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**Crown Estate  
Scotland**  
Oighreachd a' Chrùin Alba

MEMORANDUM OF UNDERSTANDING MADE ON *25th* APRIL 2017

**BETWEEN**

- (1) THE CROWN ESTATE COMMISSIONERS ("The Crown Estate") and
- (2) CROWN ESTATE SCOTLAND (INTERIM MANAGEMENT) ("The Interim Manager")

#### **Introduction**

1. The Crown Estate's "existing Scottish functions"<sup>1</sup> (the "Scottish Functions") are to be transferred to The Interim Manager, as the nominee of Scottish Ministers. It is intended that the transfer will take place on 1 April 2017.
2. The relationship between The Crown Estate and the Interim Manager (each a "Party" and together the "Parties") will need to comply with any applicable competition laws.
3. The purpose of this Memorandum of Understanding is to record the Parties' understanding and commitment to cooperate, whilst also complying with applicable competition laws in their dealings with each other.

#### **Agreement**

4. The following list provides some examples of areas where the parties expect to cooperate:
  - a. end of year (2016/2017) reporting;
  - b. requests under the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002;
  - c. appropriate corporate communications;
  - d. appropriate sharing of information;

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<sup>1</sup> As defined by Section 90B(2) of the Scotland Act 1998.

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- e. OW ORJIP and OE ORJIP; and
  - f. cross-border regulatory matters.
5. Any cooperation will be overseen by an "Oversight Group", which will meet six monthly to discuss joint activities and agree and review project implementation through an action plan.
  6. The Oversight Group will be made up of an equal number of representatives from The Crown Estate and The Interim Manager.

### Competition

7. The Parties hereby recognise the importance of their compliance with competition laws. In particular, the Parties recognise that from April 2017 each Party may be a separate undertaking for the purposes of the Competition Act 1998, and equivalent EU competition laws to the extent relevant, and as such they will need to conduct their relationship subject to the requirements of those laws to the extent they are applicable.
8. Accordingly, the Parties each hereby agree to have in place from April 2017 a compliance programme, with the objective of ensuring their relationship and dealings with each other will be conducted fully in accordance with all applicable competition laws.
9. The Parties agree that in order to ensure an effective culture of competition law compliance, they will each support their respective compliance programmes with sufficient resources and staff training, appropriate internal protocols, procedures and guidelines, and active endorsement and monitoring by senior management.
10. In particular, the Parties recognise that there will be a number of important legitimate and permissible areas of cooperation and information exchange between them and as such they agree to establish, implement and monitor guidelines to regulate their activities in these areas in order to ensure compliance with applicable competition laws associated with those activities.

### Competition Governance

11. The Parties will each nominate a suitably senior person in their organisations who will have direct oversight responsibility for competition law compliance and will report regularly on this as part of their internal control framework.

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12. The Parties will also establish a procedure for resolution between them of any queries or issues that arise with regard to ensuring competition law compliance in the conduct of their relationship, and will as necessary take specialist legal advice to support that procedure.

### Intellectual Property Rights

13. In the context of ongoing working relations, the Parties hereby recognise that there may be intellectual property rights which: are enjoyed by The Crown Estate; are necessary for the proper discharge of the Scottish Functions; have not legally transferred to The Interim Manager; and for which there is no reasonable or cost effective alternative available ("Required IPR").
14. In relation to the identification of Required IPR, The Crown Estate will respond in good faith to such reasonable and specific requests as The Interim Manager may make for details of the existence of intellectual property rights which may be Required IPR.
15. Where The Interim Manager identifies Required IPR, The Interim Manager shall be entitled to approach The Crown Estate, confirming the details and status of the Required IPR, with a view to putting in place arrangements for its use of the Required IPR.
16. The Crown Estate will give proper consideration to any such approach and will in good faith seek to put in place arrangements to share any such rights as it may have in the Required IPR. The parties acknowledge that such sharing will not be possible where it would contravene existing legal obligations or commitments, or where the required arrangement would have or be reasonably likely to have a significant adverse impact on The Crown Estate's business interests and/or activity.
17. Both parties shall ensure that they provide a full and transparent justification for any position taken and in the event of a disagreement matters will be escalated to the Parties' respective Chief Executives.

### Status

18. The Parties agree that this Memorandum of Understanding is not legally binding between them and does not create any form of partnership or legal rights or obligations. It is, however, a statement of their shared intention to work together in a spirit of co-operation in pursuance of the matters outlined above.
19. Nothing in this Memorandum of Understanding shall fetter the discretion of either The Crown Estate or The Interim Body, with regard to their respective legal obligations, (whether under the Crown Estate Act 1961 or otherwise).

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20. This Memorandum of Understanding shall be effective from the date hereof. It shall be reviewed, and updated if necessary, on an annual basis.

Signed by the Parties by:



Alison Nimmo, Chief Executive

For and on behalf of the Crown Estate  
Commissioners



Ronnie Quinn, Chief Executive

For and on behalf of Crown Estate Scotland  
(Interim Management)