

## SCHEDULE 16

### REFINANCING

#### 1. Definitions

**In each part of this Schedule 16 (Refinancing) the following expressions (in addition to those specified in Schedule 1 (Definitions)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:**

<b>“EEA”</b>	from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area
<b>“Equity IRR”</b>	the projected blended real rate of return to the Relevant Persons over the full term of this Contract (including the non-interest bearing debt advanced to the Contractor under the Subordinated Financing Agreements) having regard to the Distributions made and projected to be made
<b>“Escrow Account”</b>	means the “Drawdown Account” (as such term is defined in the Common Terms Agreement);
<b>“Exempt Refinancing”</b>	<ul style="list-style-type: none"><li>(a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge;</li><li>(b) a change in taxation or change in accounting treatment;</li><li>(c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:<ul style="list-style-type: none"><li>(i) breach of representations and warranties or undertakings;</li></ul></li></ul>

- (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed);
- (iii) late or non-provision of information, consents or licences;
- (iv) amendments to Sub-Contracts;
- (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Financing Agreements as at Financial Close or as amended with the prior written approval of the Authority);
- (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements (as at Financial Close or as amended with the prior written approval of the Authority) and/or amounts released from the Escrow Account during the Initial Availability Period, each as defined in the Senior Financing Agreements (as at Financial Close or as amended with the prior written approval of the Authority) and which are given as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the agreed Construction Programme and which are notified in writing by the Contractor or the Senior

Lenders to the Authority prior to being given;

- (vii) changes to milestones for drawdown and/or amounts released from the Escrow Account during the Initial Availability Period set out in the Senior Financing Agreements (as at Financial Close or as amended with the prior written approval of the Authority) and which are given as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Lenders to the Authority prior to being given;
- (viii) failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreements (as at Financial Close or as amended with the prior written approval of the Authority); or
- (ix) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements, (as at Financial Close or as amended with the prior written approval of the Authority);

(d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Variation under this Contract;

- (e) any sale of shares in the Contractor or Holdco by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor or Holdco provided that this paragraph (e) shall, in respect of shares in Holdco, only apply so long as Holdco holds 100% of the issued share capital of the Contractor;
- (f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements; or
- (g) any Qualifying Bank Transaction

**“Initial Availability Period”** means the Availability Period (as defined in the Common Terms Agreement)

**“Margin”** has the meaning given to it in the Senior Financing Agreements as at the date immediately prior to the relevant Qualifying Refinancing

**“Margin Gain”** means an amount equal to the lower of:

- (a) the Refinancing Gain; and
- (b) the higher of:
  - (i) zero; and
  - (ii)  $D - E$

Where:

$D$  = the Net Present Value of the Distribution projected immediately prior to the Refinancing (taking into account the effect of the change to the Margin only in relation to the Refinancing and the senior debt repayment profile immediately prior to the Qualifying Refinancing and using the Sponsor Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made

to each Relevant Person over the remaining term of the Contract following the Refinancing;

E – the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Sponsor Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of the Contract following the Refinancing

**“Notifiable Financings”**

any Refinancing described in paragraphs (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting the Contractor's or any Associated Company's ability to carry out any such arrangement

**“Refinancing”**

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Agreement (other than any Subordinated Financing Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreements) or the contracts, revenues or assets of the Contractor whether by way of security or otherwise;
- (d) any other arrangement put in place by the Contractor or another person which has

	an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Contractor's ability to carry out any of (a) to (c) above; or
(e)	a prepayment of Senior Debt by the Contractor using sums advanced by the Authority in accordance with the terms of this Schedule 16
<b>"Refinancing Gain"</b>	an amount equal to the greater of zero and ((A-B)-C), where:
A =	the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Sponsor Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of this Contract following the Refinancing;
B =	the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Sponsor Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person (without double counting) over the remaining term of the Contract following the Refinancing; and
C =	any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR
<b>"Insurance Undertaking"</b>	has the meaning given in the rules from time to time of the Financial Services Authority
<b>"Pre-Refinancing Equity IRR"</b>	the nominal post-tax (that is post-tax with respect to the Contractor, pre-tax with respect to the Shareholders) Equity IRR calculated immediately prior to the Refinancing
<b>"Project Accounts"</b>	the accounts referred to in and required to be

established under the Senior Financing Agreements

**“Qualifying Bank Transaction”**

- (a) the syndication by a Senior Lender, in the ordinary course of its business, of any of its rights or interests in the Senior Financing Agreements;
- (b) the grant by a Senior Lender of any rights of participation, or the disposition by a Senior Lender of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior Financing Agreements in favour of:
  - (i) any other Senior Lender;
  - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2001/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
  - (iii) a local authority or public authority;
  - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least ten million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time);
  - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust

has (or has had at any time during the previous two years) at least 50 members and assets under management of at least ten million pounds (£10,000,000) (or its equivalent in any other currency at the relevant time);

- (vi) an EEA or Swiss Insurance Undertaking;
- (vii) a Regulated Collective Investment Scheme;
- (viii) any Qualifying Institution; or
- (ix) any other institution in respect of which the prior written consent of the Authority has been given;

(c) the grant by a Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Contractor, whether by way of security or otherwise, in favour of:

- (i) any other Senior Lender;
- (ii) any institution specified in paragraphs (b)(ii) to (vii) above;
- (iii) any Qualifying Institution; or
- (iv) any other institution in respect of which the prior written consent of the Authority has been given

**“Qualifying Institution”** has the meaning given to Qualifying Lender in the Senior Credit Agreement

**“Qualifying Refinancing”** any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing

**“Regulated Collective Investment Scheme”** has the meaning given in the rules from time to time of the Financial Services Authority.

