

**EXECUTION VERSION**

**COMMON TERMS AGREEMENT**

**20 AUGUST 2015**

**Between**

**WODS TRANSMISSION HOLDCO LTD  
as HoldCo**

**WODS TRANSMISSION PLC  
as the OFTO**

**HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED  
as Bond Trustee and as Security Trustee**

**THE EUROPEAN INVESTMENT BANK  
as the PBCE Provider**

**HSBC BANK PLC  
as Principal Paying Agent**

**HSBC BANK PLC  
as Account Bank**

**and**

**ABBAY NATIONAL TREASURY SERVICES PLC, LLOYDS BANK PLC AND ROYAL BANK OF  
CANADA  
as Initial Hedge Counterparties**

**ALLEN & OVERY**

**Allen & Overy LLP**

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**THIS AGREEMENT** is made on 20 August 2015

**BETWEEN:**

- (1) **WODS TRANSMISSION HOLDCO LTD**, a company incorporated in England and Wales (registered number 9308464) and having its registered office at The American Barns Banbury Road, Lighthorne, Warwickshire CV35 0AE (**HoldCo**);
- (2) **WODS TRANSMISSION PLC**, a public limited company incorporated in England and Wales (registered number 9309507) and having its registered office at The American Barns Banbury Road, Lighthorne, Warwickshire CV35 0AE (**the OFTO**);
- (3) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as bond trustee for the Bondholders (**the Bond Trustee**);
- (4) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as security trustee for the Secured Creditors (**the Security Trustee**);
- (5) **THE EUROPEAN INVESTMENT BANK** as creditor in respect of the PBCE Letter of Credit and Reimbursement Deed (**the PBCE Provider**);
- (6) **HSBC BANK PLC** as paying agent in London (**the Principal Paying Agent**);
- (7) **HSBC BANK PLC** as account bank under the Account Bank Agreement (**the Account Bank**); and
- (8) **ABBEY NATIONAL TREASURY SERVICES PLC, LLOYDS BANK PLC AND ROYAL BANK OF CANADA** as initial hedge counterparties pursuant to the Hedging Agreements (**the Initial Hedge Counterparties**).

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

Terms defined in the master definitions agreement dated on the date of this Agreement and made between, among others, the parties to this Agreement (**the Master Definitions Agreement**) have the same meaning when used in this Agreement unless otherwise expressly defined in this Agreement.

**1.2 Construction**

The provisions contained in part 2 (Construction) of schedule 1 (Common Definitions) of the Master Definitions Agreement apply to this Agreement as though set out in full in this Agreement.

**1.3 Finance Document definitions**

- (a) Each Finance Document in effect on the Initial Issue Date (other than the Master Definitions Agreement) will, with effect from the Initial Issue Date, and each other Finance Document (other than the Master Definitions Agreement) will, from the date upon which that Finance Document becomes effective (and for so long in each case as the Master Definitions Agreement is in force), be supplemented by incorporation of the definitions and principles of interpretation and construction contained in schedule 1 (Common Definitions) of the Master Definitions Agreement and to the extent that such definitions or principles of interpretation and construction are inconsistent with the definitions or principles of interpretation or construction set out in a Finance Document other than in

respect of the PBCE Letter of Credit and Reimbursement Deed and the PBCE Letter of Credit, the relevant terms and expressions or the principles of interpretation or construction will have the meanings given to them in schedule 1 (Common Definitions) of the Master Definitions Agreement.

- (b) Where any term or provision of this Agreement or the Security Trust and Intercreditor Deed is expressly or impliedly incorporated into a Finance Document, each such term or provision shall be construed in accordance with the Master Definitions Agreement.

## **2. STID**

Each Party acknowledges the arrangements which have been entered into pursuant to the terms of the STID and agrees that:

- (a) all actions to be taken, discretions to be exercised and other rights vested in the Finance Parties under the terms of the Finance Documents will only be exercisable as provided in or permitted by the STID; and
- (b) no Obligor will be obliged to monitor or enquire whether any of the other Finance Parties or the OFTO is complying or has complied with the terms of the STID; and
- (c) any Finance Document entered into by it will be subject to the terms of the STID.

