and are similar to leased lines but with no bandwidth guarantee. These require customer premise equipment (CPE) which needs to be monitored, maintained and replaced as necessary.

- 7.4.4 Managed upstream Internet services are sold to Shetland Broadband and Telecomputing A/S. No additional CPE is required above and beyond that which delivers the associated leased line or cloud connection. The Internet service requires routing facilities in Lerwick and Maywick which must be monitored, maintained and replaced as necessary.
- 7.4.5 If income from the investment is to be maintained and perhaps grown there is a need for business development and marketing in addition to the basic tasks of maintaining service levels on the network.

7.5 Unfinished work

There are no unfinished work streams at this point in time. Several potential projects are being considered but these will be planned, authorised and managed separately.

8. Recommendations

The equipment, skills and personnel to deliver all the outstanding actions in section 7 above are available across the Council. Rather than create a new function to manage the Council's fibre assets it is recommended that the Manager of Economic Development investigate how a virtual team might be established across council services. Areas that will need to be considered include:

8.1 Fibre optic asset management

- 8.1.1 Ensuring that the skills and equipment necessary for supporting the asset are maintained and developed.
- 8.1.2 Managing customer contracts and invoicing for services provided on the asset.
- 8.1.3 Buying in specialist services as required.
- 8.1.4 Monitoring SLA's and taking managerial and financial responsibility for the delivery of remedial action when required.

8.2 Asset maintenance

- 8.2.1 24 hour coverage for repairs to the fibre asset.

8.3 Network monitoring and fault reporting

- 8.3.1 Establishing a central point to which all damage / faults is reported.
- 8.3.2 Provision of a 24 hour fault reporting and escalation service.

8.4 Replacement of faulty equipment

- 8.4.1 Replacement of faulty CPE and core network equipment to deliver contracted SLA's.

9. Lessons Report

This section contains a review of what went well, what went badly, and any recommendations for corporate or programme management consideration

9.1 Design and tender

9.1.1 In hindsight it was a mistake to run phases I, II and III separately. It would have been difficult to include phase III due to excessive delays and redesign however phases I and II were in no way different and it was only caution that led to them being tendered separately.

9.1.2 Combining the phases might have allowed local contractors to build the in house skills necessary to complete the installation. In four of the five phases slicing and testing was subcontracted to an off island specialist, phase III was carried out by project staff with contractor support. The entirety of civil works for phases IV and V were subcontracted to an off island company, only management was carried out by a local firm.

It would have been better for the diversity of Shetlands technical contracting businesses if this work could have been carried out by local firms. How this could have been effected is difficult to identify but some thought might identify a legal and equitable manner in which it could be done.

9.2 Build

Concerns about the ability to “blow” fibre into the duct led to a decision to use preinstalled cable in duct for phases I and II. This caused difficulties and slowed down the installation process as duct lengths could not be cut at convenient points. Each 4km length had to be installed in one contiguous slot. Phases III, IV and V installed empty duct, which can be cut and jointed with relative ease. Once the duct is finished the 4km length of cable were easily blown in. Again excessive caution proved to be counterproductive.

9.3 Operation

The Council need to build a support team with the knowledge and skills required to support the fibre network, active and passive. Ownership / responsibility for identifying and resolving issues must be clearly understood and the mechanism required to implement repairs should be agreed with ICT, the DLO and other stakeholders.

9.4 Finance

Projects with the possibility of significant variance in overall cost, specifically including projects that might come in under budget should carefully consider the implications regarding grant support. ERDF grants are considered to be financier of last resort. In effect this means that a 25% grant funded project with an overall cost of £1 Million will receive a grant of £250,000 leaving the Council to find £750,000. If the project is completed under budget this may appear to be a good thing. In practice ERDF will reduce its grant aid by the full underspend, so the Council will still need to find £750,000.



Meeting(s):	Special Development Committee	13 December 2016
Report Title:	Preparing a Business Case to Develop Super Fast Broadband Services in the North Isles	
Reference Number:	DV-61-16-F	
Author / Job Title:	Executive Manager – Economic Development	

1.0 Decisions / Action required:

- 1.1 That the Committee delegates authority to the Executive Manager – Economic Development to:
- a) prepare revisions for the Digital Shetland Strategy to potentially include a programme of works to provide Super Fast broadband services to all communities in Shetland, once the extent of the Scottish Government's investment in these services is known, and if considered to be deficient;
 - b) procure structured and focused research into a need for High Speed broadband in services, businesses and homes in the North Isles; and,
 - c) maintain continuous contact with the Director of DigitalScotland on the timetable for rolling out phase two of Digital Scotland Superfast Broadband project (DSSB) to Shetland Communities and ensure that discussions are taking place with SSE on interconnector crossings to the North Isles.

2.0 High Level Summary:

- 2.1 The report and its appendix have been written to encourage a discussion about the use of the Building Better Business Case method in establishing a preferred option for delivering high speed broadband services to the North Isles (Yell, Unst and Fetlar) at this time. While it is clear that broadband services to the North Isles are inferior to places on the Shetland mainland where the DSSB project has upgraded the exchanges, the documents suggest that there is a lack of an evidence base to prepare a business case. Some solutions are discussed to improve the situation. More information is provided in Appendix 1.

3.0 Corporate Priorities and Joint Working:

- 3.1 "Improve high-speed broadband and mobile connections throughout Shetland" is one of the top priorities in the Council's Plan 2016-20.
- 3.2 "Ensuring that Next Generation Broadband is available to 75% of Shetland's population by 2016 – helping to boost social connectivity and economic activity throughout Shetland and helping Economic Development and service delivery in some of Shetland's remoter areas" is a key outcome in the Community Plan.
- 3.3 The main avenue for joint working is with the Scottish Government where the report has an action to maintain a close contact with DigitalScotland so that future plans for supporting Super Fast broadband are understood as early as possible.

4.0 Key Issues:	
4.1	<p>The main issue is the lack of a structured evidence base to apply the Business Case method to. This means that it is difficult to: Make a case for change; demonstrate value for money; and assess affordability. In particular:</p> <ul style="list-style-type: none"> • The absence of detailed policy to provide a proper policy context for a business case. • No detailed research on the need for high speed broadband in Yell, Unst and Fetlar. • No timetable for the Scottish Government's investment in high speed broadband in Yell, Unst and Fetlar. • Ensuring synergy between improving high speed broadband services in the North Isles and SSE's plans to put power interconnectors across Yell Sound and Bluemull Sound in 2017. • Identifying what the responsibilities for breakages are in any shared cable crossings across Yell Sound and Bluemull Sound. • Understanding and meeting any future Council cost considerations. • Understanding and meeting any Council staff requirements during and after the project.
5.0 Exempt and/or confidential information:	
5.1	None.
6.0 Implications :	
6.1 Service Users, Patients and Communities:	The report is recommending that research is done to understand what the likely impact of developing high speed broadband is for the communities and services in the North Isles.
6.2 Human Resources and Organisational Development:	The presence of Super Fast broadband in the North Isles could have a significant benefit on how people work in the North Isles and how they are organised. Faster communications and more home working could be beneficial for health, safety and well being.
6.3 Equality, Diversity and Human Rights:	Improved public services would bring better equal opportunities for living in the North Isles with more diversity.
6.4 Legal:	Suppliers of Super Fast broadband services are bound by their contractual obligations to customers and the relevant regulations.

6.5 Finance:	There are no financial implications arising from this report, as the additional costs associated with the proposed research will be met from within current budgets.	
6.6 Assets and Property:	Any service provider responsible for a future Super Fast broadband network in the North Isles would have to be prepared to bear the maintenance costs and future replacement costs.	
6.7 ICT and new technologies:	There are positive indications that ICT service provision would improve with the installation of Super Fast broadband services in the North Isles but this needs to be fully assessed.	
6.8 Environmental:	Better availability of Super Fast broadband would reduce the need for travel.	
6.9 Risk Management:	Any significant Council involvement in capital spend would be assessed under JCAD.	
6.10 Policy and Delegated Authority:	<p>This report has been prepared under policy 3.1 of the Economic Development Policy statement 2013-17 (Development Committee min. Ref. 37.13), which states “Provide High Speed Broadband in Shetland with the following outcomes/targets:-</p> <ul style="list-style-type: none"> • 85% of Shetland households able to access Super Fast broadband (20 MB/s). • Develop technical and service needs cases for extensions of the Council broadband network to Unst and Fetlar. • Achieve net income of £140,000. • Develop campaign to promote benefits of high-speed broadband to communities, businesses and households. <p>The Development Committee has delegated authority to implement decisions within its remit, in accordance with Section 2.3.1 of the Council’s Scheme of Delegations.</p> <p>As the subject of this report is covered by existing policy, the Development Committee has delegated authority to make a decision.</p>	
6.11 Previously considered by:	The Shetland Telecom Project Stakeholder Group	2 November 2016

Contact Details:

Douglas Irvine, Executive Manager – Economic Development,
douglas.irvine@shetland.gov.uk Report Finalised – 7 December 2016

Appendices:

Appendix 1 – Developing Super Fast Broadband Services in Shetland’s North Isles using the Building Better Business Case Method.

Background Documents:
None.

**Developing Super Fast Broadband Services in Shetland's North Isles
Using the Building Better Business Case Method.**

1. Summary of the Building Better Business Case (BBBC) Method

General

The BBBC method is an evidence based systematic approach to ensure that projects are developed in a rational way, in line with Council objectives to obtain maximum public value from spending proposals. It is based on five distinctive cases, as described below.

The Strategic Case

This confirms the strategic context of the proposal in terms of Council objectives and also in relation to wider public sector policies. It also includes a compelling case for change which is the rationale for considering the intervention.

The Economic Case

This demonstrates that a wide choice of options has been appraised to make sure that the preferred option offers optimum value for money in relation to associated costs, benefits, dis-benefits and risks.

The Commercial Case

This considers procurement, whether the supply side can deliver what is required on an efficient market basis. At its final stage the correct contractual arrangements are made for specified goods and services.

The Financial Case

The main output from this case is determining the affordability of the proposal. It considers how realistic the capital costs are and takes into account the revenue costs and savings over the full life span of the project. Sources of finance and other support for the project are considered.

The Management Case

This sets out how the project will be delivered effectively in terms of governance, management, staffing and all the resources, systems and processes required for successful implementation.

2. Existing Evidence Base and Suggestions to Improve Information

2.1 The Policy Base

There is considerable high level policy in favour of promoting Super Fast broadband services in Shetland. The main community policy documents – The Council's Corporate Plan, Community Plan and the Local Outcomes Improvement Plan (LOIP) - all include the improvement of broadband services as a priority.

The Council's Corporate Plan states:

"Improve high speed broadband and mobile connections throughout Shetland."

The Community Plan states:

"Ensuring that Next Generation Broadband is available to 75% of Shetland's population by 2016 – helping to boost social connectivity and economic activity throughout Shetland and helping economic development and service delivery in some of Shetland's remoter areas."

The LOIP states:

"Supporting the development of a digital, diverse and innovative business base."

While helpful, none of these policy statements are strategic, and do not describe how the policy will be achieved, and there is little reference to more detailed implementation in the rest of these documents. The current Digital Shetland Strategy 2014-17, adopted by the Development Committee on 16 June 2014 (Min Ref 29/14) emphasises partnership working with the DSSB project and Community Broadband Scotland to achieve its objectives. This current strategy is markedly different from the earlier 2011-14 Strategy, which set out a programme for Council investment to achieve a broadband network in Shetland.

In terms of wider public sector policy the Scottish Government has a published aim to achieve 100% high speed broad coverage in Scotland by the end of 2021. The available detail of this will be discussed later.

Solution

At the point when it is clear what the extent of the Scottish Government's investment in broadband services in Shetland will be, the Council should be in a stronger position to consider other ways to bring high speed broadband services to the parts of Shetland that Government Schemes could not reach. This would have to take any other public sector initiatives into consideration. Until such a time the policy context for a Business Case remains weak.

2.2 The Need for Super Fast Broadband in Yell, Unst and Fetlar

It is important to have detailed evidence of the need for Super Fast Broadband in the North Isles for the preparation of the Business Case. The impact on public services needs to be understood as does improved business opportunities and the enhanced domestic/social use. With a robust evidence base the case for change can be assessed, value for money aspects can be presented and affordability can be shown.

At the time of preparing this document good information on the need for Super Fast Broadband in the North Isles had been sourced from:

The Community Care Service
The Education Service
The NHS
The Council's ICT Service

A message from Unst Community Council urging the Council “to do whatever it can within its power to see if a better broadband can be delivered to our most fragile communities “ had also been received. Taken together this is a promising start to identify the evidence base described above and indicates how important Super Fast Broadband would be for the North Isles. More information is necessary though to provide the full evidence base required.

Solution

Using the valuable information received on how Super Fast Broadband will improve service provision in the North Isles, a structured and focused research project should be conducted on all potential uses for Super Fast Broadband in the North Isles to provide the evidence base required.

2.3 Scottish Government's Future Investment in High Speed Broadband Services

The latest available information on the Scottish Government's plans is that phase two of the DSSB roll out in Scotland will be tendered in 2017 with a three year roll out programme beginning in 2018. This is expected to cost £45M for the Highlands and Islands with an application being made by the Government for ERDF funding of £20M. The application states that there will be “a particular focus on remote island communities”, with island communities in Orkney and Shetland getting specific mention under the section on Aims, Objectives and Proposed Activity. As yet there is no specific timetable for developing Super Fast broadband services in Yell, Unst and Fetlar.

Solution

An email has been sent to the Director of DigitalScotland to seek more information about the development of Super Fast broadband services in the North Isles and about any discussion that the Scottish Government have had with SSE about the possibility for joint use of the North Isles crossings.

2.4 Commercial and Licensing Transactions

The deal to enable a joint crossing of electricity and fibre cables across the sounds will have to include a clause enabling the repair of the fibre cable in the event of a break. The Crown Estate rental obligations also need to be known.

Solution

Detailed discussions would have to take place between the eventual operator of the Super Fast broadband service in the north isles and SSE about the fibre optic cable responsibilities.

2.5 Financial Considerations

With a Council investment in fibre to the North Isles there would be revenue costs. It is usual to predict that a capital investment in fibre optic cables would have a 10% annual running cost so a capital investment of £1M would cost £100,000 a year to operate. Should the project become part of the Shetland Telecom set up, the additional revenue cost would have a significant impact on the Economic Development Service's budget, by severely reducing the surplus that is currently earned from the Shetland Telecom project.

Solution

These figures would have to be built into the cost benefit analysis for appraising options to see how cost effective any of the options are. Options external to the Council would be evaluated in a stronger light than options that incur additional costs to the Council.

2.6 Project Resources

In addition to the capital expenditure the management requirements and costs of the project need to be considered. If the Council undertook the project management then the staff situation at Shetland Telecom would need to be reviewed, assuming that the Shetland Telecom staff would be deployed to this project. This has to be regarded as a separate project to the earlier Shetland Telecom network.

Solution

The costs of managing the project have to be built into the cost benefit analysis but, as for the financial considerations, building in internal project management costs will favour the externally run options.

3. Conclusion

The issues identified in this short paper illustrate how difficult it is to prepare a fully considered business case for developing Super Fast broadband services in the North Isles. Much of the essential evidence base is missing. The situation would be much improved if better information was available, as set out in the six solutions.