## 2. **Requirement for Authority consent**

The Contractor shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Contractor shall at all times act in good faith with respect to (a) any Refinancing or (b) any potential or proposed Refinancing under paragraph 9 of this Schedule 16.

## 3. **Share of gain**

### 3.1 The Authority shall be entitled to receive:

3.1.1 in relation to a Qualifying Refinancing derived from limbs (a) to (d) of the definition of Refinancing:

3.1.1.1 where there is a reduction in the Margin from the Margin as shown in the Senior Financing Agreements as at the Restatement Date arising from such Qualifying Refinancing (or, in the case of a second or subsequent Qualifying Refinancing, from the Margin as shown in the immediately preceding Qualifying Refinancing) a 90% share of the Margin Gain arising from the Qualifying Refinancing;

3.1.1.2 a share of any further Refinancing Gain (arising otherwise than from a reduction in Margin) from such Qualifying Refinancing, in respect of any Refinancing Gain (when considered in aggregate with all previous Qualifying Refinancings) as follows:

- (a) for a Refinancing Gain from £1 to £1 million, a 50% share;
- (b) for a Refinancing Gain of £1 million up to £3 million, a 60% share; and
- (c) for a Refinancing Gain in excess of £3 million, a 70% share; or

3.1.2 in relation to a Qualifying Refinancing derived from limb (e) of the definition of Refinancing, a 90% share of any Refinancing Gain from such Qualifying Refinancing.

## 4. **No withholding or delay**

The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that specified in paragraph 3 of this Schedule 16.

## 5. **Contractor details**

The Contractor shall promptly provide the Authority with full details of any proposed Qualifying Refinancing (excluding Exempt Refinancings) including a copy of the proposed Financial Model relating to it (if any) and the basis for the assumptions used in the proposed Financial Model. The Authority shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any Financial Model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether a Refinancing is a Qualifying Refinancing or not).

### 5.1 **Receipt of Gain**

The Authority shall have the right to elect to receive its share of any Refinancing Gain (including any Margin Gain) as:

- 5.1.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
- 5.1.2 a reduction in the Unitary Charge over the remainder of the Contract Period; or
- 5.1.3 a combination of any of the above.

## 6. **Method of calculation**

The Authority and the Contractor will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain (including any Margin Gain) and payment of the Authority's share of the Refinancing Gain (taking into account how the Authority has elected to receive its share of the Refinancing Gain under paragraph 5.1 (Receipt of Gain)). If the Contractor and the Authority fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Authority's share, the dispute shall be determined in accordance with the Dispute Resolution Procedure.

## 7. **Costs**

The Refinancing Gain (including any Margin Gain) shall be calculated after taking into account any breakage costs necessary to facilitate the Qualifying Refinancing together with the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority will be paid to the Authority by

the Contractor within 20 Business Days of any Qualifying Refinancing. Such costs shall be allocated as between the Margin Gain (if any) and the remaining Refinancing Gain (if any) pro rata.

## 8. **Notifiable Financings**

Without prejudice to the other provisions of this Schedule, the Contractor shall:

- 8.1.1 notify the Authority of all Notifiable Financings (other than Exempt Refinancings) on becoming aware of the same and again when they are entered into and provide full details of the same; and
- 8.1.2 include a provision in the Financing Agreements (other than subordinated Refinancing Agreements) whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements (other than subordinated Refinancing Agreements).

## 9. **Authority right to request Refinancing**

### 9.1 If the Authority:

- 9.1.1 considers (acting reasonably) the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements ("**Market Refinancing**"); or
- 9.1.2 wishes to make a capital contribution to be used for the prepayment of Senior Debt ("**Authority Refinancing**"),

the Authority may by notice in writing to the Contractor, in the case of a Market Refinancing require the Contractor to request potential funders to provide terms for a potential Refinancing, or in the case of an Authority Refinancing set out its intention to make a capital contribution to the Contractor so that the Contractor can prepay some or all Senior Debt (a "**Refinancing Notice**").

### 9.2 In the case of a Market Refinancing only, the Refinancing Notice shall set out in reasonable detail the grounds upon which the Authority believes such funding terms to be available.

### 9.3 The Contractor and Authority shall meet to discuss the Refinancing Notice within 28 days of the date of such Refinancing Notice. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing or the potential Refinancing Gain from making a capital contribution (including consideration of different structures for receipt of any such capital

contribution) (as appropriate), including any changes required to the Senior Financing Agreements and any proposals for implementing the potential Refinancing. The Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten days following the meeting.