## **3. CONDITIONS PRECEDENT**

Neither the Initial Issue Date nor the issuance of the PBCE Letter of Credit will occur until the Security Trustee (having received written confirmation from the PBCE Provider, the Hedge Counterparties and the Bookrunners of the same) has notified the OFTO and the other Secured Creditors that all conditions precedent to the Initial Issue Date and the issuance of the PBCE Letter of Credit have been received by each of the PBCE Provider, the Hedge Counterparties and the Bookrunners in form and substance satisfactory to them or waived by them.

## **4. REPRESENTATIONS**

### **4.1 Representations**

The representations set out in Schedule 1 (Obligor Representations) are made severally by each Obligor in respect of itself only to each Finance Party.

### **4.2 Times for making representations**

- (a) The representations set out in Schedule 1 (Obligor Representations) are made by the relevant Obligor on the date of this Agreement and the Initial Issue Date.
- (b) Each Initial Date Representation is deemed to be repeated by the relevant Obligor on the date upon which any Further Bonds are created and issued to finance all or part of any Additional Capacity Adjustment Investment as required by the OFTO Licence in accordance with the provisions of the Finance Documents subject to such carve outs, disclosures and/or disapplications in respect of any such Initial Date Representation as may be agreed between the Obligors and the Security Trustee.
- (c) Each Repeating Representation is deemed to be repeated by the relevant Obligor on each Payment Date.

- (d) The representations in Paragraphs 16 (Forecast), 18.2 (Written Information) and 18.3 (No Material Facts Undisclosed) of Schedule 1 (Obligor Representations) are deemed to be repeated by the relevant Obligor whenever such new information thereunder is provided.
- (e) When a representation is repeated, it is applied to the facts and circumstances existing at the time of repetition and repeated by reference to the facts and circumstances then existing.

## **5. COVENANTS**

Each Obligor (as applicable) agrees to be bound by the covenants set out in each part of Schedule 2 (Obligor Covenants) relating to it.

## **6. EVENTS OF DEFAULT**

### **6.1 Events of Default**

- (a) Each of the events set out in Schedule 3 (Events of Default) is an Event of Default.
- (b) If an Event of Default or Potential Event of Default occurs, any Obligor becoming aware thereof will notify the Security Trustee (that is in form and content accepted by Euroclear and/or Clearstream, Luxembourg) for onward transmission to the other Secured Creditors by the following means (x) in respect of the Bondholders, by email to the Principal Paying Agent for distribution to the Bondholders via Euroclear and/or Clearstream, Luxembourg; and (y) in respect of each other Secured Creditor, by email, of that Event of Default or Potential Event of Default and of any steps being taken to remedy that Event of Default or Potential Event of Default.

### **6.2 Consequences of an Event of Default and delivery of an Enforcement Notice**

Subject to Paragraph 6.3 (Third Party Event Remediation Plan), at any time after the delivery of an Enforcement Notice and subject always to the provision of the STID with respect to the taking of any Enforcement Action:

- (a) the Security Trustee will be entitled by notice to the Obligors to enforce any guarantee or security for the OFTO's obligations to the Secured Creditors or the Obligors' obligations under the Security Documents; and
- (b) each Finance Party including the Security Trustee may, subject to the provisions of the relevant Authorised Credit Facility to which it is a party and subject to the provisions of the STID:
  - (i) declare any amount outstanding under the Finance Documents to be immediately due and payable, whereupon it shall become immediately due and payable;
  - (ii) take any other Enforcement Action other than those required to be taken by the Security Trustee in accordance with the STID; and/or
  - (iii) exercise or direct the relevant Representative of any Secured Creditor or the Security Trustee to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