Meeting(s):	Special Development Committee Policy & Resources Committee	13 December 2016 13 February 2017
Report Title:	Shetland Investment Fund - Decision Making and Conditions	
Reference No:	DV-60-16-F	
Author/ Job Title:	Douglas Irvine/Executive Manager – Economic Development	

1.0 Decisions / Action required:

- 1.1 That the Development Committee RECOMMEND that the Policy and Resources Committee RESOLVE to:
- a) Approve the decision making process for the Shetland Investment Fund as detailed in section 4 and further illustrated by the flow chart in Appendix 1.
 - b) Instruct the Executive Manager – Economic Development to establish a Shetland Investment Board to operate under the terms of reference detailed in Appendix 2.
 - c) Delegate authority to the Executive Manager – Economic Development to make decisions on lending activity within the Shetland Investment Fund as detailed in Appendix 3.
 - d) Approve the addition of a condition to the Shetland Investment Fund Lending Policy (as shown in section 4.5) requiring borrowers who are employers to pay no less than the Living Wage.
 - e) Approve the Deed of Conditions for Shetland Investment Fund loans, attached as Appendix 4.
 - f) Approve the Conditions for Shetland Investment Fund Hire Agreements with the Option to Purchase, attached as Appendix 5.

2.0 High Level Summary:

- 2.1 This report concerns the Council's Shetland Investment Fund which operates as part of the Economic Development Service. Following the Council decision in April 2016 to establish a Shetland Investment Fund, work has continued to review the policies and procedures in place to manage the lending activity. This report focuses on the decision making processes for the Shetland Investment Fund and recommends that a Shetland Investment Board is established to consider proposals for new and existing investments. The Board will make recommendations to the Executive Manager - Economic Development for decision under delegated authority.
- 2.2 The report also proposes the adoption of revised standard conditions for lending and the inclusion of a specific condition requiring borrowers, who are employers, to pay no less than the Living Wage.

3.0 Corporate Priorities and Joint Working:

- 3.1 Shetland Islands Council's Our Plan 2016 - 2020 recognises that Shetland's future prosperity is dependent on maintaining a sustainable economy. The Shetland Investment Fund assists in the delivery of the following Economy & Housing objectives detailed in the Corporate Plan:
- "The long term community plan aim is for Shetland to have good places to live as well as sustainable economic growth with good employment opportunities, and for our residents to have the skills they need to benefit from those opportunities."
 - "We have an economy that promotes enterprise and is based on making full use of local resources, skills and a desire to investigate new commercial ideas."
 - "We will be investing development funds wisely to produce the maximum benefit for Shetland's economy."
- 3.2 The Shetland Partnership recognises the link between economic success and strong communities and the Shetland Partnership's Local Outcomes Improvement Plan 2016-20 sets out the activity and priorities to achieve the Shetland Community Plan. The following outcomes are relevant to the lending service:
- "D2: Make the best use of existing assets, infrastructure and human capital for sustainable socio-economic development."
- "D3: Supporting the development of digital, diverse and innovative business base."

4.0 Key Issues:

Decision Making Process

- 4.1 Currently decisions on new and existing Shetland Investment Fund investments are made by the Development Committee. There is one loan scheme in place where decision making is delegated to the Executive Manager – Economic Development. This scheme assists local fishing businesses to purchase whitefish quota and fishing licences.
- 4.2 It is proposed that authority be delegated to the Executive Manager – Economic Development to make decisions on new and existing investments within the Shetland Investment Fund. Part of the decision making process would be to establish a Shetland Investment Board consisting of Council Officials to assess all proposals within an agreed remit. Unanimous agreement from the Board would be required to recommend approval to the Executive Manager – Economic Development. A flow chart to illustrate the path applications would take is attached as Appendix 1. The draft terms of reference for the Shetland Investment Board are attached as Appendix 2 and draft terms of the delegation to the Executive Manager – Economic Development are attached as Appendix 3. The existing whitefish quota and fishing licence scheme would cease to exist as a separate scheme and all applications would be routed through the new process.
- 4.3 This proposal would bring flexibility to the decision making process allowing applications to be considered as and when required. This would lead to more efficient decision making and thus improve the economic development service offered by the Council.

The Living Wage/Sick Pay Conditions

- 4.4 At the Policy and Resources Committee on 24 October 2016 [Min Ref: 74/16] the draft Lending Policy & Guidelines were considered and a decision was deferred to allow advice to be received on additional conditions on the payment of the Living Wage and sick pay.
- 4.5 The legal advice received indicates that it is legally permissible to include a condition requiring borrowers who are employers to pay the living wage. The Council has made a commitment to the principle of the Living Wage in order to promote the wellbeing of people working in Shetland. There is therefore good reasoning to incorporate a condition into the Council's lending policy. It is proposed that the following be included in the Lending Service Policy & Guidelines which will be presented to Policy & Resources Committee on 13 February 2017 for approval.
- "Applicants who are employers will be required to pay no less than the 'Living Wage' as set by the Living Wage Foundation to all employees."
- 4.6 The following clause (clause 7.11) is also included in the Deed of Conditions attached as Appendix 4.
- "in the event that the Borrower is an employer, the Borrower shall pay no less than the 'Living Wage' as set by the Living Wage Foundation to all employees throughout the term of the loan agreement."
- 4.7 It should be noted that not all borrowers will be employees and some businesses operate with workers who are self employed or contracted i.e. in the fish catching sector. Such businesses would not be affected by this condition.
- 4.8 Subject to certain conditions employees are legally entitled to statutory sick pay. All employers will therefore be paying their employees who qualify for statutory sick pay. The Council does not have a stated policy position on the payment of additional sick pay by private sector employers in Shetland and it may be regarded as an operational matter for businesses. The Council needs to consider what reasons it would have to set conditions which interfere with the operation of the borrower's business and have no immediate relevance to the loan or the Council's wider policy objectives. It is therefore not recommended that any additional conditions regarding sick pay are introduced into the lending scheme.

Deed of Conditions

- 4.9 The Deed of Conditions is a list of standard conditions which apply to all loans/Hire Purchase (HP) agreements approved. The Deed is referred to in loan/HP agreements issued by the Council. Some conditions must be satisfied before funds can be released and others must be complied with throughout the term of the loan/HP agreement.
- 4.10 In addition to the standard conditions, loan/HP agreements also include additional conditions which are specific to that business or project.
- 4.11 The two existing Deeds have been reviewed by external legal advisors and updated accordingly. These documents are attached as Appendices 4 and 5 and recommended for approval.

5.0 Exempt and/or Confidential Information:	
None.	
6.0 Implications:	
6.1 Service Users, Patients and Communities:	<p>Implementation of the decision making process proposed in this report will lead to more efficient decision making and thus improve the economic development service offered by the Council.</p> <p>Standard lending terms contained in the Deed of Conditions for loans and HP will provide clarity to both lender and borrower on the conditions which apply to Council lending prior to fund release and for the duration of the loan/HP agreement.</p>
6.2 Human Resources and Organisational Development:	The administration of the Shetland Investment Board will be carried out by Economic Development staff.
6.3 Equality, Diversity and Human Rights:	A condition of lending that borrowers must pay staff no less than the Living Wage is one way in which the Council can promote the well being of people working in Shetland.
6.4 Legal:	All lending conditions proposed in this report have been prepared following legal advice.
6.5 Finance:	There are no direct financial implications arising from this report.
6.6 Assets and Property:	None.
6.7 ICT and New Technologies:	None.
6.8 Environmental:	None.
6.9 Risk Management:	<p>Risks associated with lending to local businesses are mitigated through having robust lending policies and systems in place. Due diligence is carried out on all new investments and each investment is actively monitored and managed to completion.</p> <p>The risks associated with the project to establish a lending service are listed on JCAD and have a controlled risk profile score of 2 (low risk).</p>

6.10 Policy and Delegated Authority:	<p>This report has been prepared with regard to the pledges contained in the Council's Economic Development Policy Statement 2013-2017. The Policy Statement was approved by the Development Committee on 14 January 2015 [Min Ref: 01/15].</p> <p>The Lending Service supports the following objective:</p> <p>Section 2.1 "Encourage sustainable growth in the local economy through support for business development and social enterprises".</p> <p>The Development Committee has functional responsibility for economic development matters, including decisions on business investments.</p> <p>The Policy and Resources Committee must however make a decision as this Committee has functional responsibility for Council processes and procedures and delegated authority for the co-ordination, control and proper management of the financial affairs of the Council.</p>	
6.11 Previously Considered by:	Economic Development Policy Group Lending Service Project Board	13 September 2016 8 November 2016

Contact Details:

Douglas Irvine, Executive Manager – Economic Development,
douglas.irvine@shetland.gov.uk Date: 6 December 2016

Appendices:

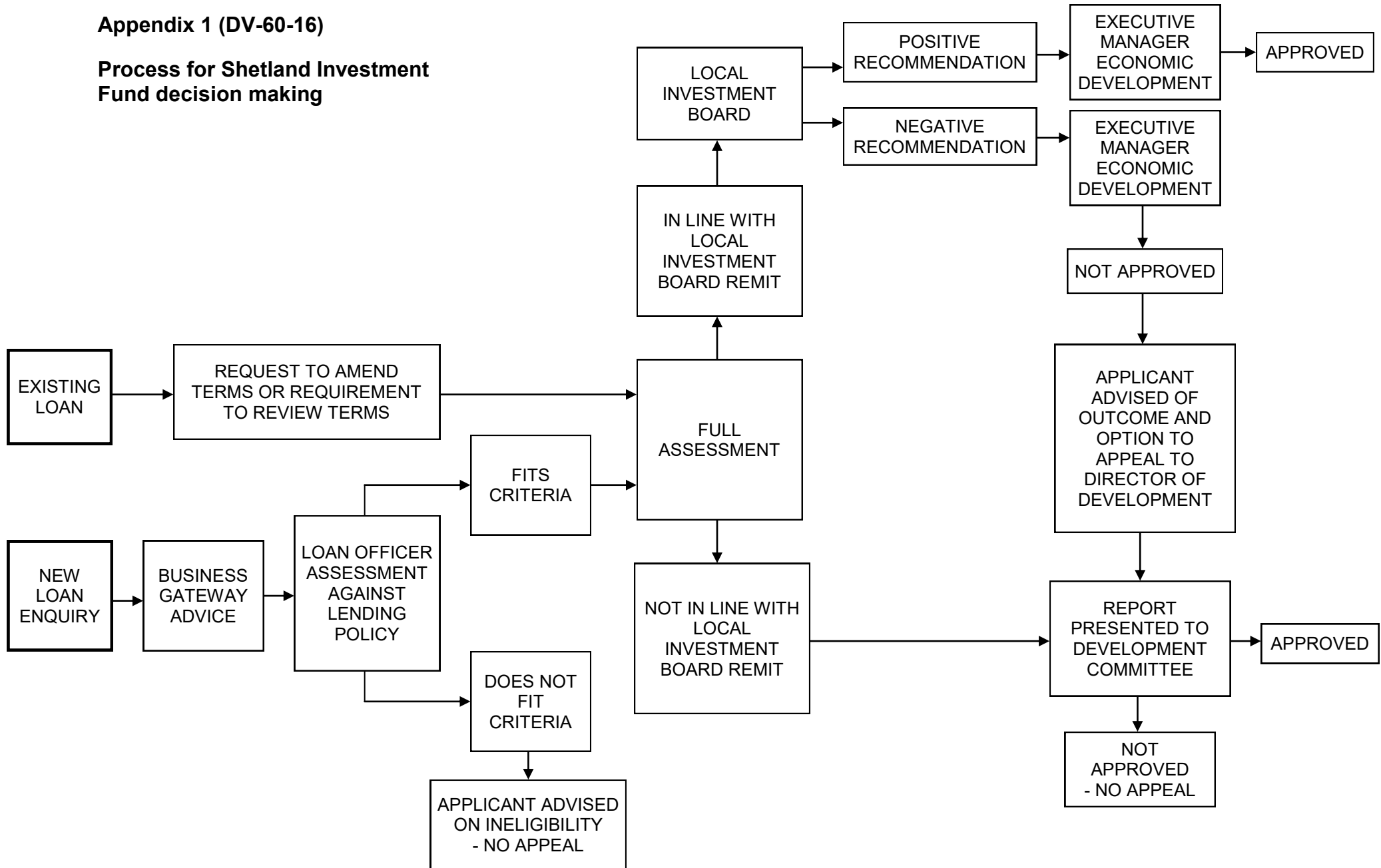
Appendix 1 – Decision Making Process – Flow chart
Appendix 2 – Shetland Investment Board – Terms of Reference
Appendix 3 – Delegation to the Executive Manger – Economic Development
Appendix 4 – Deed of Conditions for Loans
Appendix 5 – Conditions for Hire Agreements with the Option to Purchase

Background Documents:

Report to Development Committee – 4 October 2016 and Policy & Resources Committee
24 October 2016 – Economic Development Lending Service, including proposed Lending
Policy & Guidelines and Interest Rate Calculation Guidelines.

Appendix 1 (DV-60-16)

Process for Shetland Investment Fund decision making



**Shetland Islands Council
Shetland Investment Board
Terms of Reference**

1.0 Aim

- 1.1 To fulfil Council Policy objectives and Service Plan targets for Economic Development.

2.0 Remit

New Investments:

- 2.1 To make recommendations to the Executive Manager – Economic Development:
- 2.1.1 That applications for loans, hire purchase facilities and equity investments be approved, subject to all the following criteria being met:
- The maximum value of loan application which can be considered by the Board is £500,000 per application, or total Shetland Investment Fund investment in any one business (or group) of £500,000.
 - Recommendations must be made in accordance with the Lending Policy & Guidelines approved (subject to approval).
 - All proposals are in line with the Medium Term Financial Plan and agreed with the Executive Manager – Finance Services as Section 95 Officer.
 - Council funding must not represent more than 75% of the total project cost.
 - Approvals must be scheduled for repayment within a 10 year term.
- 2.1.2 That applications be declined. Such decisions and the reasons why will be communicated to applicants. Applicants will have the option to appeal and have their case presented by the Director of Development to Development Committee for final decision.
- 2.2 To consider pre-application enquiries and provide direction to the Council's Commercial Investment Officers on suitable lending terms.

Management of Investments:

- 2.3 To oversee the existing portfolio of investments and new investments as they are released.
- 2.4 To oversee a programme of annual Business Reviews on investments.
- 2.5 To make recommendations to the Executive Manager – Economic Development to approve amendments to the terms of existing investments to protect the best interests of the Council. This includes:
 - 2.5.1 Reschedule repayments on existing investments by introducing interest only periods and/or extending the term of the investment up to a maximum of 6 months per investment. Requests in excess of 6 months or repeat requests will be presented to Development Committee.
 - 2.5.2 Approve revised interest rates for all investments which have been agreed with scheduled interest rate review periods. The Interest Rate Calculation Guidelines will apply (subject to approval).
 - 2.5.3 Approve the sale, redemption or other exit route for equity assets included in the Council's Shetland Investment Fund. Clear justification for how any approval achieves best value for the Council must be shown.
 - 2.5.4 Agree the repayment terms for arrears on investments.
 - 2.5.5 Agree changes to security for existing investments provided the proposal is in the best interests of the Council.
 - 2.5.6 Release securities on completion of investment agreements.
- All proposals must be in line with the Medium Term Financial Plan and agreed with the Executive Manager – Finance Services as Section 95 Officer.
- 2.6 To monitor the cashflow of the Shetland Investment Fund and ensure a sustainable level of commitments is maintained.
- 2.7 To monitor debt situations and risk profile of investments.
- 2.8 To seek professional advice from external specialist organisations to protect Council investments (following Council procurement processes and funded from Economic Development Budgets).
- 2.9 To approve annual reporting information on the Shetland Investment Fund prior to presentation to Development Committee.

3.0 Definition of Shetland Investment Fund investments:

- 3.1 Loans, equity investments, hire purchase agreements, remaining loan guarantees and fishing licences; and investments remaining in the bare trust following wind up of the Shetland Development Trust.

