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## To Departmental Private Finance Units

### SoPC 4 Addendum April 2009: Amended Refinancing Provisions

Further to Gordon McKechnie's letter of 16 October 2008, attaching an addendum to Standardisation of PFI Contracts Version 4 ("SoPC 4"), which amended the Refinancing provisions of SoPC 4, this letter is being sent to Departmental Private Finance Units to notify them of a further amendment to these refinancing provisions, which has been made in the light of submissions by industry participants following the release of the October Addendum.

This further amendment:

- provides, in clause 34.1, that the Authority and the Contractor shall act in good faith with respect to any potential or proposed refinancing under the new refinancing provisions introduced in October in clause 34.9; and
- removes reference, in clause 21.6.1 (a) (Termination by the Authority for Breach of the Refinancing Provisions), to the new clause 34.9.

The effect of these changes taken together is that a breach of the provisions of clause 34.9 would not of itself be viewed as a default (giving the Authority a right to terminate), but a wilful breach of the Contractor's covenant to act in good faith with respect to any proposed refinancing under clause 34.9 could be.

The amended refinancing clauses listed in the Addendum hereto show the original SoPC 4 drafting as updated to take account of both the changes made by the October letter and the changes made by this letter. The application of these further revised provisions is mandatory for all PFI projects that are still in competitive procurement (i.e. where final bids have not yet been received or the Competitive Dialogue process has not been closed) as at the date of this letter or where the terms of the funding arrangements change after the date of this letter.



For any project that closed its dialogue or received its final bid or revised the terms of its funding arrangements after 1 November 2008 (but before the date of this letter), the requirements of the October Addendum shall apply; however the relevant Department may agree to make the further amendments set out in this letter.

For all other PFI projects in procurement (those that closed their dialogue or received final bids before 1 November 2008 and where the terms of the funding arrangements have not subsequently changed) the guidance is therefore not mandatory, but adoption of the revised guidance and adherence to the principles contained in it is encouraged. Subject to applicable procurement principles, an Authority and Contractor should consider these principles in any event and the Authority should discuss their position with the Refinancing Taskforce and/or HM Treasury.

For the avoidance of doubt, it is not intended that either the October Addendum or this April Addendum would apply to those contracts signed before the issue of the October Addendum.

We continue to monitor the funding markets and the appropriateness of the refinancing provisions as solutions develop on individual projects. Authorities should be aware of the impact that changes in funding terms can have on the allocation of risks and benefits within a project. If an Authority receives a variant bank term sheet, constructed along different lines to the traditional market norm for long-term PFI transactions, they should contact HM Treasury or the Refinancing Task Force at Partnerships UK to discuss the application of these gain sharing provisions.

Should you wish to discuss the Addendum please contact me, Tom Burgess (Tel: 020 7273 4660) or the Refinancing Taskforce at Partnerships UK (Tel: 020 7273 8383).

Yours sincerely,



Cameron Matson  
PFI Financing Advisor