### 6.3 Third Party Event Remediation Plan

- (a) Following the occurrence of an Event of Default arising under any of Paragraph 3 (Breach of Other Obligations) (in relation to a breach of Paragraphs 1 (Authorisations), 2 (Compliance with laws and regulation), 3 (Environmental Matters), 9(a) (Operation and Maintenance) or 9(c) (Operation and Maintenance) only) of Part 3 of Schedule 2 (Obligor Covenants) and Paragraphs 12(c) (Transaction Authorisations), 15 (Material Proceedings) and 19 (Insurance) of Schedule 3 (Events of Default) directly as a result of the occurrence of a Third Party Event which is capable of remedy and which has not arisen or is continuing as a result of any failure by the OFTO to perform any of its obligations under the Finance Documents or Project Documents which are within its control (a "Remediable Event"), the OFTO may elect to provide the Security Trustee with a remediation plan, and if it so elects shall provide (i) a preliminary remediation plan within 20 Business Days and (ii) a final remediation plan (such final remediation plan, a "Third Party Event Remediation Plan") within 40 Business Days, in each case of the occurrence of such Remediable Event which demonstrates:
- (i) that the Event of Default has arisen directly as a result of the occurrence of a Third Party Event which is capable of remedy and which has neither arisen nor is continuing as a result of any failure by the OFTO to perform any of its other obligations under the Finance Documents or Project Documents which are within its control;
  - (ii) that the OFTO is capable of:
    - (A) curing the relevant Event of Default or correcting or repairing the events or circumstances giving rise to it leading to the outage of the asset as relevant within 6 months of the date of approval of the Third Party Event Remediation Plan;
    - (B) continuing the operation of the Transmission Assets as a going concern; and
    - (C) repaying all Secured Liabilities by their respective Final Maturity Dates in accordance with the relevant Authorised Credit Facility; and
  - (iii) that the OFTO is not and will not be in material breach of its obligations under the OFTO Licence or the Leases and that the OFTO Licence would not be revoked as a result of the event;
  - (iv) the extent to which the relevant Third Party Event constitutes an Insurable Event or an Income Adjusting Event and otherwise entitles the OFTO to receive any Insurance Proceeds, Compensation or any other payment from the Authority, insurer or any other third party and the time at or by which any such payment will be received; and
  - (v) that, taking into account any payment and timing referred to in paragraph (iv), the OFTO is capable of complying, and is expected to comply with, the Finance Documents such that the relevant Event of Default is remedied and the consequences of such Event of Default removed,

together, in respect of the Third Party Event Remediation Plan, with a report or reports prepared by appropriately qualified and experienced Independent Expert(s) nominated by the OFTO after having consulted with the PBCE Provider, the Technical Adviser and/or the Insurance Adviser (as applicable) with regards to the suitability of such Independent Expert(s)) confirming its (or their) agreement with and supporting evidence for the matters set out in the Third Party Event Remediation Plan including the core proposals, assumptions made and those in relation to paragraph (i) to (iv)

above, and which is accompanied by a Forecast prepared as at such date which demonstrates the Debt Life Cover Ratio and the Projected DSCR,.

- (b) The Security Trustee (acting in accordance with the STID) must either approve or reject the Third Party Event Remediation Plan (including its underlying assumptions) and the Independent Expert reports within 22 Business Days of receiving them. If the Security Trustee neither approves nor rejects the Third Party Event Remediation Plan within this period, it shall be deemed to have approved the Third Party Event Remediation Plan and Independent Expert report.
- (c) Following the submission of the Third Party Event Remediation Plan and Independent Expert report(s) in accordance with (a) above, the Security Trustee may only serve an Enforcement Notice in accordance with Clause 6.2 (Consequences of an Event of Default and delivery of an Enforcement Notice) if:
  - (i) the Security Trustee rejects a Third Party Event Remediation Plan and Independent Expert report(s) from the OFTO within 62 Business Days from the occurrence of the Third Party Event;
  - (ii) the OFTO fails to implement the agreed Third Party Event Remediation Plan to the satisfaction of the Security Trustee in accordance with the STID (acting on the advice of the Technical Adviser and the Insurance Adviser);
  - (iii) the circumstances which resulted in the Remediable Event and its consequences have not been remedied within 6 months of the date of approval of the Third Party Event Remediation Plan; or
  - (iv) any payment referred to under paragraph (a)(iv) is not received by the date expected or any claim for such payment is rejected in whole or part by the Authority, insurers or relevant other party or the Authority declines to recognise, or rejects, the event as an Income Adjusting Event.