4.0 Management of Fishing Quota

- 4.1 The Shetland Investment Fund does not include the whitefish quota owned by the Council, however the Shetland Investment Board will monitor and manage the quota in line with the Management Agreement, and other information available from the Shetland Fisheries Producer's Organisation, and the industry as a whole, to ensure that the best return can be achieved for both the Council and the fishing industry in Shetland.

5.0 Board Representation

- 5.1 Director of Development Services
Executive Manager – Finance Services
Executive Manager – Economic Development
Team Leader – Legal Services

6.0 Administration of Shetland Investment Board

- 6.1 Economic Development Services staff will be responsible for gathering agenda items and preparing reports for consideration by the Board.
- 6.2 All reports presented will include an appraisal of the proposal and a recommendation to the Board. Input from Finance Services and Legal Services will be sought through the due diligence phase.
- 6.3 Reports will be marked as confidential and not issued publically when concerning the financial affairs of applicants.
- 6.4 Agendas will be sent at least 5 working days in advance of a meeting.
- 6.5 Board Members can appoint a depute to act on their behalf.
- 6.6 Board Members can provide their views by email if they, or a depute, are not available to attend. Written views should be expressed clearly and state whether the Board member is in agreement with the recommendations or otherwise.

- 6.7 Decisions on new investments are to be notified to the Communications team and discussion held on the suitability of each decision to be issued as a Press Statement. Development Committee Members will be notified prior to any press releases.
- 6.8 All decisions on new or existing investments will be progressed and formalised with advice from Legal Services.
- 6.9 A right of appeal exists for applications which fit the Lending Policy and are in line with the remit of the Shetland Investment Board, but which are given a negative decision by the Board. The appeal process is for applicants to request that the Director of Development Services prepares a report for Development Committee.

7.0 Meetings

- 7.1 Meetings will be scheduled and held approximately every 8 weeks. Additional meetings can be called with the agreement of the Director of Development Services if urgent decisions are required.
- 7.2 Minutes will be taken at all meetings and draft minutes presented for approval at the following meeting.
- 7.3 Meetings will be held in private and reports should not be made public.

8.0 Reporting

- 8.1 Quarterly Updates in the form of an appendix to the Development Service Directorate Performance Report (to Development Committee). To include details of:
 - 8.1.1 New approvals in the period (under delegated authority and Committee).
 - 8.1.2 Loans declined by the Shetland Investment Board.
 - 8.1.3 Approved changes to existing investments.
 - 8.1.4 Completed investments in the period.
 - 8.1.5 Funds released in the period.
 - 8.1.6 Capital returned in the period.
 - 8.1.7 Total value of loans made and commitments (to be released).

8.2 Annual Performance Report (to Development Committee). To include:

8.2.1 Summary of all investments included in the portfolio, including details of balances due, purpose of loan and up to date information.

8.2.2 List of new approvals, including:

- Number of businesses supported in the year.
- Capital and interest returned within the year.
- Number of new start businesses supported.
- Number of jobs created and sustained .
- Turnover increases forecast for the 3 years following investment/start of project.

8.2.3 Outcomes associated with investment activity in the 12 month period:

- Value of jobs created and sustained based on the Gross Weekly Earnings statistics for Shetland.
- Value of turnover and jobs with multipliers.
- External funds and private funds co-invested in projects.

8.2.4 Approved changes to existing investments.

8.2.5 Statement of financial position of the fund including Shetland investment total commitments due to be released and balance available for lending (invested in Managed Funds).

8.2.6 Information on demand for the Shetland Investment Fund and enquiries:

- Loan enquiries – numbers, purpose, sector, loan amount.
- Business Gateway assistance offered.
- Outcome of enquiries i.e. proceeded to Council application, signposted to other lenders and proceeded, not in line with Lending Policy and reasons why.
- Loans declined by the Shetland Investment Board and reasons why.

8.2.7 Details of monitoring activity.

8.2.8 Report on Council owned Whitefish Quota financial and economic performance, including outlook for the future.

**Shetland Islands Council
Shetland Investment Fund
Delegation to the Executive Manager – Economic Development**

The Executive Manager – Economic Development is authorised:

1.0 New Investments

1.1 To approve loans, hire purchase facilities and equity investments in businesses up to £500,000 per application, or total Shetland Investment Fund investment in any one business of £500,000, on condition that:

- The proposal has been unanimously agreed by the Shetland Investment Board.
- The proposal is in line with the Shetland Investment Fund Lending Policy and Guidelines (subject to approval).
- All decisions are in line with the Medium Term Financial Plan and agreed with the Executive Manager – Finance Services as Section 95 Officer.
- The funding represents no more than 75% of the total project cost.
- The funding is scheduled for repayment within a 10 year term.

2.0 Existing Investments

2.1 To approve amendments to existing investments, provided that proposals:

- Have been unanimously approved by the Shetland Investment Board.
- Are in line with the Medium Term Financial Plan.
- Have been agreed with the Executive Manager – Finance Services as Section 95 Officer.

2.2 This includes authority to:

- Reschedule repayments on existing investments by introducing interest only periods and/or extending the term of the investment up to a maximum of 6 months per investment. Requests in excess of 6 months or repeat requests will be presented to Development Committee.
- Approve revised interest rates for all investments which have been agreed with scheduled interest rate review periods. The Interest Rate Calculation Guidelines will apply (subject to approval).

- Approve the sale, redemption or other exit route for equity assets included in the Shetland Investment Fund Portfolio. Clear justification for how any approval achieves best value for the Council must be shown.
- Agree the repayment terms for arrears on investments.
- Agree changes to security for existing investments provided the proposal is in the best interests of the Council.
- Release securities on completion of investment agreements.

3.0 Limitations on Delegation

- 3.1 Any proposal which is in line with the Shetland Investment Service Lending Policy and Guidelines (subject to approval), but does not clearly fit with the remit of the Shetland Investment Board will be referred to Development Committee.
- 3.2 Any application which meets Council Policy objectives other than those within the remit of Economic Development will be presented to an appropriate Council Committee for decision. i.e. housing developments or other infrastructure project loan applications.
- 3.3 Any proposal which does not receive unanimous approval from the Shetland Investment Board will be discussed with the applicant. The applicant will have the right to ask the Director of Development Services to prepare a report on the case for the Development Committee.



Shetland Islands Council

Shetland Investment Fund

Deed of Conditions for Loans

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1 Availability of the Loan

The obligation of the Council shall be to advance the Loan in such sum or sums, on such dates and upon such terms and conditions as the Council shall think fit.

2 Ascertainment of Sums Due

The amount of outstanding indebtedness due by the Borrower to the Council under or by virtue of the Agreement (whether in respect of principal, interest, expenses or otherwise) shall be sufficiently ascertained by a certificate under the hand of the Council and such certificate shall, except in the case of manifest error, be conclusive and final and binding on the Borrower for every purpose.

3 Sums to be Paid in Full, Without Deductions etc

All payments by the Borrower to the Council under or by virtue of the Agreement shall be made without compensation or set-off and, without prejudice to the generality of the foregoing, shall be made free and clear of and without deduction for or on account of any present or future taxes (including, but not limited to, Value Added Tax) or other charges of whatever nature or any other matter or thing whatsoever, unless the Borrower is required by law to make such deduction, in which event, payment under or by virtue of the Agreement shall be increased by such amount as may be necessary so that the net amount after such deduction shall equal the amount to which the Council would have been entitled under or by virtue of the Agreement had no such deduction been required by law (except to the extent that the Council are otherwise able directly to recover the same).

4 Early Repayment

The Borrower shall be entitled to make early repayment of the Loan (or any part thereof) without additional payment or charge. In the event of such early repayment of part only, the Borrower shall continue to repay the Loan in accordance with the provisions of the Agreement except that the number of repayments and/or the amount of the last repayment (whichever shall be appropriate in the sole discretion of the Council) shall be adjusted accordingly. Any amount repaid may not be redrawn by the Borrower.

5 Application of Sums Received by the Council

The Council shall be entitled, at their option, to apply in whole or in part sums received from the Borrower towards satisfaction of any outstanding indebtedness of the Borrower to the Council whether under or by virtue of the Agreement or otherwise.

6 Undertakings by the Borrower

The Borrower undertakes that, so long as the Council are under any obligation to advance the Loan and/or any monies remain owing to the Council by the Borrower, the Borrower shall not without the prior approval in writing of the Council:-

- 6.1 allow any debt owing to remain unpaid (except in the ordinary course of business); or
- 6.2 grant or create or permit to be created any mortgage, charge, security, lien, hypothec or the like, whether fixed or floating, or allow the same to arise by operation of law or otherwise; or
- 6.3 incur or contract to incur any indebtedness, including further advances under any existing mortgage, charge, security or the like, whether fixed or floating, save for:-
 - 6.3.1 the Agreement; and
 - 6.3.2 indebtedness in respect of a trade creditors on normal credit terms; or
- 6.4 alter the character of or sell or otherwise discontinue the whole or any part of the Borrower's business; or
- 6.5 allow any tax, assessment and other governmental charges on or against the Borrower to remain unpaid to the extent that the same are being contested in good faith by appropriate proceedings and adequate reserves have been set aside for payment.

7 Further Conditions of the Loan

So long as the Council are under any obligation to advance the Loan and/or any monies remain owing to the Council by the Borrower:-

- 7.1 the Council shall be entitled to receive such information as they may require in regard to or in connection with any matter relating to the Borrower's business, including employees of the Borrower, and the Borrower shall, if requested, supply the Council with such information and, without prejudice to the generality of the foregoing, with a copy of every balance sheet, trading and profit and loss accounts and other accounts of or relating to the Borrower's business;
- 7.2 the Borrower's business shall be carried on in a proper, efficient and economical manner and full, true and otherwise proper financial records and books of account shall be kept to the satisfaction of the Council and in accordance with generally accepted accounting principles in Scotland and such records and books of account and all records in respect of the Borrower's business shall at all reasonable times be open to the inspection of the Council through such other person or persons as they may from time to time appoint for such purpose;
- 7.3 the Borrower will submit to the Council within nine months of the end of each financial year either:-

- 7.3.1 a copy of the professionally audited annual accounts of the business for that financial year; or
- 7.3.2 in the event of the Borrower being exempt from audit in terms of the Companies Act 2006 (Amendment) (Accounts and Reports) Regulations 2008, the unaudited annual accounts which the Borrower submitted to Companies House in respect of that financial year;
- 7.4 the Borrower shall effect and maintain full insurances to the satisfaction of the Council and shall ensure that the Council's interest shall be noted on all policies of insurances, which policies shall contain a requirement for the Council to be notified of any payment thereunder and to exhibit to the Council, as and when requested by the Council, such evidence as the Council may require that such insurances are in full force and effect;
- 7.5 the Borrower will operate his business within Shetland;
- 7.6 where appropriate, the Borrower will operate the loan assisted equipment;
- 7.7 the Borrower will maintain and operate his premises and/or machinery and equipment in such a way as to conform, to the satisfaction of the Council, with relevant legislation such as Department of Transport legislation, Health and Safety legislation and Food and Trading Legislation;
- 7.8 the Borrower will make his premises and/or machinery and equipment available for inspection by representatives of the Council at all reasonable times;
- 7.9 where appropriate, the Borrower will provide evidence of his right to occupy the site of the loan assisted development for a period of the loan;
- 7.10 the Borrower shall provide evidence of and maintain at all times in full force and effect all governmental and other consents (if any) required by law for the operation of his business and/or machinery and equipment or the validity, enforceability or legality of the Security Documents;
- 7.11 in the event that the Borrower is an employer, the Borrower shall pay no less than the 'Living Wage' as set by the Living Wage Foundation to all employees throughout the term of the loan agreement;
- 7.12 the Borrower shall immediately advise the Council in writing of the occurrence or the likely occurrence of any of the events of default referred to in sub-clause (b) of Condition 16 hereof;
- 7.13 the Borrower shall immediately advise the Council of the execution of any diligence against him;
- 7.14 the Borrower will provide a signed undertaking, in terms satisfactory to the Council confirming that in the event of the Total Project Cost exceeding the figure specified in the Agreement, no further monies will be sought from the Council or Shetland Islands Council or any funding body over which Shetland Islands Council or Shetland Islands Council Charitable Trust has a controlling interest;

- 7.15 (for tourism accommodation) the Borrower will ensure that accommodation and other facilities are made available to *bona fide* tourists at least during the tourist season May to September in any given year during the period of the loan;

8 Fishing Vessels

Where the Loan is to be advanced in connection with the use and operations of a fishing vessel then so long as the Council are under any obligation to advance the Loan and/or any monies remain owing to the Council by the Borrower:-

- 8.1 the Borrower will provide a copy of any commercial loan agreement for the purchase/construction of the vessel;
- 8.2 (for second hand vessels) the Borrower will provide an independent valuation and survey of the vessel which is satisfactory to the Council;
- 8.3 (for second hand vessels) the Borrower will provide a copy of the Bill of Sale (or equivalent) naming the Borrower as owner of the vessel;
- 8.4 (for new vessels) the Borrower will provide a copy of the executed building contract for the vessel;
- 8.5 the Borrower will provide an undertaking to provide a copy of the Certificate of Registry within 30 days of the registration of the vessel and procure that the vessel is registered under the British flag at the Port of Lerwick as a Scottish sea fishing boat, or such other Port as the Council approve, and not to do or suffer to be done anything whereby such registration may be forfeited or imperilled, and not without the previous written consent of the Council, to change the name of the vessel;
- 8.6 the Borrower will provide evidence satisfactory to the Council that the vessel has sufficient historic fishing performance (quota) with which to ensure the viable operation of the vessel;
- 8.7 the Borrower will provide evidence satisfactory to the Council that the vessel is suitable for commercial fishing in the Shetland area;
- 8.8 the Borrower will provide evidence satisfactory to the Council that he holds appropriate Certificates of Competency;
- 8.9 the Borrower will provide evidence satisfactory to the Council that he holds a full pressure stock licence;
- 8.10 the Borrower must be a fully subscribed member of the Shetland Fish Producers Organisation where the vessel is equal to or over 10m in length;
- 8.11 the Borrower must hold Category A Licences in respect of the vessel where the vessel is under 10m in length;

- 8.12 the Borrower must hold Shetland Permits in respect of the vessel as issued by The Shetland Shellfish Management Organisation Limited where the vessel is used for shellfish catching;
- 8.13 the Borrower will fish full time with the vessel from Shetland and will retain ownership of the vessel;
- 8.14 the Borrower will make the vessel available for inspection by representatives of the Council at all reasonable times and afford all proper facilities for such inspection;
- 8.15 the Borrower will ensure that the vessel and all her equipment meet the required standards specified by Shetland Seafood Quality Control to enable him to use the SSQC mark;
- 8.16 the Borrower will keep the vessel in a good and seaworthy state of repair to the satisfaction of the Council, so as to maintain her UK Fishing Vessel Safety Certificate issued by the UK Department of Transport (or equivalent) and so as to comply with the provisions of the Sea Fishing Boats (Scotland) Act 1886; the Merchant Shipping Acts 1894 to 1988 inclusive and all other regulations and requirements (statutory or otherwise) from time to time applicable to vessels registered in such manner at the Port of Lerwick or such other Port as the Council may approve and to procure that all repairs to or replacement of any damaged, worn or lost parts of equipment be effected in such manner (both as regards workmanship and quality of materials) as not to diminish the value of the vessel at the time when the repair is made.
- 8.17 the Borrower will at his own expense effect and maintain or procure to be effected and maintained a policy or policies of insurance (including hull and machinery) or, if applicable, certificate or certificates of entry in a protection and indemnity defence and war risks association or associations to the satisfaction of the Council in the name of the Borrower cover the vessel against:-

(Firstly) marine risks (including excess risks);

(Secondly) war risks;

(Thirdly) protection and indemnity risks;

(Fourthly) mortgagees' interest insurance in favour of the Council;

(Fifthly) any other thing which the Council shall reasonably determine, (hereinafter together referred to as "the Policy").