9.4 If the Authority serves a Refinancing Notice which is not withdrawn pursuant to paragraph 9.3 of this Schedule 16 (Refinancing) then the Contractor shall:

9.4.1 act promptly, diligently and in good faith with respect to the potential Refinancing;

9.4.2 in the case of a Market Refinancing, use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing, and in the case of an Authority Refinancing, consider different structures that do not change the risk of the Contractor for receipt of the relevant capital contribution and prepayment of Senior Debt (provided that in neither a Market Refinancing nor an Authority Refinancing shall the Contractor be required to propose Refinancing in a manner which a prudent board of directors of a company operating in the same business in the United Kingdom to that operated by the Contractor, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of paragraph 7 of this Schedule 16 (Refinancing); and

9.4.3 either:

9.4.3.1 as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Authority:

(i) full details of the proposed Refinancing, including a Financial Model and the basis for the assumptions used in the Financial Model and, in the case of a Market Refinancing, evidence to the reasonable satisfaction of the Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in paragraph 9.4.2 of this Schedule 16 (Refinancing) above; and

(ii) in the case of a Market Refinancing, initial drafts of any changes to this Contract including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or

9.4.3.2 if, in the case of a Market Refinancing, the Contractor (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements in accordance with the requirements of paragraph 9.4.2 provide evidence to the reasonable satisfaction of the Authority for such belief and evidence to the reasonable satisfaction of the Authority that the Contractor has complied with its obligations in paragraphs 9.4.1 and 9.4.2 of this Schedule 16 (Refinancing).

9.5 Following receipt of the information referred to in paragraph 9.4.3.1 of this Schedule 16 (Refinancing), the Authority shall (in its absolute discretion) either:

- 9.5.1 instruct the Contractor to implement the proposed Refinancing; or
- 9.5.2 instruct the Contractor to discontinue the proposed Refinancing,

provided that if the Authority reasonably considers that the requirements of paragraph 9.4.3.1 of this Schedule 16 (Refinancing) have not been satisfied, the Authority may require the Contractor to satisfy its obligations under paragraph 9.4.3.1 of this Schedule 16 (Refinancing) whereupon the provisions of paragraphs 9.4 and 9.5 of this Schedule 16 (Refinancing) shall apply as if the Authority had served a Refinancing Notice.

9.6 If the Authority instructs the Contractor to implement the proposed Refinancing in the case of an Authority Refinancing, paragraph 9.7 of this Schedule 16 shall only apply if the Authority:

- 9.6.1 confirms in writing the amount of the capital contribution it shall make available to the Contractor;
- 9.6.2 confirms in writing the date on which it shall make the capital contribution available to the Contractor in cleared funds; and
- 9.6.3 provides an indemnity to the Contractor, in a form satisfactory to the Contractor (acting reasonably), against any losses the Contractor might suffer as a result of complying with paragraph 9.7 of this Schedule 16, and the Authority not making the capital contribution on the date and in the amount set out in paragraphs 9.6.1 and 9.6.2 of this Schedule 16.

9.7 If the Authority instructs the Contractor to implement the proposed Refinancing:

- 9.7.1 in the case of a Market Refinancing, the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;

9.7.2 in the case of an Authority Refinancing, the Authority shall pay the capital contribution to the Contractor on the date and in the amount set out in paragraphs 9.6.1 and 9.6.2 of this Schedule 16;

9.7.3 on receipt of the capital contribution from the Authority in accordance with paragraph 9.7.2 of this Schedule 16, the Contractor shall promptly apply all amounts so provided in prepayment of the Senior Debt and all break costs or other costs the Contractor reasonably incurs in connection with the prepayment (including any costs the Contractor is obliged to meet under the Senior Financing Agreements to permit such prepayment, less any income to the Contractor from terminating hedging arrangements as required under the Senior Financing Agreements to permit such prepayment);

9.7.4 such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and

9.7.5 the provisions of paragraphs 1 to 8 of this Schedule 16 (Refinancing) shall apply.

9.8 If:

9.8.1 the Authority instructs the Contractor to discontinue the potential Refinancing pursuant to paragraph 9.5.2 of this Schedule 16 (Refinancing); or

9.8.2 the requirements of paragraph 9.4.3.2 of this Schedule 16 (Refinancing) are satisfied,

then the Authority shall reimburse the Contractor for the reasonable and proper professional costs incurred by the Contractor in relation to the potential Refinancing, such costs to be paid to the Contractor by the Authority within 28 days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Contractor except insofar as (a) it can be demonstrated to the reasonable satisfaction of the Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (b) the Authority has, by prior written agreement, approved the use of such internal management resource.

9.9 The Authority shall be entitled to issue a Refinancing Notice under paragraph 9.1 of this Schedule 16 (Refinancing) at any time but not more than once in any two year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under paragraph 9.2 of this Schedule 16 (Refinancing) has been issued for the purpose of this paragraph 9.7.