## **7. OFTO AS AGENT OF HOLDCO**

- (a) HoldCo by its execution of this Agreement irrevocably appoints the OFTO to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
  - (i) the OFTO on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by HoldCo notwithstanding that they may affect HoldCo, without further reference to or the consent of HoldCo; and
  - (ii) each Finance Party to give any notice, demand or other communication to it pursuant to the Finance Documents to the OFTO,

and in each case HoldCo shall be bound as though it had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the OFTO or given to the OFTO under any Finance Document or in connection with any Finance Document shall be binding for all purposes on HoldCo as if HoldCo had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the OFTO and HoldCo, those of the OFTO shall prevail.

## **8. THE ADMINISTRATIVE PARTIES**

### **8.1 No fiduciary duties**

Nothing in the Finance Documents makes an Administrative Party (other than the Bond Trustee and the Security Trustee) a trustee or fiduciary for any other Party or any other person. No Administrative Party (other than the Bond Trustee and the Security Trustee) need hold in trust any moneys paid to it for a Party or (other than the Account Bank) be liable to account for interest on those moneys.

### **8.2 Individual position of an Administrative Party**

- (a) If it is also an Authorised Credit Provider, each Administrative Party has the same rights and powers under the Finance Documents as any other provider of financial accommodation and may exercise those rights and powers as though it were not an Administrative Party.
- (b) Each Administrative Party may:
  - (i) carry on any business with any Obligor or their respective related entities (including acting as an agent or a trustee for any other financing); and
  - (ii) retain any profits or remuneration it receives under the Finance Documents or in relation to any other business it carries on with any Obligor or its related entities.

### **8.3 Consent of the Security Trustee**

In providing its consent or making a determination hereunder the Security Trustee shall take instructions from the Secured Creditors to the extent required or permitted and in each case in the manner set out in the STID.

## **9. EVIDENCE AND DETERMINATIONS**

### **9.1 Accounts**

Accounts maintained by a Finance Party in connection with the Finance Documents are *prima facie* evidence of the matters to which they relate for the purpose of any litigation or arbitration proceedings.

### **9.2 Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under the Finance Documents will be, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **10. INDEMNITIES AND ENFORCEABILITY**

### **10.1 Currency indemnity**

- (a) The OFTO shall, as an independent obligation, within three Business Days of written demand indemnify each Finance Party against any cost, loss or liability which that Finance Party properly incurs as a consequence of:
  - (i) that Finance Party receiving an amount in respect of the OFTO's liability under the Finance Documents; or



(ii) that liability being converted into a claim, proof, judgment or order,

in a currency other than the currency in which the amount is expressed to be payable under the relevant Finance Document.

(b) Unless otherwise required by law, the OFTO waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency other than that in which it is expressed to be payable.

## **10.2 Other indemnities**

(a) The OFTO shall within 3 Business Days of written demand indemnify each Finance Party against any cost, loss or liability which that Finance Party incurs as a consequence of:

(i) the occurrence of any Event of Default;

(ii) any failure by the OFTO to pay any amount due under a Finance Document on its due date, including, any cost, loss or liability resulting from any distribution or redistribution of any amount among the Finance Parties under this Agreement or any other Finance Document; or

(iii) any financial accommodation provided to the OFTO not being prepaid in accordance with a notice of prepayment or any omission or action (other than of or by that Finance Party or any Finance Party Relevant Party) in connection with the offering, issue, sale, marketing, remarketing or delivery of the Bonds.

(b) The OFTO shall within 3 Business Days of written demand indemnify the PBCE Provider against any cost, loss or liability which the PBCE Provider incurs as a consequence of investigating any event which the PBCE Provider reasonably and in good faith believes to be a breach of Clause 2 (Representations, Warranties and Covenants) of the PBCE Letter of Credit and Reimbursement Deed, provided that (i) the PBCE Provider shall discuss the suspected breach with the OFTO prior to incurring any third party costs or liabilities (ii) the PBCE Provider shall inform the OFTO prior to incurring any third party costs or liabilities, (iii) the OFTO shall only be liable for any reasonable third party costs or liabilities incurred by the PBCE Provider and (iv) the OFTO shall not be responsible for any cost in respect of any management time or other internal costs incurred by the PBCE Provider.