The Policy shall:

- 8.17.1 insure the vessel on an agreed value basis which shall (unless the Council agrees to the contrary) at all times be whichever is the greater of:

- 8.17.1.1 120% of the outstanding indebtedness of the Borrower to the Council; or

- 8.17.1.2 The full market value of the vessel;

- 8.17.2 carry a Loss Payable and Notice of Cancellation Clause in favour of the Council in such form as the Council may require, and on the assignation of the Policy to the Council a Notice of Assignment in such terms as the Council may require;
 - 8.17.3 be with such insurance companies, underwriters or war risks or protection and indemnity associations or the like and be effected through such brokers as the Council may from time to time approve;
 - 8.17.4 be in a form approved by the Council;
 - 8.17.5 provide that it may not be permitted to lapse or be materially modified without the prior written consent of the Council or be cancelled without fourteen (14) days prior written notice to the Borrower and the Council.
- 8.18 the Borrower shall:
- 8.18.1 produce the Policy (or evidence of its existence) to the Council, shall pay the initial and other premiums as required by the terms of the Policy and shall, if so requested, promptly produce to the Council the receipts (or other evidence of payment) for such initial and other premiums. In the case of renewals of the Policy the Borrower shall produce to the Council evidence of each renewal at least fourteen (14) days before the expiry of the Policy, shall pay the renewal and other premiums as required by the terms of the Policy and shall promptly produce to the Council, if so requested, the receipts (or other evidence of payment) for such renewal and other premiums;
 - 8.18.2 procure that the Council and their insurance advisers are given such information as to the Policy as the Council may reasonably require;
- 8.19 in the event of:
- 8.19.1 a Total Loss of the vessel the proceeds of the Policy shall be payable without deduction or deductions to the Council;
 - 8.19.2 the occurrence of any loss other than the Total Loss, monies in respect of such loss receivable by the Borrower shall be paid to the Council (except insofar as any Loss Payable Clause shall permit the payment of any claim of less than Fifty Thousand Pounds or the equivalent thereof to the Borrower or to its order) and the Council:-
 - 8.19.2.1 if the Borrower is not in default hereunder:
 - 8.19.2.1.1 shall themselves pay monies received from the insurers (or consent that the insurers pay directly) for repairs, salvage or other charges or liabilities; or
 - 8.19.2.1.2 shall reimburse the Borrower for any damage which the Borrower shall first have fully repaired or for any

expenditure actually incurred with the Council's approval in order to secure complete discharge of the liability insured against, up to the full extent of the amount which the Council shall have received from the insurers; or

- 8.19.2.2 if the Borrower is in default hereunder, shall be entitled to retain such insurance monies from the insurers and shall apply the same in accordance with the provisions of Condition 8.40 hereof;
- 8.19.3 the Borrower (notwithstanding the foregoing) receiving any insurance monies before having made good the loss or restoring the damage and discharging the liability in respect of which the monies are paid the Borrower shall immediately pay such monies to the Council or as the Council shall in writing direct;
- 8.20 the Borrower shall do all things and provide all documents, evidence and information necessary to enable the Council to collect or recover any monies to become due in respect of the Policy and for such purpose the Borrower shall permit the Council if necessary to sue in the name of the Borrower;
- 8.21 the Borrower shall arrange to supply such guarantees as may from time to time be required by any protection and indemnity or war risk association;
- 8.22 at any time from time to time, the Council shall be entitled at the Borrower's expense to obtain from insurance brokers or other consultants appointed by the Council a written opinion as to the quality and/or adequacy of the Policy. Without prejudice to any other remedy available to them under the Security Documents, if the Council are not satisfied that the Policy provides the Council with good and adequate security, the Council may require the Borrower to amend the Policy, and/or to place further and additional insurances and entries. Such amendments and/or additions shall be effected within fifteen (15 days) of receipt by the Borrower of written notice from the Council.
- 8.23 the Borrower will submit the vessel regularly to such periodical or other surveys as may be required for classification or UK Department of Transport (or equivalent) purposes and, if so required, supply the Council with copies of all survey reports and class or other certificates issued in this respect.
- 8.24 the Borrower will not employ the vessel, or suffer her employment:
- 8.24.1 otherwise than in conformity with the terms of the Policy (including any warranties expressed or implied therein) without first obtaining the consent to such employment of the insurers and complying with such requirements as to the extra premium or otherwise as the insurers may prescribe;

- 8.24.2 in any trade or business or in any fishing ground which is forbidden by Scottish or English Law, or the law of any country to which the vessel may sail, or which is in any manner otherwise illicit;
- 8.24.3 in carrying illicit or prohibited goods, or in any manner whatsoever which may render her liable to condemnation in a Prize Court or to destruction, seizure or confiscation;
- 8.24.4 (in the event of hostilities in any part of the world, whether war be declared or not) in carrying any contraband goods, nor to enter or trade in any zone which is declared a war zone by the vessel's war risks insurers unless the Borrower has effected, at his own expense, such special insurance cover as the Council may require;
- 8.24.5 on demise charter for any period;
- 8.25 the Borrower will perform fully any and all charterparties which are or may be entered into with respect to the vessel;
- 8.26 the Borrower will promptly furnish the Council, when so required by them in writing, with all such information regarding the vessel, her employment, position and engagement, particulars of all catches and of all towages and salvages and copies of her accounts and of all charters and other contracts for her employment or otherwise howsoever concerning her and all such material information as shall be or ought to be supplied to the insurers of the vessel;
- 8.27 the Borrower will notify the Council forthwith, of:-
 - 8.27.1 any accident to the vessel involving repairs, the cost of which will, or is likely to, exceed Fifty Thousand Pounds;
 - 8.27.2 all charters and other contracts for the employment of the vessel which may be entered into by the Borrower;
 - 8.27.3 any requirement or recommendation made by the insurer, the UK Department of Transport (or equivalent) or classification society, or by any competent authority, which is not complied with within any time limit imposed by such insurer, government body or classification society or authority;
- 8.28 the Borrower will promptly pay all tolls, dues and other outgoings whatsoever in respect of the vessel, and if requested by the Council to furnish satisfactory evidence that the wages and allotments, and the insurance and pension contributions in respect of the Master and crew, are being regularly paid and that the Master has no claim for disbursements other than those incurred by him in the ordinary course of trading on the voyage then in progress;
- 8.29 the Borrower will not put the vessel into the possession of any person for the purpose of work being done upon her in an amount exceeding or likely to exceed Two Hundred Thousand Pounds unless either the cost of such work is fully recoverable under the insurances or such person has

first given to the Council in terms satisfactory to them a written undertaking not to exercise any lien on the vessel, the insurances, the fishing licences or the earnings for the cost of such work or otherwise;

- 8.30 the Borrower will at the request and cost of the Council from time to time, have the vessel valued (with or without inspection and on the basis of an arms' length sale for prompt delivery, between a willing seller and a willing buyer, charter-free) by a shipbroker practising in the United Kingdom and customarily dealing with fishing vessels of a type and trade similar to the vessel nominated or approved by the Council and promptly to deliver the valuation certificate to the Council.
- 8.31 the Borrower will use his best endeavours to maintain at all times in full force and effect the fishing licences and to comply with all conditions attaching thereto an on or prior to their expiry, will procure their renewal;
- 8.32 the Borrower will not transfer or otherwise alienate the benefits of the fishing licences without the prior written consent of the Council;
- 8.33 the Borrower will promptly notify the Council of any supplement, replacement or variation of the fishing licences;
- 8.34 the following events shall constitute specified events of default for the purposes of Condition 14 hereof:-
 - 8.34.1 the vessel becomes or is likely to become a total loss; or
 - 8.34.2 any earnings of the vessel are paid otherwise than as agreed from time to time with the Council; or
 - 8.34.3 the Borrower ceases to be in lawful possession of all valid and subsisting fishing licences in respect of the vessel; or
 - 8.34.4 it becomes impossible or unlawful for the Borrower to own or operate the vessel.
- 8.35 Upon the Council becoming entitled to enforce the Security Documents in terms of Condition 16 hereof then the Council shall be entitled, as and when they see fit and without prejudice to the generality of Condition 16:-
 - 8.35.1 to take possession of the vessel;
 - 8.35.2 to require that all policies, contracts and other records relating to the insurances and entries (including details of and correspondence concerning outstanding claims) be forthwith delivered to such brokers as the Council may nominate;
 - 8.35.3 to collect, recover, compromise and give a good discharge for all claims then outstanding or thereafter arising under the insurances or entries or any of them, and to take over or institute (if necessary using the name of the Borrower) all such

proceedings in connection with such claims as the Council in their absolute discretion think fit and to permit the brokers through whom collection or recovery is effected to charge the usual brokerage;

- 8.36 to discharge, compound, release or compromise claims against the Borrower in respect of the vessel which have given rise to any charge or lien on the vessel or which are or may be enforceable by proceedings against the vessel;
- 8.37 to sell the vessel and with or without benefit of any charterparty, by public auction or private contract, at home or abroad, and upon such terms as the Council in their absolute discretion may determine, with power to postpone any such sale and without being answerable for any loss occasioned by such sale or resulting from its postponement;
- 8.38 to manage, insure, maintain and repair the vessel and to employ or lay up the vessel in such manner and for such period as the Council in their absolute discretion deem expedient, the Council being entitled to do all acts and things incidental or conducive to this end and, in particular, to enter into such arrangements respecting the vessel, her insurance, management, maintenance, repair, classification and employment in all respects as if the Council were the owners of the vessel, and without being responsible for any loss thereby incurred;
- 8.39 to recover from the Borrower on demand all expenses, payments and disbursements incurred by the Council in or about or incidental to the exercise by them of any of the powers aforesaid, together with interest (as well after as before any judgement) at the Default Rate as specified in the Agreement.

Provided always that upon any sale of the vessel or any share therein by the Council pursuant to Condition 8.38 above, (a) the purchaser shall not be bound to see or enquire whether the power of sale of the Council has arisen in the manner provided by these Conditions, the sale being deemed within the power of the Council and the receipt of the Council for the purchase money shall effectively discharge the purchaser who shall not be otherwise concerned or in any way answerable for the sale; and (b) the Borrower shall be required to transfer the fishing licences and the benefit of the same to the purchaser of the vessel and any monies received by the Borrower in respect of such transfer shall be paid to the Council and dealt with by them in accordance with the provisions of Condition 8.41 hereof;

- 8.40 All monies received by the Council in respect of:-

- 8.40.1 sale of the vessel or any share in the vessel;
- 8.40.2 recovery under the insurances;
- 8.40.3 Requisition Compensation;
- 8.40.4 Earnings; and

8.40.5 transfer of the fishing licences;

shall be held by them upon trust:

FIRSTLY: to pay or make good all costs, expenses and liabilities whatsoever incurred by them in or about or incidental to the said sale, or the recovery of such insurance or compensation money;

SECONDLY: in or towards discharge of the outstanding indebtedness of the Borrower to the Council;

THIRDLY: in payment of the balance to or to the order of the Borrower or other person entitled.

9 Aquaculture Industry

Where the Loan is to be advanced in connection with the trading of the Borrower in the aquaculture industry then so long as the Council are under any obligation to advance the Loan and/or any monies remain owing to the Council by the Borrower:-

- 9.1 the Borrower must provide the Council with certified true copies of all works licences (the "Works Licences") or planning permission granted in terms of the Town and Country Planning (Scotland) Act 1997, as amended, ("the Planning Permission"), whichever is appropriate, issued in respect of its trading in the aquaculture industry;
- 9.2 the Borrower undertakes to maintain the Works Licences or planning permission and comply fully with their terms throughout the term of the Loan;
- 9.3 the Borrower must provide the Council with a signed undertaking that it shall not transfer the Works Licences to any party without the consent in writing of the Council during the term of the Loan;
- 9.4 the Borrower authorises the Council to use the information held by it as the body empowered to issue Works Licences and planning permission for any reasonable purpose in connection with this loan agreement;
- 9.5 the Borrower will comply in full with the terms of The Code of Good Practice for Scottish Finfish Aquaculture.

10 Companies

Where a company is included in the expression "the Borrower":-

- 10.1 the Borrower shall deliver to the Council prior to the date of advance of the Loan certified true copies of:-
 - 10.1.1 the resolution of the Board of Directors of the Borrower, approving the acceptance of the Loan and the granting of the Security Documents;

- 10.1.2 the certificate of incorporation of the Borrower and any certificate of incorporation on change of name of the Borrower; and
- 10.1.3 the current Memorandum and Articles of Association of the Borrower being true, complete and accurate in all respects, which Memorandum and Articles of Association shall require to be in terms acceptable to the Council and the resolution of the members of the Borrower adopting such Memorandum of Articles;
- 10.2 the Borrower shall not without the prior approval in writing of the Council, which approval shall not be unreasonably withheld:
 - 10.2.1 alter the Memorandum and/or Articles of Association of the Company;
 - 10.2.2 form or acquire any subsidiary;
 - 10.2.3 redeem any share or loan capital of the Company; or
 - 10.2.4 create or issue any share or loan capital of the Company;
- 10.3 on the transfer of shares in the Company, save for a transfer which alters the controlling interest in the company in which case Condition 6.4 shall apply, the Borrower shall notify the Council of such transfer within thirty days of the date of execution thereof;
- 10.4 the Borrower warrants and represents that the Company has complied in all respects with the provisions of the Companies Acts 1985, 1989 and 2006;
- 10.5 notwithstanding that the Council may register the Security Documents in the Company's Register of Charges the Borrower shall so register the Security Documents and in all respects comply with the provisions of the Companies Act 1985 to 1989 in respect of the registration of charges; and
- 10.6 the following events shall constitute specified events of default for the purposes of Condition 16 hereof:
 - 10.6.1 the Company shall fail to register the Security Documents in the Company's Register of Charges.
 - 10.6.2 the Company is unable or admits inability to pay its debts generally as they fall due, in terms of section 122 of the Insolvency Act 1986, suspends making payments on any of its debts (or announces an intention to do so) or a moratorium is declared in respect of any of its indebtedness;
 - 10.6.3 the Company, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;

- 10.6.4 any corporate action, legal proceedings or other procedure or step (other than vexatious or frivolous steps) is taken in relation to:
- 10.6.4.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company other than for the purpose of reconstruction on terms previously agreed by the Council;
 - 10.6.4.2 a composition, assignment or arrangement with any creditor of the Company;
 - 10.6.4.3 the appointment of a liquidator, receiver, administrator (including, without limitation, the issuing of a notice to appoint an administrator or a notice of intention to appoint an administrator by any third party), administrative receiver, compulsory manager or other similar officer in respect of the Company or any of its respective assets;
 - 10.6.4.4 enforcement of any Security over any asset of the Company; or
 - 10.6.4.5 or any analogous procedure or step is taken in any jurisdiction.
- 10.6.5 any liquidator, judicial custodian, compulsory manager, receiver, administrative receiver, administrator (including, without limitation, an administrator appointed out of court) or the like is appointed in respect of the Company or any of its respective assets;
- 10.6.6 the directors of the Company request the appointment of a liquidator, judicial custodian, compulsory manager, receiver, administrative receiver, administrator (including, without limitation, an administrator appointed out of court) or the like; or
- 10.6.7 any other steps are taken to enforce any Security over any asset of the Company;

11 Limited Liability Partnerships

Where a Limited Liability Partnership (hereinafter referred to as an “LLP”) is included in the expression “the Borrower”:-

- 11.1 the Borrower shall deliver to the Council prior to the date of advance of the Loan certified true copies of:-
- 11.1.1 the Certificate of Incorporation of the LLP together with any Certificates of Incorporation on Change of Name;
 - 11.1.2 the Limited Liability Partnership Agreement (as amended where applicable) in respect of the LLP which agreement shall require to be in terms acceptable to the Council;

- 11.1.3 the minutes of the meeting of the Designated Members of the LLP approving the acceptance of the Loan and the granting of the Security Documents.
- 11.2 the Borrower shall not without the prior approval in writing of the Council, which approval shall not be unreasonably withheld:-
 - 11.2.1 alter the Limited Liability Partnership Agreement;
 - 11.2.2 form or acquire any subsidiary;
 - 11.2.3 redeem any Capital of the Limited Liability Partnership; or
 - 11.2.4 appoint any new members.
- 11.3 on the transfer of a Member's Shares in the Capital of the LLP, save for a transfer which alters the controlling interest in the LLP in which case Condition 6.4 shall apply. The Borrower shall notify the Council of such transfer within thirty days of the date of execution of the instrument of transfer;
- 11.4 the Borrower warrants that the LLP has complied in all respects with the Limited Liability Partnerships Act 2000 (the "LLPA 2000");
- 11.5 notwithstanding that the Council may register the Security Documents with Companies House, the Borrower shall so register the Security Documents and in all respects comply with the provisions of the LLPA 2000 in respect of the registration of charges; and
- 11.6 the Terms of Condition 10.6 shall apply.

