

Schedule 12

Refinancing

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1 Definitions

1.1 In each of part of this Schedule 12 the following expression (in addition to those specified in Schedule 1 (Definitions, Interpretations and Construction)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, the following meanings:

EEA means 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

Equity IRR means the projected blended rate of return to the Relevant Persons over the full term of this Contract, having regard to Distributions made and projected to be made

Exempt Refinancing means:

- (a) any Refinancing that was fully taken into account in the calculation of the Unitary Charge;
- (b) a change in taxation or change in accounting treatment;
- (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:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements as at Financial Close;
 - (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);
 - (vi) restrictions imposed by the Senior Lenders on the dates at which the Senior Debt can be advanced to the Service Provider under the Senior Financing Agreements and/or amounts released from the [Escrow Account] during [the Initial Availability Period] (each defined in the Senior Financing

Agreements) and which are given as a result of any failure by the Service Provider to ensure that the installation works are performed in accordance with the agreed programme and which is notified in writing by the Service Provider 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] (as defined in the Senior Financing Agreements) and which are given as a result of any failure by the Service Provider to ensure that installation works are performed in accordance with the agreed programme and which is notified in writing by the Service Provider or the Senior Lenders to the Authority prior to being given;
 - (viii) failure by the Service Provider to obtain any consent by statutory bodies required by the Senior Financing Agreements; 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;
- (d) any amendment, variation or supplement of any agreement approved by the Authority as a result of a Qualifying Variation under this Contract;
 - (e) any sale of shares in the Service Provider [or Holdco] by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the Service Provider [or Holdco provided that this paragraph (e) shall, in respect of shares in Holdco, only apply for so long as Holdco holds one hundred per cent (100%) of the issued share capital of the Service Provider];
 - (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

Insurance Undertaking has the meaning given in the rules from time to time of the Financial Services Authority

Notifiable Financings shall mean any Refinancing described in paragraph (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 Service Provider's or any Associated Company's ability to carry out any such arrangement described in paragraphs (a) or (c)

Pre-Refinancing Equity IRR means the nominal post-tax (i.e. post-tax with respect to the Service Provider, pre-tax with respect to the Shareholders) Equity IRR calculated immediately prior to the Refinancing

Project Accounts means accounts referred to in and required to be established under the Senior Financing Agreements

Qualifying Bank Transaction means:

- (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)), 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 (2) 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 (2) years) at least fifty (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; or
 - (viii) any other institution in respect of which the prior written consent of the Authority has been given; and/or
- (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 Service Provider [or Holdco], whether by way of security or otherwise, in favour of:

- (i) any other Senior Lender;
- (ii) any institution specified in paragraphs (b)(ii) to (b)(vii);
- (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 means [*Bidders to propose if required and any proposals must detail specific parties/institutions*]

Qualifying Refinancing means 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

- 1.2 The Service Provider shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Service Provider shall, at all times, act in good faith with respect to any Refinancing.
- 1.3 The Authority shall be entitled to receive a fifty per cent (50%) share of any Refinancing Gain arising from a Qualifying Refinancing.
- 1.4 The Authority shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater than fifty per cent (50%) share of the Refinancing Gain.
- 1.5 The Service Provider shall promptly provide the Authority with full details of any proposed Qualifying Refinancing, 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 the Refinancing (whether that Refinancing is a Qualifying Refinancing or not).
- 1.6 Without prejudice to the other provisions of this paragraph 1, the Service Provider shall:
 - (a) notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
 - (b) include a provision in the Financing Agreements whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements.

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- 1.7 The Authority shall have the right to elect to receive its share of any Refinancing Gain as:
- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
 - (b) a reduction in the Unitary Charge over the remainder of the Contract Period; or
 - (c) a combination of any of the above.
- 1.8 The Authority and the Service Provider shall negotiate in good faith to agree the basis and method of calculation of the Refinancing 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 1.7). If the parties 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.
- 1.9 The Refinancing Gain shall be calculated after taking into account 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 shall be paid to the Authority by the Service Provider within twenty (20) Business Days of any Qualifying Refinancing.
- 1.10 Without prejudice to the other provisions of this Schedule 12, the Contractor shall:
- (a) notify the Authority of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and
 - (b) include a provision in the Financing Agreements whereby it is entitled to be informed of any proposals which the Senior Lenders may have to refinance the Financing Agreements.