The OFTO's liability in each case includes any loss or expense on account of funds borrowed, contracted for or utilised to fund any amount payable under any Finance Document, any amount repaid or prepaid or any relevant financial accommodation.

(c) Without prejudice to any indemnity contained in any other Finance Document, the OFTO shall within three Business Days of written demand indemnify the Security Trustee, each Receiver and Delegate against any loss or liability incurred by the Security Trustee, Receiver and Delegate as a result of:

(i) investigating any event which the Security Trustee reasonably believes to be a Default; or

(ii) acting or relying on any notice, which the Security Trustee reasonably believes to be genuine, correct and appropriately authorised.

(d) No Finance Party shall have any duty or other obligation, whether as fiduciary or trustee for any Finance Party Relevant Party or otherwise, to recover any such payment or to account to any other person for any amounts paid to it under this Clause 10.

- (e) No Finance Party shall be obliged to pursue first any recovery or seek reimbursement under any other indemnity or reimbursement obligation before seeking recovery under the indemnification and reimbursement obligations of the OFTO under this Agreement or any other of the Transaction Documents.
- (f) Each of the indemnities set out in this Agreement shall be a continuing indemnity and shall:
  - (i) extend to any and all sums and liabilities which are or may become due and payable to a Finance Party and/or any Finance Party Relevant Party under the Transaction Documents; and
  - (ii) continue in force notwithstanding any intermediate payment in whole or in part of the sums and liabilities which are or may become owing to a Finance Party under the Transaction Documents.
- (g) The OFTO agrees to reimburse a Finance Party (in the currency in which incurred by that Finance Party) for any losses which that Finance Party or any Finance Party Relevant Party may pay or incur in connection with investigating, disputing or defending any reasonable action or reasonable claim arising as a result of, or in connection with, any of the matters referred to in Clause 10.2(a) unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Finance Party Relevant Party.

## 11. ENFORCEMENT COSTS

The OFTO must within 3 Business Days of demand pay to each Finance Party the amount of all costs and expenses (including legal fees) properly incurred by such Finance Party (and, in the case of the STID, any Receiver or Delegate) in connection with the enforcement of, or the preservation of, any rights under any Finance Document.

## 12. VAT

### 12.1 Sums payable exclusive of VAT

Any sum set out in any Finance Document as payable, or otherwise payable pursuant to a Finance Document, shall be deemed to be exclusive of any VAT which is or becomes chargeable on any supply or supplies for which that sum (or any part thereof) is the whole or part of the consideration for VAT purposes.

### 12.2 Payment of amounts in respect of VAT

Where:

- (a) any person that is a party to any Finance Document (such person, being the **Supplier** for the purposes of this Clause 12) makes a supply to another person that is also a party to that Finance Document (such person being the **Recipient** in relation to that supply for the purposes of this Clause 12) for VAT purposes pursuant to that Finance Document;
- (b) the Supplier is required to account to any relevant Tax Authority for any VAT chargeable on that supply,

the Recipient shall pay to the Supplier an additional amount equal to that VAT, such additional amount to be paid at the same time as paying any other consideration for that supply, save that where the consideration for that supply does not consist of, or wholly of, money, such amount shall be paid no later than five (5) Business Days before the last day on

which the Supplier can account to the relevant Tax Authority for the VAT due in respect of that supply without incurring interest or penalties and the Supplier shall (in either case) provide the Recipient with a valid VAT invoice in respect of that supply.

(c)

### **12.3 Costs and expenses**

References in any Finance Document to any fee, cost, loss, disbursement, commission, damages, expense, charge or other liability incurred by any person that is a party to that Finance Document and in respect of which such person is to be reimbursed or indemnified by any other person under the terms of, or the amount of which is to be taken into account in any calculation or computation set out in, any Finance Document shall include such part of such fee, cost, loss, disbursement, commission, damages, expense, charge or other liability as represents any VAT and also any VAT for which such first person is required to account to the relevant Tax Authority under any reverse charge regime or regime applicable to acquisitions for VAT purposes in relation to such fee, cost, loss, disbursement, commission, damages, expense, charge or other liability, but (in each such case) only to the extent that such first person is not entitled to a refund (by way of credit or repayment) in respect of such VAT from any relevant Tax Authority.