12 Partnerships

Where partners are included in the expression "the Borrower":-

- 12.1 the Borrower shall deliver to the Council a copy of the Partnership Agreement, which Partnership Agreement shall require to be in terms acceptable to the Council;
- 12.2 the Borrower shall not without the prior approval in writing of the Council, which approval shall not be unreasonably withheld, alter the Partnership Agreement;
- 12.3 such partners shall continue to be the sole partners of and participants in the partnership business and no other person shall, without the prior approval in writing of the Council, be assumed as a partner and in the event that the Council grant such approval the parties shall enter into addenda to the Security documents at the expense of the Borrower;
- 12.4 all obligations and liabilities incumbent on the Borrower as partners, as trustees and as individuals under and by virtue of the Agreement shall be joint and several and shall be binding on their respective successors, heirs, executors and personal representatives whomsoever and the Council shall not be bound to discuss them in their order; and

- 12.5 the conditions, warranties, indemnities, obligations and the like to be performed or observed by the Borrower shall not in any way be affected or impaired by a change in the constitution or composition of the partnership.

13 Warranties and Representations

The Borrower warrants and represents to the Council that, as at the date of his execution of the Agreement:-

- 13.1 all provisions of the Agreement relating to the Borrower are true and accurate in all respects and all information given by or on behalf of the Borrower to the Council in the course of negotiations or discussions in respect of the Loan was and remains true and accurate and there is no fact, matter or circumstances known to the Borrower which has not been disclosed to the Council which makes any such information untrue or inaccurate or misleading or the disclosure of which might affect or have affected the willingness of the Council to authorise the making of an offer of loan and/or to advance the loan;
- 13.2 the Borrower is not involved or engaged in any litigation, arbitration, proceeding or the like before any court, tribunal or person or the like nor is any such litigation, arbitration, proceeding or the like likely or threatened against the Borrower;
- 13.3 the Borrower is not in default under any agreement or arrangement to which the Borrower is a party or by which the Borrower is bound, being a default which has had or might have an adverse effect on the business or assets of the Borrower (other than as may have been disclosed in writing to the Council);
- 13.4 the Borrower is not insolvent, bankrupt nor has a judicial factor, receiver, administrators, administrative receiver or Liquidator or other similar officer been appointed to any of the property or assets of the Borrower nor has the Borrower made any arrangement or composition with or for the benefit of creditors or granted a trust deed on behalf of his creditors;
- 13.5 no event has occurred or is continuing which would constitute an event or default referred to in Condition 16 hereof (whether or not subject to notice, effluxion of time or other conditions);
- 13.6 all accounts of the Borrower, if any, produced to the Council have been prepared in accordance with all applicable statutes, regulations, requirements and the like and in accordance with good accounting practice and all financial projections, forecasts or the like relating to the Borrower's business which have been produced to the Council have been prepared in accordance with good accounting practice and, to the best of the knowledge and belief of the Borrower are full, proper and professionally audited;
- 13.7 the Borrower has duly and correctly in all respects made all returns which ought to have been made by or in respect of the Borrower for any taxation, national insurance, customs and/or excise duty or social security purposes and all such returns are up to date, correct and on a proper basis and none of such returns is the subject to any dispute with the appropriate authority;

- 13.8 except as disclosed, the making and performance of any of the Security Documents by the Borrower is within the powers of the Borrower and have been duly authorised by all necessary actions and approvals, do not and will not conflict with any provisions of or contravene any law, regulation or contractual restriction which binds or may bind the Borrower;
- 13.9 any and all licences and consents which may be necessary for the validity, legality or enforceability of the Security documents have, insofar as they are within the Borrower's control, been obtained by the Borrower and are in every respect in full force and effect, and true copies of all such licences and consents have been delivered to the Council;
- 13.10 there are no agreements or arrangements nor any applicable law or regulation binding on the Borrower which may adversely affect or conflict with the Security Documents or the security they create or are intended to create;
- 13.11 the Security Documents will (subject to registration or the giving of notice where appropriate) create in favour of the Council valid and enforceable security interests, with the required priority, in the assets and revenues intended to be covered;
- 13.12 where appropriate, the vessel is tight, staunch, strong and well and sufficiently tackled, apparelled, furnished and equipped and seaworthy and fit for service.

14 Continuing Warranty and Representation

The Borrower warrants and represents to the Council that for so long as the Council are obliged to advance the Loan or any monies remain owing to the Council the facts and matters referred to in Condition 13 hereof shall at all times and in all respects remain true and accurate and every provision of Condition 13 hereof shall continue so to apply and to remain in full force and effect.

15 Indemnity

The Borrower agrees forthwith on demand to indemnify and keep indemnified the Council from and against any losses, costs, expenses, liabilities, claims, demands, proceedings or damages whatsoever that the Council may suffer or incur as a result of a breach of the warranties and representations contained in Condition 13 or Condition 14 hereof and the foregoing indemnity shall continue in full force and effect notwithstanding any time or other indulgence which may be given by the Council to the Borrower or any other obligant and shall continue in full force and effect notwithstanding any judgement in favour of the Council.

16 Events of Default

- 16.1 Notwithstanding any agreement to the contrary whether contained in the Agreement or otherwise, upon the occurrence of any of the events specified in Condition 16.2 hereof, which events shall be promptly notified to the Council by the Borrower, the Council shall, at their sole discretion and without prior notice or warning to the Borrower, be entitled to treat the Borrower as being in breach of the Agreement (and the Borrower shall then be held so to be in breach) and thereupon the Loan

and any other monies for which the Borrower may be indebted to the Council shall immediately become due and payable in full together with interest thereon until the date of full and final discharge of the outstanding indebtedness and the Security Documents shall immediately become enforceable and the Council shall be entitled as and when they see fit to put into force and to exercise all the rights and remedies available to the Council in respect of such breach.

16.2 The specified events referred to in Condition 16.1 are as follows:-

- 16.2.1 the Borrower shall have failed to make payment, under the Agreement or otherwise, of any sum (whether in respect of principal, interest or otherwise) on the due date for payment; or
- 16.2.2 the Borrower shall stop or threaten to stop payment of his debts or shall cease or threaten to cease to carry on his business or any substantial part thereof; or
- 16.2.3 the Borrower shall be in breach of any warranty or representation referred to in Condition 13 or Condition 14 hereof; or
- 16.2.4 the Borrower shall have breached in any way any provision of the Agreement or the Security Documents and in the case of a breach capable of remedy (which the Council in their absolute discretion shall determine) such breach is not remedied within ten (10) days of a written demand by the Council; or
- 16.2.5 any loan whether by the Council or any other person to the Borrower shall have become repayable or enforceable prior to its due date of repayment or enforceability; or
- 16.2.6 any grant whether by the Council or any other person to the Borrower shall have become repayable for any reason whatsoever; or
- 16.2.7 the Borrower shall be charged for payment of any sum and shall not make payment thereof within seven days or before the expiry of the *induciae* (whichever is the earlier); or
- 16.2.8 any inhibition, adjudication, arrestment, lien, charge, distress, diligence, execution, sequestration or other process shall be used or levied, placed or enforced upon or against the Borrower or any property or assets (including any vessel or her Earnings) of the Borrower and shall not have been withdrawn, removed or discharged within seven days from the date of being so levied, placed or enforced; or
- 16.2.9 the Borrower shall commit an act of bankruptcy or become insolvent or shall make an arrangement or composition with or for the benefit of his creditors or grant a trust deed on behalf of his creditors; or

- 16.2.10 any encumbrancer shall take possession or a judicial factor shall be appointed or an appointment of similar effect shall be made in respect of the whole or any part of the property or assets of the Borrower; or
 - 16.2.11 the Borrower shall die or become insane or incapable of handling his affairs; or
 - 16.2.12 it becomes impossible or unlawful:
 - 16.2.12.1 for the Borrower to fulfil any of the obligations on his part contained in the Agreement or the Security Documents; or
 - 16.2.12.2 for the Council to exercise the rights or any of them vested in them under the Agreement or the Security Documents or otherwise.
 - 16.2.13 Any other event occurs which gives reasonable grounds in the opinion of the Council for the belief that the Borrower may not (or may be unable to) perform his obligations under the Agreement or the Security Documents or which would have and adverse effect upon the Agreement or the Security Documents.
- 16.3 In the event of the Council exercising any right to demand repayment or early repayment of the Loan or any part thereof, the Council shall, without prejudice to any claim, right of action or remedy available to the Council in that respect, be entitled to require the Borrower from time to time on demand to perform or perform further (as the case may be) all or any of the obligations and others incumbent on the Borrower hereunder or by virtue hereof which, as at the date of the exercise of such right to demand repayment, shall not have been fully performed to the satisfaction of the Council.
- 16.4 A certificate under the hand of the Council certifying that an event of default has occurred shall be conclusive evidence to that effect.
- 16.5 The Borrower shall at the request of the Council from time to time promptly furnish the Council with a certificate signed by the Borrower confirming that the Borrower is at the date of such certificate in compliance with his obligations under the Agreement and the Security Documents and that no event of default nor any event which, with the giving of notice and/or lapse of time, would constitute an event of default has occurred, or if any has occurred, none is continuing.
- 17 The Council's Powers
- 17.1 The Council shall without prejudice to their other rights and powers in terms of these Conditions, be entitled (but not bound) at any time and as often as may be necessary to take any such action as they may in their discretion think fit for the purpose of protecting and preserving the security created by the Security Documents and each and every expense or liability so incurred by the Council shall be repayable to them by the Borrower on demand together with interest (as well after as before any judgement) at the Default Rate as specified in the Agreement.

17.2 Without prejudice to the foregoing:

- 17.2.1 if the Borrower fails to comply with the provisions of Condition 7.4 the Council shall at the cost of the Borrower, be at liberty to effect, and thereafter maintain, all such insurances as in their discretion they may think fit and/or to treat such failure as an event of default in terms of Condition 16;
 - 17.2.2 if the Borrower fails to comply with the provisions of Condition 8.17 the Council shall, at the cost of the Borrower, be at liberty to effect, and thereafter maintain, all such insurances and entries upon or relating to the vessel as in their discretion they may think fit and at any time whilst such failure is continuing to require the vessel to remain in port (or as the case may be to proceed to and remain in a reasonably convenient port designated by the Council) until such provisions are fully complied with and/or to treat such failure as an event of default in terms of Condition 16;
 - 17.2.3 if the Borrower fails to comply with the provisions of Condition 8.23 the Council shall at the cost of the Borrower be at liberty to arrange for the carrying out of such surveys as they deem expedient or necessary and/or to treat such failure as an event of default in terms of Condition 16;
 - 17.2.4 the Borrower hereby agrees to indemnify and hold harmless the Council against each and every expense, cost or liability incurred by the Council in connection with this Condition 17 and to pay the same to the Council on demand together with interest (as well after as before any judgement) at the Default Rate as specified in the Agreement.
- 17.3 The Council shall be entitled at any time, and as often as may be expedient, to delegate all or any of the powers and discretions vested in them by these Conditions or the Security Documents or any of them in such manner, upon such terms, and to such persons, as the Council in their absolute discretion may think fit.
- 17.4 The Council shall be entitled to hold the Security Documents as continuing security for the payment of all outstanding indebtedness which may at any time and from time to time be or become due and payable by the Borrower to the Council whether under or by virtue of the Agreement or otherwise.

18 Waivers

- 18.1 No failure or delay by the Council to exercise any right, power or privilege shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers or privileges expressly provided in the Agreement and the Security Documents are cumulative and not exclusive of any of the rights and remedies which the Council would otherwise have.
- 18.2 Any obligation or liability to the Council under the Agreement may in whole or in part be released, compounded or compromised or time or indulgence may be given by the Council in their absolute

discretion as regards the Borrowers under such obligation or liability without in any way prejudicing or affecting any right, power or privilege of the Council.

19 Costs and Expenses

The Borrower shall be responsible for the whole costs of the Council, all investigation, negotiation and legal expenses of any kind whatsoever, stamp duties, registration dues and any other charges, in connection with the Borrower's application for financial assistance, in connection with the preparation, completion and registration of the Security Documents and the subsequent implementation or enforcement or intended or attempted implementation or enforcement of the terms of the Agreement or of the Security Documents or any discharge or assignation thereof or of any other document relative or incidental thereto. If the Council and the Borrower so agree in writing, the whole or any part of such costs shall comprise part of the Loan. The Borrower shall pay interest to the Council (after as well as before any judgement) at the Default Rate as specified in the Agreement upon any amount due to the Council under this Condition from the date on which the relevant expenditure, loss, liability, expense or tax is incurred or is due until the date of payment by the Borrower.

20 Notices

Any notice, request, demand or other communication to be served under or in connection with the Agreement or the Security documents shall be sufficiently served, notwithstanding that the same may be returned, if it is sent by recorded delivery letter in the English language and addressed (a) in the case of the Council, to any person and to such address as may be nominated by the Council, and failing such nomination, to the Council's Legal Adviser and (b) in the case of the Borrower, to the Borrower at his address shown in the Agreement or to such other address as may have been notified at least seven days in advance in writing to the Council. Any such notice, request, demand or other communication posted as aforesaid shall be deemed to be received 48 hours after the time of posting. In proving service it shall be sufficient to show that the envelope containing such notice, request, demand or other communication was properly addressed, stamped and posted.

21 Further Assurance

The Borrower hereby further undertakes at his own expense upon demand and at no cost to the Council to execute, sign, perfect, do and (if required) register every such further assurance, document, act or thing as in the opinion of the Council may be necessary or desirable for the purpose of more effectively securing the outstanding indebtedness of the Borrower to the Council.

22 Acceptance of Provisions as Fair and Reasonable

The Borrower accepts the provisions of the Agreement as fair and reasonable for inclusion in a financial contract of that kind.

23 Agreement Personal to the Borrower

The Borrower shall not be entitled to assign or transfer either absolutely or in security or otherwise part with or deal in any way whatever with his rights, liabilities, obligations or others conferred and/or imposed under or by virtue of the Agreement but the rights, liabilities, obligations or others conferred and/or imposed under or by virtue of the Agreement on the Council shall be freely transferable by the Council to any central bank or monetary or regulatory authority having jurisdiction over the Council or to any other bank or financial institution whatsoever.

24 Proper Law and Jurisdiction

The construction, validity and performance of the Agreement and the Security Documents shall be governed by Scots Law and the Council and the Borrower agree to submit to the non-exclusive jurisdiction of the Scottish Courts and/or the courts of any place where any asset of the Borrower is situated. The Borrower and the Council agree that any writ or legal process issued in Scotland may be served in the case of the Council on their Legal Adviser and in the case of the Borrower on the Borrower at the address shown in the Agreement.

If the Council decide that any legal proceedings should be undertaken in any jurisdiction other than in Scotland where there are assets of the Borrower then the Borrower covenants and undertakes to instruct lawyers in that jurisdiction to accept service of legal process and copies of such process shall be sent to the address shown in the Agreement.

Final judgement against the Borrower in any action or proceedings brought by the Council in any jurisdiction in relation to any such dispute may be enforced in that or any other jurisdiction by any means lawfully available as if (where such is not the case) it were a judgement given in that jurisdiction.

If for the purposes of obtaining judgement in any court in any country it becomes necessary to convert into any other currency ("the judgement currency") an amount due in Pounds Sterling under the Security Documents, then the conversion shall be made at the rate of exchange prevailing on the business day before the day on which the judgement is given, following which, if there is a change in the rate of exchange prevailing between the business day before the day on which judgement is given and the date of payment of the amount due, then the Borrower will pay on demand such additional amounts (if any) as are necessary to ensure that the amount paid in the judgement currency will be sufficient to satisfy, when converted at the rate of exchange prevailing on the date of payment, any outstanding indebtedness and the Borrower shall pay the amount converted as described in this Condition.

25 Headings

The Headings are for convenience of reference only and do not form part of the Agreement and shall not affect its validity or construction.

26 Continuing Validity

If any one or more of the provisions of this Deed or of the Security Documents should at any time for any reason be declared invalid, void or otherwise inoperative by a court of competent jurisdiction, such declaration or decisions shall not affect the validity or any other provision or provisions in this Deed or the Security Documents or the validity of this Deed or the Security Documents as a whole. In particular, but without prejudice to the generality of the foregoing, the Default Rate shall, where necessary, be deemed to be limited to rate not exceeding the legal rate of interest on loans, advances and credits of a similar class and nature to the credit for the time being enforceable in Scotland.

27 Interpretation

27.1 In these Conditions, unless the context otherwise requires:-

- 27.1.1 a reference to any statute or statutory provision shall include a reference to 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 to any order, regulation or instrument or other subordinate legislation made under the statute in question;
- 27.1.2 a reference to any tax shall include a reference to any tax amending, extending or replacing the same;
- 27.1.3 a reference to any gender shall include a reference to all other genders;
- 27.1.4 a reference to the singular shall include a reference to the plural and vice versa; and
- 27.1.5 where there are two or more persons included in the expression "the Borrower" every obligation, liability and undertaking shall be joint and several;
- 27.1.6 all documents referred to include the same as varied from time to time;
- 27.1.7 reference to the Council in Conditions 7 to 12 (inclusive) shall be deemed to include a reference to the Council's Legal Adviser.
- 27.1.8 reference to the Council in Conditions 7 to 16 (inclusive) shall be deemed to include a reference to the Council's Legal Adviser and
- 27.1.9 reference to the Council in Conditions 2 and 4 shall be deemed to include a reference to the Council's Financial Adviser.

27.2 In these Conditions, unless the context otherwise requires, all terms shall have the meanings given to them in the Agreement provided however that:-

- 27.2.1 “Security Documents” means every document from time to time executed by the Borrower to secure his obligations to the Council under the Agreement;
- 27.2.2 “excess risks” means the proportion of claims not recoverable in respect of general average and salvage, or under the ordinary running down clause, as a result of the value at which a vessel is assessed for the purpose of such claims exceeding her insured value;
- 27.2.3 “protection and indemnity risks” means the usual risks covered by a protection and indemnity association approved by the Council, including the proportion not otherwise recoverable in case of collision under the ordinary running-down clause;
- 27.2.4 “war risks” includes the risk of mines and all risks excluded from the standard form of United Kingdom marine policy by the free of capture and seizure clause;
- 27.2.5 “total loss” means (a) actual, constructive, comprised or arranged total loss of the vessel; (b) requisition for title or other compulsory acquisition of the vessel, otherwise than by requisition for hire; (c) capture, seizure, detention or confiscation of the vessel, by any government, or by any persons acting or purporting to act on behalf of any government, unless the vessel is released within one (1) month thereafter;
- 27.3 In the event of any inconsistency between these Conditions and (a) the Agreement, the Agreement shall prevail and (b) the Security Documents, the Security Documents shall prevail.

28 Registration

And we consent to registration hereof for preservation and execution.

THIS DOCUMENT IS TO BE READ IN CONJUNCTION WITH THE SPECIAL CONDITIONS AND ANY OTHER CONDITIONS CONTAINED IN THE AGREEMENT. THESE CONDITIONS SHALL APPLY TO ALL LOANS MADE BY THE COUNCIL EXCEPT AS SPECIFICALLY AMENDED BY THE SPECIAL CONDITIONS OR OTHERWISE VARIED IN WRITING BY THE COUNCIL.



Shetland Islands Council

Shetland Investment Fund

Equipment Hire Agreement with Option to Purchase

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1 Definitions and Interpretation

1.1 These terms and conditions (these “Conditions”) shall apply to the hire of the Equipment by the Hirer from the Owner (all as hereinafter defined). In these Conditions and in the Agreement (as hereinafter defined) the following words and expressions shall, unless the context otherwise requires, have the following meanings:

1.1.1 “Accelerated Payment Rebate” shall mean a sum of money equal to:

$$\frac{a(a+1)}{b(b+1)} \times c$$

where a = the total number of Hire Payments not yet due at the date of termination of the hiring of the Equipment and the Agreement under Clauses 16 or 17;

where b = the total number of Hire Payments payable under the Agreement; and

where c = the total charge for credit specified in the Agreement;

1.1.2 “Agreement” shall mean any equipment hire-purchase agreement in which these Conditions are incorporated in whole or in part and whether with or without variation or modification, and of which they form part;

1.1.3 “Certificate of Hireworthiness” shall mean a certificate addressed to the Owner under the hand of an independent and suitably qualified person, appointed by the Hirer and having the prior written approval of the Owner, certifying, in terms satisfactory to the Owner, that the Equipment is according to specification, properly installed, in good working order and condition, capable of being safely operated for, and fit for, the purpose for which the Equipment is being hired;

1.1.4 “Equipment” shall mean the equipment specified in the Agreement together with all replacements and renewals thereof or of the component parts thereof and all extras, additions, spare parts and accessories forming part thereof or used in connection therewith;

- 1.1.5 “Event of Default” shall mean any of the events specified in Clause 17 or an event which, with the giving of notice or lapse of time, could become an Event of Default;
- 1.1.6 “Hire Payments” shall mean the hire payments specified in the Agreement;
- 1.1.7 “Hire Period” shall mean the hire period specified in the Agreement;
- 1.1.8 “Hirer” shall mean the hirer described in the Agreement, together with legal representatives and permitted successors and assignees, and if two or more persons constitute the Hirer obligations and conditions expressed to be performed or observed by the Hirer shall be held to bind such persons jointly and severally;
- 1.1.9 “Month” shall mean calendar month;
- 1.1.10 “Owner” shall mean Shetland Islands Council, established under the Local Government etc. (Scotland) Act 1994, and having their principal offices at the Town Hall, Lerwick, Shetland and **their successors and assignees whomsoever; and**
- 1.1.11 “Premises” shall mean the premises specified in the Agreement as the address where the Equipment is to be installed and used.
- 1.2 In these Conditions and in the Agreement, unless the context otherwise requires:
 - 1.2.1 a reference to the singular shall include a reference to the plural and vice versa;
 - 1.2.2 a reference to any gender shall include a reference to all other genders;
 - 1.2.3 a reference to any clause are to clauses of these Conditions;
 - 1.2.4 a reference to any tax shall include a reference to any tax amending, extending or replacing the same;
 - 1.2.5 a reference to any statute or statutory provision shall include a reference to 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 to any order, regulation or instrument or other subordinate legislation made under the statute in question;

1.2.6 a reference to the Agreement shall include a reference to these Conditions; and

1.2.7 a reference to any person or words importing a person shall include a reference to any person, individual, firm, company, corporation, government, state, agency of a state or local authority, or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.

2 Equipment Hire

2.1 The Hirer shall hire the Equipment from the Owner for the Hire Period.

2.2 The Owner shall not, other than in exercise of its rights under the Agreement, these Conditions or applicable law, interfere with the Hirer's quiet possession of the Equipment.

3 Hire Payments

3.1 The Hirer shall pay to the Owner the Hire Payments in respect of the Equipment on the dates specified in the Agreement.

3.2 All of the Hire Payments or other payments payable to the Owner under the Agreement shall be made by the Hirer without any compensation, deduction, counterclaim or set-off and without prejudice to the generality of the foregoing, shall be made free and clear of, and without deduction for or on account of, any present or future taxes (including, but not limited to, Value Added Tax) or other charges of whatever nature or any other matter or thing whatsoever.

3.3 Notwithstanding Clause 3.2, where the Hirer is required by law to make any deduction, payment hereunder or by virtue hereof shall be increased by such amount as may be necessary so that the net amount after such deduction shall equal the amount to which the Owner would have been entitled hereunder or by virtue hereof had no such deduction been required by law.

3.4 The Hirer shall not be entitled to withhold any Hire Payments or other payments payable to the Owner under the Agreement for any reason whatever. Payments made by post shall be at risk of the Hirer.

3.5 If the Hirer fails to make payment due to the Owner under the Agreement by the due date then, without limiting the Owner's remedies under these Conditions, the Hirer

shall pay interest on the overdue amount in accordance with the terms of Clause 18.
The Hirer shall pay the interest together with the overdue amount.

4 Delivery and acceptance of Equipment

4.1 The Hirer shall take delivery of the Equipment on behalf of the Owner and shall be responsible for the cost, if any, of collecting the Equipment, wherever the Equipment may be, and of transporting it to the Premises.

4.2 In the event that the Owner has acquired the Equipment from the Hirer and the Equipment is in the possession of the Hirer at the commencement of the Hire Period the date of delivery of the Equipment shall be deemed to be the date of execution of the Agreement by the Hirer.

4.3 The Hirer shall ensure that the Equipment is transported and properly installed by suitably qualified persons.

4.4 If prior delivery of a Certificate of Hireworthiness by the Hirer to the Owner is not required under the conditions precedent set out in the Agreement the Hirer shall, within twenty-one days of the Equipment being delivered to the Premises and (where relevant) installed therein, deliver to the Owner a Certificate of Hireworthiness.

4.5 The Certificate of Hireworthiness shall be final and binding on the Hirer for every purpose and the Hirer shall be deemed to have satisfied himself that the Equipment is according to specification, properly installed, in good working order and condition and is capable of being safely operated for, and is fit for, the purpose for which the Equipment is being hired.

4.6 The Hirer shall:

4.6.1 inspect the Equipment on delivery to the Hirer or on the Hirer taking possession;

4.6.2 notify the Owner in writing as soon as reasonably practicable, and in any event within forty-eight hours of delivery to the Hirer or of the Hirer taking possession of the Equipment, of any defect in the Equipment; and

4.6.3 allow the Owner (on reasonable notice) at any time access to inspect the Equipment.

4.7 If the Hirer does not give notification under Clause 4.6.2 then the Hirer will be conclusively deemed to accept that the Equipment is:

- 4.7.1 complete;
- 4.7.2 in good order and condition;
- 4.7.3 fit for purpose for which the Hirer requires it; and
- 4.7.4 in every way satisfactory to the Hirer.

5 Equipment to remain Owner's property

- 5.1 Unless and until the Hirer's option, under Clause 15, to become owner of the Equipment is exercised, the Equipment shall remain the property of the Owner and nothing in the Agreement or these Conditions shall confer or be deemed to confer on the Hirer during the Hire Period any right, title or interest in the Equipment apart from the right to use the same upon the terms, and subject to the conditions, contained in the Agreement and these Conditions.
- 5.2 The Hirer shall not sell, lend, let, sub-let, assign, deliver, charge or otherwise deal with, part with possession or control of, or dispose of the Equipment or any part thereof, or any interest therein nor create, nor allow to be created, nor allow to remain in force, any fixed or floating charge, pledge, trust, lien, hypothec, right of compensation, or other security or encumbrance whatsoever on, over or affecting the Equipment or any part thereof, or any interest therein, and in the event of any breach of this Clause 5.2 the Hirer shall immediately remedy same, failing which the Owner may remedy such breach and in that event the Hirer shall repay forthwith to the Owner all costs and expenses incurred by the Owner in remedying the said breach.
- 5.3 The Hirer shall not do anything that leads any person to attempt to seize, arrest, poind, take possession of, or to attempt to execute any diligence, execution, civil recovery or judgment on the Equipment.
- 5.4 The Hirer shall affix to the Equipment in a conspicuous position a plate made of metal or some similar substance and of a design, size and nature having the Owner's prior approval stating clearly the following:

"This equipment is owned by Shetland Islands Council. No charges, liens, hypothecs or others can be created over it."

and the Hirer shall not cause or permit the same to be removed, obscured or defaced.

5.5 To the extent that the Hirer may at any time be held to be the owner of the Equipment prior to the exercise by the Hirer of its option under Clause 15 hereof, the Hirer shall hold and be deemed to hold the Equipment as trustee for the Owner.

6 Affixing of Equipment to land or buildings

6.1 The Hirer shall not, without the previous consent in writing of the Owner, affix the Equipment to any land or buildings so as to cause it to become a fixture thereon.

6.2 As between the Owner and the Hirer and their respective successors in the title the Equipment shall, during the Hire Period, remain moveable property and shall continue in the ownership of the Owner notwithstanding that the same may at any time have been affixed to land or buildings.

6.3 The Hirer shall ensure that, in so far as the Equipment is affixed to any land or buildings, such Equipment shall be capable of being removed without material injury to the said land or buildings and that all such steps shall be taken as are necessary to prevent title to the Equipment passing to the owner of the said land or buildings during the Hire Period. The Hirer shall be responsible for any damage caused to any land or buildings by the affixing of the Equipment thereto or the removal of the Equipment therefrom (whether such affixing or removal be effected by the Owner, Hirer or otherwise) and shall indemnify the Owner against any claim made in respect of all such damage (including damage caused by the negligence of the Owner, its servants or agents).

6.4 The Hirer shall not sell, feu, excamb, mortgage, charge, let, sub-let, or otherwise dispose of, deal with or part with possession of, any land or buildings, or any part thereof, on or in which the Equipment is kept without giving the Owner at least six weeks' prior notice in writing and in any event the Hirer shall procure that any third party with whom or in whose favour such feu, excambion, mortgage, charge, lease, sub-lease or other disposition, dealing or parting with possession, as the case may be, is made or granted gives, in such form as the Owner may require, including but not limited to:

6.4.1 a formal renunciation of any claim, right, title or interest, present or future, which they might have in or to the Equipment under such feu, excambion, mortgage or otherwise as the case may be; and

6.4.2 a right of the Owner to repossess the Equipment at any time (whether or not the same or any part thereof shall have become affixed to the said

land or buildings) and to enter such land or buildings and severing any Equipment affixed thereto for that purpose.

- 6.5 The Hirer shall supply to the Owner on request a copy of any deed, draft deed, instrument or other writing relating to any proposed or completed sale, feu, excambion, mortgage, charge, lease, sub-lease or other disposal of, dealing with or parting with possession of, the said land or buildings, or any part thereof, by the Hirer in terms of Clause 6.4. If the Hirer becomes aware of any conveyance, transfer, assignation or burdening, or any proposed conveyance, transfer, assignation or burdening of any third party's right, title or interest in or to the said land or buildings, or any part thereof, the Hirer shall immediately notify the Owner of the same.

7 Maintenance and use of Equipment

- 7.1 The Hirer shall, at its own cost and expense, maintain the Equipment in good and substantial repair, condition and working order (ordinary wear and tear resulting from proper use thereof alone excepted), properly serviced and maintained, and shall promptly replace all missing, damaged or broken parts with parts of at least equal quality and value.
- 7.2 The Hirer shall employ qualified experts to repair or make good any damage to the Equipment whether or not caused by the Hirer's own act or default and shall punctually pay for all servicing and repairs and other work done to the Equipment and for replacement parts and accessories thereof. In the event of default by the Hirer under this Clause 7, the Owner shall be entitled to take possession of the Equipment for the purpose of having repairs carried out and to make any payments on which the Hirer has defaulted and to recover the cost thereof from the Hirer on demand.
- 7.3 The Hirer shall use the Equipment in a proper and skilful manner and shall not permit it to be used or handled other than by persons properly trained, or to be overloaded, or to be used for any purpose other than for which the Equipment is designed or suitable.
- 7.4 The Hirer shall obtain, or procure the obtaining of, all the necessary licences, certificates, permits, authorisations and others required for the operation of, or in connection with, the Equipment and shall maintain the same in full force throughout the Hire Period, and the Hirer shall furnish the Owner with copies if so required, and shall not do, neglect to do or permit to be done, any act whereby the Equipment or its use would contravene any statute, rule, regulation or bye-law or any such

licence, certificate, permit, authorisation and others for the time being in force pertaining to the possession, use, maintenance or safety of the Equipment.

7.5 The Hirer shall not, without the prior written consent of the Owner (which consent may be given conditionally), make any alteration or modification to the Equipment.

7.6 The Hirer shall take all necessary steps to ensure that the Equipment is safe and without risk to health when properly used, and, in particular (but without prejudice to the generality of the foregoing), shall (subject to Clause 7.5) at its own expense add to or instal with the Equipment any safety or other equipment required by any applicable law or regulation to be so added or installed, shall check with the manufacturer or supplier of the Equipment that it has been thoroughly tested and shall ensure that there is available in connection with the use of the Equipment adequate information to ensure that when used the Equipment is safe and without risk to health.

7.7 The Hirer shall give the Owner all information concerning the condition, use and operation of the Equipment which the Owner may require from time to time and shall permit, or procure permission for, the Owner, the Owner's agents, employees or other persons designated by the Owner, at all reasonable times to inspect and to observe its use and operation and for this purpose to enter the Premises or any land or buildings where the Equipment may be located.

7.8 The Hirer shall maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Owner, together with such additional information as the Owner may reasonably require.

8 The Premises

8.1 The Hirer shall not, without the prior written consent of the Owner, remove the Equipment from the Premises. The Hirer shall be responsible for all the costs of any such removal and subsequent installation.

8.2 The Hirer warrants that the Premises are suitable for the use and/or storage of the Equipment.

9 Licence duties, fees, etc.

The Hirer shall be liable for and shall punctually pay all licence duties, fees, registration charges, expenses, outgoings, levies, rates and taxes in respect of the Equipment, including its use and possession, or in respect of the Premises (including mortgage payments) and whether exigible from the Owner or the Hirer of the

Equipment. If required by the Owner, the Hirer shall forthwith produce to the Owner receipts for any such payments. In the event of the Hirer failing to make any of the payments referred to in this Clause 9 on the due date the Owner may make such payments and shall be entitled to recover the same from the Hirer on demand together with the amount of any expenses, losses or other charges incurred by the Owner in connection with such payments.

10 Warranties by Hirer

10.1 The Hirer warrants to the Owner that as at the date of execution of the Agreement:

- 10.1.1 all information given by or on behalf of the Hirer to the Owner in the course of negotiations or discussions in respect of the hiring of the Equipment was and remains true and accurate and there is no fact, matter or circumstance known to the Hirer which has not been disclosed in writing to the Owner which makes any such information untrue or inaccurate or misleading or the disclosure of which might affect or have affected the willingness of the Owner to enter into the Agreement;**
- 10.1.2 except as disclosed in writing to the Owner, the Hirer is not involved in any litigation, arbitration or proceeding before any court, tribunal or person nor is any such litigation, arbitration or proceeding threatened against the Hirer;**
- 10.1.3 the Hirer is not in default under any agreement to which the Hirer is a party or by which the Hirer is bound, being a default which has had or might have a materially adverse effect on the undertaking, property or assets of the Hirer;**
- 10.1.4 no event has occurred or is continuing which would constitute an Event of Default (whether or not subject to notice, effluxion of time or other condition);**
- 10.1.5 the Hirer has disclosed to the Owner true and accurate details of all monies borrowed by the Hirer, details of the Hirer's indebtedness to third parties arising other than in the normal course of business, details of all securities, fixed or floating, over the whole or any part of the undertaking, property and assets of the Hirer and details of all guarantees given by the Hirer;**

- 10.1.6 the Hirer has disclosed to the Owner true and accurate details regarding the ownership and occupation of the Premises and all leases, sub-leases, licences, standard securities, mortgages, charges, options and other burdens affecting the same;
 - 10.1.7 the Hirer is taking the Equipment on hire in the course of a business; and
 - 10.1.8 the Agreement is not a regulated agreement under the Consumer Credit Act 1974 or an agreement to which the Hire-Purchase (Scotland) Act 1965, or any legislation of intent or effect similar thereto applies and any sale of the Equipment by the Hirer to the Owner prior to the hiring of the Equipment under the Agreement was not a transaction outwith the Sale of Goods Act 1979 by virtue of Section 62(4) thereof.
- 10.2 The Hirer shall on demand indemnify and keep indemnified the Owner from and against any loss or damage whatsoever that the Owner may suffer or incur as a result of a breach of any of the foregoing warranties and this indemnity shall continue in full force and effect notwithstanding any time or other indulgence which may be given by the Owner to the Hirer or any other obligant and shall continue in full force and effect notwithstanding any judgment in favour of the Owner.

11 Insurance

- 11.1 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on execution of the Agreement and the Hirer shall, unless otherwise required by the Owner, restore the same or replace the same with equipment of a type and quality, and in a state of repair and condition, similar to that of the Equipment immediately prior to such loss, destruction or damage. The Equipment shall remain at the sole risk of the Hirer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Hirer (the "Risk Period") until such time as the Equipment is returned to the Owner. During the Hire Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurance:
- 11.1.1 insurance of the Equipment of a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Owner may from time to time reasonably require;
 - 11.1.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Owner may from time

to time reasonably require, to cover any third party of public liability risks of whatever nature and however arising in connection with the Equipment; and

- 11.1.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Owner may from time to time consider reasonably necessary and advise to the Hirer.
- 11.2 The insurance referred to in Clause 11.1 shall be under a comprehensive policy or policies of insurance, free from restriction or excess. The policy or policies shall be in the joint names of the Owner and Hirer unless the Owner shall otherwise require, shall bear an endorsement recording that the Equipment is the property of the Owner and shall state that no payment is to be made to the Hirer under the policy or policies until the Owner's interest has been discharged in full. The Hirer shall deliver or produce on demand the said policy or policies and shall duly and punctually pay all premiums and other monies necessary for effecting and keeping in force such insurance and when so required shall forthwith produce to the Owner receipts for all such payments.
- 11.3 The Hirer shall not use or allow the Equipment to be used for any purpose not permitted by the terms and conditions of any policy or policies of insurance for the Equipment or whereby the same may be avoided.
- 11.4 The Hirer shall immediately notify the Owner in writing of any loss, theft or destruction of, or damage to, the Equipment or any part thereof.
- 11.5 All monies payable under the said policy or policies of insurance in respect of loss or destruction of, or damage to, the Equipment shall be paid by any insurers to the Owner and the Hirer hereby irrevocably appoints the Owner the agent of the Hirer for the purpose of receiving all monies payable under the said policy or policies and giving a discharge therefor, but if nevertheless such monies shall be paid to the Hirer the same shall be held by the Hirer in trust for the Owner under Clause 11.9.
- 11.6 Subject to there being no Event of Default, all monies payable under the said policy or policies of insurance in respect of loss or destruction or, damage to, the Equipment shall, at the option of the Owner, be applied:
- 11.6.1 towards reimbursement of the Hirer for the cost of repair of the Equipment, in which event the Hirer shall complete the repairs to the satisfaction of the Owner; or

11.6.2 so far as possible, in replacing the Equipment with equipment of a type and quality, and in a state of repair and a condition, similar to that of the Equipment immediately prior to the said loss, destruction or damage, in which event the replacement equipment shall be held by the Hirer under the terms and conditions of the Agreement and these Conditions; or

11.6.3 towards the payment of the remaining Hire Payments (including any in arrears) in the inverse order of their respective due dates, together with any interest due thereon under Clause 18 hereof, each such Hire Payment being discounted by such amount as the Owner may, in its absolute discretion, permit.

Any surplus remaining after the application of the said monies as aforesaid shall be retainable by the Owner for its own benefit.

11.7 The provisions of this Clause 11 shall not prejudice any liability of the Hirer to the Owner under any other provisions of the Agreement or these Conditions and in particular (but without prejudice to the generality of the foregoing), if the amount received by the Owner under the said policy or policies of insurance shall be less than the sum which would have been payable to the Owner had the damage or loss giving rise to the payment constituted an Event of Default the Hirer shall on demand pay to the Owner the amount of the deficiency.

11.8 In the event of failure by the Hirer to effect or maintain any insurance required under the Agreement or these Conditions, the Owner shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.

11.9 The Hirer hereby declares that it holds and will hold the sum of one pound (£1.00) and all monies received by the Hirer under the said policy or policies of insurance and the right to receive such monies in trust for the Owner as the absolute property of the Owner and the Owner shall be entitled to appoint a new trustee or new trustees of the trust fund along with the Hirer as trustee aforesaid or in place of the Hirer as if the Hirer desired to be discharged or in place of any trustee or trustees appointed under this power as if he/she or they were dead.

11.10 In the event of the insurance monies recovered in respect of any loss, destruction of or damage to the Equipment being applied under Clause 11.6.3 in full satisfaction of the remaining Hire Payments and any interest due thereon the hiring hereunder shall be terminated (but without prejudice to any claim, right of action or remedy available to the Owner in respect of such termination) but save as aforesaid notwithstanding

any loss, destruction or damage, the Agreement shall continue in full force and effect.

- 11.11 The Owner shall use its reasonable endeavours to extend to the Hirer the benefit of any condition, warranty, statement or representation which may have been given or made to the Owner by the manufacturer or vendor of the Equipment or otherwise implied in favour of the Owner, but such benefit shall only be so extended if and so long as the Hirer is not in default under the Agreement or these Conditions and on terms that the Hirer indemnifies the Owner against all costs, claims, damages and expenses incurred in connection with the enforcement thereof, or the making of any claim thereunder.

12 Exclusion of conditions, warranties, etc.

- 12.1 It is expressly agreed that no condition, warranty or representation of any kind (other than a condition implied under Section 8 of the Supply of Goods (Implied Terms) Act 1973) has been, or is given or made by the Owner, or the Owner's servants or agents with respect to, or in respect of, the Equipment and all conditions, warranties or representations, express or implied, statutory or otherwise, as to the state, quality, description, fitness for any purpose or otherwise, of the Equipment are expressly excluded. The Hirer shall not be entitled to any rebate of Hire Payments in respect of any period during which the Equipment is unserviceable, lost, destroyed, out of order, unusable or not in the possession of the Hirer and the Owner shall not be liable to provide the Hirer with any replacement equipment or parts.

- 12.2 No dealer, supplier, manufacturer or insurance agent, nor any person in the employment of a dealer, supplier, manufacturer or insurance agent, is or shall be deemed to be the agent of the Owner for any purpose or authorised to bind the Owner in any way, and the Owner has and shall have no liability for, and shall not be bound by, any statement, representation, undertaking or promise made by any such person, or any employee of such person, to the Hirer.

13 Owner not liable for defects

- 13.1 Subject to Clause 13.2, the Owner shall not be liable to the Hirer, whether in contract, quasi-contract, delict, quasi-delict, by statute or in any other way whatsoever, for any liability, claim, loss (including loss of business or other consequential loss), damage, injury or expense of any kind or nature and howsoever caused (including any liability, claim, loss, damage or expense caused by the negligence of the Owner, its servants or agents) arising out of or in connection with

the Equipment or any part thereof, its manufacture, selection, delivery or possession, any delay in the delivery thereof, any inadequacy thereof for any purpose, any deficiency or defect therein, whether such defect be latent or apparent on examination, the use or performance thereof, any repairs, servicing or otherwise thereto or any delay in providing or failure to provide the same or any interruption or loss of service or use thereof.

13.2 The Owner does not exclude liability to the Hirer for:

13.2.1 death or personal injury cause by the negligence of the Owner, its servants or agents while acting in the course of their employment by the Owner; and

13.2.2 breach by the Owner of any condition implied by Section 8 of the Supply of Goods (Implied Terms) Act 1973).

14 Indemnity

14.1 The Hirer shall indemnify and keep indemnified the Owner against:

14.1.1 all losses, actions, claims, demands, proceedings (whether criminal or civil), costs, legal expenses (on a full indemnity basis), insurance premiums and calls, liabilities, judgments, damages or other sanctions whenever and howsoever arising, directly or indirectly from the Hirer's failure or alleged failure to perform its obligations under the Agreement or these Conditions;

14.1.2 any loss, injury or damage suffered by any person (including without limitation the Owner) because of the presence of the Equipment;

14.1.3 the delivery, possession, hiring, transportation, condition, use, operation, removal or return of the Equipment;

14.1.4 the sale or disposal by the Owner of the Equipment;

14.1.5 any defect in the Equipment or its design, manufacture, testing, maintenance or overhaul; and

14.1.6 the Owner exercising any right in respect of the Equipment, its ownership, or its hiring.

15 Option to purchase

15.1 If the Hirer has paid punctually all Hire Payments and other sums payable by the Hirer under the Agreement and shall have duly performed and observed all the terms and conditions of the Agreement, including these Conditions, whether express or implied, to the satisfaction of the Owner, the Hirer shall have the option (which the Hirer is not obliged to exercise) at any time on or after payment of the final Hire Payment but not later than expiry of the Hire Period to purchase the Equipment for one pound (£1.00).

15.2 Unless and until the Hirer exercises the option to purchase under Clause 15.1, the Hirer shall have no right of ownership in the Equipment. Provided that the Hirer shall be at liberty to accelerate payments under the Agreement and in the event of the Hirer paying before the due date such sum or sums as may be necessary to vest the ownership of the Equipment in the Hirer pursuant to this Clause 15, the Hirer shall be granted such rebate for early payment as the Owner may, in its absolute discretion, allow.

15.3 If the Hirer does not exercise the option to purchase under Clause 15.1, upon the expiration of the Hire Period the Hirer shall become a mere custodian of the Equipment. As custodian aforesaid the Hirer shall (i) take all proper care of the Equipment; (ii) comply with all requirements of law relating to the Equipment and its possession; (iii) be responsible for all outgoings payable in respect of the Equipment; and (iv) hold the same available for delivery or re-possession as aftermentioned. At any time within forty days after expiration of the Hire Period without the said option having been exercised the Owner shall be entitled:

15.3.1 to require the Hirer to deliver up, at the Hirer's own risk and expense, the Equipment to the Owner, together with all certificates, licences and other documents relating to the Equipment, in a condition consistent with the due performance of the Hirer's obligations hereunder and at such place in the United Kingdom as the Owner shall direct; or

15.3.2 without notice to retake possession of the Equipment, and for that purpose the Owner or the Owner's employees or agents may enter upon any land or buildings on or in which the Equipment is or is believed by the Owner or the Owner's employees or agents to be situated and if the Equipment or any part thereof is affixed to such land or buildings the Owner shall be entitled to sever the same therefrom and to remove the

Equipment or part thereof so severed and the Hirer shall be responsible for all damage caused to the land or buildings by such removal.

15.4 If the Owner does not, during the period of forty days referred to in Clause 15.3 above, specify an address for delivering up the Equipment or retake possession in terms of the said Clause 15.3:

15.4.1 the Hirer shall be entitled at any time thereafter to dispose of the Equipment, at the Hirer's own risk and expense, in such lawful manner (other than re-delivery to the Owner) as the Hirer may think fit provided that the Owner shall be entitled, on giving not less than fourteen days' notice to the Hirer at any time prior to disposal of the Equipment by the Hirer, to retake possession of the Equipment and for that purpose the Owner or the Owner's employees or agents may enter upon any land or buildings on or in which the Equipment is or is believed by the Owner or the Owner's employees or agents to be situated and remove the Equipment from such land or buildings, notwithstanding that the Equipment may be or become affixed thereto. In disposing of the Equipment the Hirer shall not be, or be deemed to be, the agent of the Owner for any purpose (other than conferring a good title to the Equipment on any third party) or authorised to bind the Owner in any way and the Owner shall have no liability for, and shall not be bound by, any statement, representation, undertaking or promise made by the Hirer or any employee of the Hirer. If the Hirer disposes of the Equipment to any third party, such disposal shall be on terms that all warranties and conditions on the part of the Owner as to quality, condition, performance or fitness which might otherwise arise in respect of the Equipment by implication of law, statutory or otherwise, and which may lawfully be excluded, are excluded. For the avoidance of doubt, the expiration of the Hire Period shall not remove or restrict the effect of, or prevent reliance upon, Clauses 13 or 14, which shall remain in full force and effect; and

15.4.2 the Hirer shall be responsible for all outgoings payable in respect of the Equipment and if any such outgoings are paid by the Owner the Hirer shall repay the same to the Owner on demand.

16 Termination of Agreement by Hirer

16.1 The Hirer may, on giving not less than three Months' prior notice to the Owner, terminate the hiring of the Equipment and the Agreement at any time after the

penultimate Hire Payment falls due but before the final Hire Payment becomes payable by delivering up, at the Hirer's own risk and expense (including the cost of insurance), the Equipment in good order, repair and mechanical condition to the Owner, together with all certificates, licences and other documents relating to the Equipment, to such address as the Owner may specify free of advertising and all insignia other than the Owner's or manufacturer's.

16.2 If the hiring of the Equipment and the Agreement is terminated under Clause 16.1, without prejudice to any other liability of the Hirer to the Owner, the Hirer shall pay immediately to the Owner, (i) all Hire Payments then due, with interest calculated in accordance with the terms of Clause 18; (ii) the final Hire Payment; (iii) if need be, a sum sufficient to put the Equipment into good repair and working condition (whether or not such repairs shall be carried out); and (iv) all other sums which the Hirer may have become liable to pay at the time of such termination.

16.3 If the Owner does not, during the three-Month period specified in Clause 16.1 specify an address to which the Equipment is to be delivered, (i) Clause 15.3 shall apply as if the reference therein to a period of twenty-eight days was a reference to the said three-Month period and the reference to expiration of the Hire Period was a reference to termination of the hiring of the Equipment and the Agreement under Clause 16.1; and (iii) the Hirer shall be reimbursed for any payment made to the Owner under Clause 16.2(iii).

17 Termination of Agreement by Owner or automatically on stated events

17.1 Upon the occurrence of any of the events hereinafter specified the Owner may forthwith by written notice terminate the hiring of the Equipment and the Agreement:

17.1.1 the Hirer fails for whatever reason to pay any Hire Payments or other sum due hereunder in full on its due date and such Hire Payment or other sum remains unpaid for more than seven days;

17.1.2 the Hirer fails to observe or to perform any of the terms or conditions of the Agreement or these Conditions, whether express or implied, or of any other agreement between the parties or between the Owner and any subsidiary company of the Hirer;

17.1.3 any person who, either before or during the Hire Period, gave any such undertaking as is mentioned in Clause 6.4, fails to observe or to perform any such undertaking;

- 17.1.4 any of the warranties given by the Hirer in the Agreement, whether express or implied, prove to be incorrect;
 - 17.1.5 the Hirer suspends or threatens to suspend payment of the Hirer's debts, or suspends, or threatens to suspend a substantial part of the present business operations the Hirer is conducting directly or indirectly;
 - 17.1.6 the Agreement becomes or is, in the opinion of the Owner, likely to become, a regulated consumer credit agreement within Section 8 of the Consumer Credit Act 1974 or becomes or is, in the opinion of the Owner, likely to become regulated by any legislation of intent or effect similar to the Consumer Credit Act 1974;
 - 17.1.7 a security-holder or encumbrancer takes, or threatens to take, possession of the Equipment or any property of the Hirer;
 - 17.1.8 any form of diligence, execution or other legal process is threatened, commenced or levied by anyone whomsoever which affects the Equipment or any property of the Hirer;
 - 17.1.9 the Hirer abandons the Equipment;
 - 17.1.10 the Hirer (being an incorporated body including an industrial and provident society) is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
 - 17.1.11 any judgment against the Hirer remains unsatisfied for more than fourteen days;
 - 17.1.12 the Hirer (being an individual) dies;
 - 17.1.13 the Hirer does or causes or permits or suffers to be done any act or thing which, in the opinion of the Owner, prejudices or may or tends to prejudice the Owner's rights, title or interest in the Equipment or any remedy which under the general law or statute or the Agreement the Owner may have against the Equipment.
- 17.2 If the Hirer (being an individual) becomes notour bankrupt or is sequestrated or signs a trust deed on behalf of, or calls any meeting of, or makes any arrangement or composition with, his creditors or if (being a partnership) the partnership is dissolved or if (being an incorporated body including an industrial and provident society) an order is made or an effective resolution passed for the winding up of the Hirer or any

guarantor of the Agreement (otherwise than for the purposes of reconstruction or amalgamation the terms of which have been previously approved in writing by the Owner) or a receiver, administrative receiver, judicial factor or similar office is appointed of all or part of the assets of the Hirer then the hiring of the Equipment and the Agreement shall automatically, immediately and without notice, terminate.

17.3 If the hiring of the Equipment and the Agreement are terminated under Clauses 17.1 or 17.2:

17.3.1 the Equipment shall no longer be in the Hirer's possession with the Owner's consent;

17.3.2 the Owner may, without notice, retake possession of the Equipment, together with all certificates, licences, registration or other documents relating to the Equipment, and for that purpose shall be entitled to enter the Premises or any land or buildings where the Equipment may be situated or believed to be situated and take such steps (including the use of lawful force) as it may consider prudent or necessary for that purpose. If the Equipment or any part thereof is affixed to any land or buildings the Owner shall be entitled to sever the same therefrom and to remove the Equipment or part thereof so severed and the Hirer shall be responsible for all damage caused to the land or buildings by such removal;

17.3.3 without prejudice to any other liability of the Hirer to the Owner, the Hirer shall pay immediately to the Owner (in addition to any Hire Payments actually in arrear), by way of agreed compensation for the Owner's loss of profit, an amount equal to (i) the total of all Hire Payments which are not yet due less the Accelerated Payment Rebate; and (ii) all other monies which may at that time be payable to the Owner under the Agreement and all charges and expenses whatsoever which the Owner may have incurred or may incur or for which the Owner is or may become liable in exercise of its powers whether under the general law or under this or any other clause of the Agreement or these Conditions in regaining or attempting to regain possession of the Equipment. The Hirer's liability for such amount shall be deemed to have arisen immediately before and not after termination of the hiring and the Agreement. After, but not before, payment in full of such amount the Owner shall account to the Hirer for:

17.3.3.1 the net proceeds (if any) after deducting all costs, commission, expenses, taxes and other charges incurred by

the Owner, arising from the sale of the Equipment (including any sums reasonably expended by the Owner in putting the Equipment in good order and repair for the purpose of such sale);

17.3.3.2 the present rental value (if any) as determined by the Owner, after deducting all costs, commission, expenses, taxes and other charges incurred by the Owner, arising from the re-letting of the Equipment (including any sums reasonably expended by the Owner in putting the Equipment into good order and repair for the purpose of such re-letting); or

17.3.3.3 if the Equipment is not sold or re-let as aforesaid within six Months after termination of the hiring and the Agreement, its value, after deducting all costs, expenses, taxes and other charges incurred by the Owner, as determined by a dealer in such Equipment appointed by the Owner, on the basis of a sale to dealers in such Equipment.

17.3.4 without prejudice to the Owner's power to re-possess the Equipment under Clause 17.3.2 the Hirer shall, if so required by the Owner and at the Hirer's expense (including the cost of insurance), deliver up the Equipment serviced and maintained and in good order, repair and mechanical condition to the Owner to such address as the Owner may direct, free of advertising and all insignia other than the Owner's or manufacturer's or, if not so required, shall hold the Equipment available for collection by the Owner or the Owner's agents;

17.3.5 any unexpired portion of any licence or other duty or insurance or other premium paid in respect of the Equipment shall, no matter by whom paid, be or become the absolute property of the Owner with full power to the Owner to collect and ingather such unexpired portions;

17.3.6 the Owner shall be entitled (without prejudice to its rights under the Agreement) on giving twenty-four hours notice to the Hirer to terminate any other hire-purchase or hiring agreement entered into between the Owner and the Hirer and may exercise its powers under such other agreement, irrespective of the date when entered into, as if the Owner had the right to terminate such agreement by reason of a breach by the Hirer of the terms thereof;

17.3.7 in the event of the hiring of the Equipment and the Agreement being terminated under Clause 17.1.6 the Owner may require the Hirer to enter into a new hire-purchase agreement in respect of the Equipment expiring on the date on which the Agreement would have expired if it had not been terminated as aforesaid, with such variations in the terms and conditions of the Agreement as are necessary to ensure that the new hire-purchase agreement is not a regulated consumer credit agreement within Section 8 of the Consumer Credit Act 1974 or regulated by any legislation of similar intent or effect, but, save as aforesaid, upon the same terms and conditions as contained in the Agreement.

17.4 The Owner's rights under this Clause 17 are without prejudice always to any other claim, right of action or remedy available to the Owner in respect of the termination of the hiring of the Equipment and the Agreement.

18 Interest

Any money due or payable to the Owner under the Agreement shall bear interest (as well before as after any judgment) at the rate of 4% per annum above Shetland Island Council's standard interest rate from the date occurring fourteen days after the date when such money is due, expended or incurred until payment in full.

19 Waivers; Remedies cumulative

19.1 No failure to exercise and no delay in exercising by the Owner of any right, remedy, power or privilege arising under or by virtue of the Agreement shall operate as a waiver thereof, nor shall any single, defective or partial exercise thereof preclude any other or further exercise of that or any other right, remedy, power or privilege. The rights and remedies herein expressly conferred on the Owner are cumulative and not exclusive of any rights or remedies provided by law.

19.2 No releasing, compounding or compromising of any obligation or liability to the Owner under the Agreement and no relaxation, forbearance, delay or granting of time or other indulgence by the Owner to the Hirer shall affect, restrict or prejudice the rights, powers and privileges of the Owner or the obligations of the Hirer under the Agreement, nor shall any waiver of any breach of the Agreement by the Owner operate as a waiver of any subsequent or any continuing breach thereof.

20 Protection of Interests

The Owner, shall, without prejudice to any right, power or privilege which it may have under the general law or statute or the Agreement, be entitled at all times to take such steps as it may think fit for the purpose of establishing, maintaining and protecting its rights, title or interest in the Equipment. The Hirer irrevocably appoints the Owner as the Hirer's attorney and agent to take such steps as aforesaid in the Hirer's name or on the Hirer's behalf. The Hirer shall indemnify and keep indemnified the Owner against all or any costs, claims, damages and expenses incurred by the Owner in connection with the taking of such steps.

21 Costs and expenses

The Hirer shall be responsible for the whole costs and expenses of the Owner in connection with, or incidental to any implementation or enforcement or intended or attempted implementation or enforcement of the provisions of the Agreement, including all legal and other professional expenses, or of any certificate, statement or the like referred to herein and for the whole costs and expenses in connection with or incidental to the Certificate of Hireworthiness.

22 Statement or Certificate by Owner

A statement or certificate by any officer of the Owner as to the amount of any money (including interest) or other liabilities due or payable to the Owner under the Agreement shall be final, conclusive and binding on the Hirer.

23 Appropriation of Payments

If at any time during the Hire Period there shall be any hire-purchase agreements or other agreements in existence between the Owner and Hirer, whether in similar terms to the Agreement or otherwise, which are not regulated agreements (as defined in Section 189 of the Consumer Credit Act 1974) then provided always that the provisions of legislation from time to time in force do not apply thereto and invalidate this Clause 23, all such agreements shall be construed as forming one transaction so that any sums paid to the Owner under the Agreement or any other such agreements may be appropriated by the Owner in full or part satisfaction of any sums due to the Owner by the Hirer under any such other agreements or under the Agreement, and notwithstanding that the Hirer may have purported to appropriate such sums in some other way.

24 Time

Time shall be of the essence in the performance of the Hirer's obligations under the Agreement.

25 Further documentation

The Hirer agrees to do or execute any such further undertakings and documents, and to obtain any such indemnity or guarantee in respect of the Hirer's obligations under the Agreement, as may be required by law or as the Owner may consider necessary or desirable to establish, maintain and protect the Owner's rights or interests under the Agreement and generally to carry out the intent of the Agreement.

26 Assignment of Agreement

The Hirer shall not assign, transfer or grant a security over or purport to assign, transfer or grant a security over the Agreement or the Hirer's rights thereunder without the prior written consent of the Owner.

27 Notices

27.1 Any notice, request, demand or other communication to be given, made or delivered under the Agreement shall be in writing and shall be sufficiently given if sent by recorded delivery post, addressed (i) in the case of the Owner, to such person and to such address as may be nominated by the Owner, and failing such nomination, to Shetland Islands Council, 6 North Ness Business Park, Lerwick, Shetland, ZE1 0LZ and (ii) in the case of the Hirer, at the address of the Hirer stated in the Agreement or at the Hirer's existing or last-known business or private address.

27.2 Any such notice, request, demand or other communication posted to the Hirer under Clause 27.1 shall be conclusively deemed to have been received by the Hirer within forty-eight hours after the time of posting. If two or more persons constitute the Hirer any notice, agreement or otherwise given to or by any one or more shall bind all of them. In proving service it shall be sufficient to show that such notice, request, demand or other communication was sent by recorded delivery post, properly addressed and stamped.

28 Confidential information

28.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 28.2.

28.2 Each party may disclose the other party's confidential information:

28.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 28; and

28.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

28.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Agreement.

29 Variation

No variation of the Agreement or these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

30 No partnership or agency

Save as may be expressly provided in these Conditions, nothing in the Agreement or these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

31 Headings

The headings do not form part of these Conditions and shall not affect the validity or performance of the Agreement.

32 Invalidity of any provision

If any of the provisions of the Agreement become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be in any way effected or impaired.

33 Force Majeure

Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement or these Conditions if such delay or failure result from events, circumstances or causes beyond its

reasonable control. In such circumstances, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 90 days, the party not affected may terminate the Agreement by giving 30 days' written notice to the affected party.

34 Proper Law, etc.

The construction, validity and performance of the Agreement shall be governed in all respects by the laws of Scotland, and the parties to the Agreement submit to the exclusive jurisdiction of the Scottish Courts.

35 Registration

The Hirer consents to registration of the Agreement, these Conditions and of any certificate, statement or the like given or made thereunder or in connection therewith (including any statement or certificate referred to in Clause 22) for preservation and execution.