## **13. AMENDMENTS AND WAIVERS**

### **13.1 Change of currency**

If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognised at the same time as the lawful currency of a country), the Finance Documents will be amended to the extent the relevant parties, or in the case of the Common Documents, the Security Trustee determines in accordance with the STID Decision Making Protocol is necessary to reflect the change.

### **13.2 Waivers and remedies cumulative**

- (a) The rights of each Finance Party under the Finance Documents:
- (i) are subject to the provisions of the STID;
  - (ii) may be exercised as often as necessary;
  - (iii) are cumulative and not exclusive of its rights under the general law; and
  - (iv) may be waived only in writing and specifically.
- (b) Delay in exercising or non-exercise of any right or remedy (other than failure to vote within the period permitted) is not a waiver of that right or remedy. Any single or partial exercise of any right or remedy shall not prevent any further or other exercise thereof or the existence of any other right or remedy.

## **14. DISCLOSURE OF INFORMATION**

- (a) A Finance Party may disclose:
- (i) to any of its Affiliates and any of its officers, directors, employees, professional advisers, auditors and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given

pursuant to this Clause 14(a)(i) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by a requirement of confidentiality in relation to the Confidential Information;

(ii) to any person:

- (A) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Representatives and professional advisers;
- (B) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that persons' Affiliates, Representatives and professional advisers;
- (C) appointed by any Finance Party or by a person to whom Clauses 14(a)(ii)(A) or 14(a)(ii)(B) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (D) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clauses 14(a)(ii)(A) or 14(a)(ii)(B) above;
- (E) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, or by any equivalent body of the European Union or any of its member states, the rules of any relevant Stock Exchange or pursuant to any applicable law or regulation;
- (F) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes; or
- (G) in connection with any credit enhancement, risk asset relief, participation, potential securitisation (whether of a true sale, synthetic or other nature) or transaction with a broadly equivalent effect provided that, prior to launching the public or private offering of any securities as part of any such transaction, if the relevant Secured Debt constitutes 10 per cent. or more of the value of such offering, the relevant Finance Party seeking to undertake such transaction gives written notice to the Obligors of its intention to effect such offering at least ten Business Days prior to the commencement of any such offering to potential investors, and the relevant Finance Party shall not be permitted to make any disclosure in connection therewith without the prior written consent of the Obligors if, within such ten Business Day period, the Obligors notify such Finance Party in writing that an Obligor is or will be marketing an issuance of securities at that time, in which case no such disclosure shall be made by such Finance Party without such consent until the relevant Obligor has either completed the

issuance of its own securities or has notified the relevant Finance Party that it has ceased to be marketing the relevant securities;

(H) with the consent of the OFTO;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- I. in relation to Clauses 14(a)(ii)(A), 14(a)(ii)(B) and 14(a)(ii)(C) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- II. in relation to Clause 14(a)(ii)(D), the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- III. in relation to Clauses 14(a)(ii)(E) and 14(a)(ii)(F) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

(iii) to any person appointed by that Finance Party or by a person to whom Clauses 14(a)(ii)(A) and 14(a)(ii)(B) apply to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this Clause 14(a)(iii) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement in the form agreed between the OFTO and the relevant Finance Party; and

(iv) to any Rating Agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the Rating Agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

(b) Without prejudice to Clause 14(a) above, the PBCE Provider may also use and/or disclose such Confidential Information as it considers appropriate in each case, and shall not be in breach of its duty of confidentiality by making such use of disclosure thereof:

(i) if required by law or regulation, in accordance with any treaty or document of a similar nature binding on the PBCE Provider or pursuant to any agreement to which the PBCE Provider is a party which implements such law, regulation, treaty or binding document of a similar nature;

(ii) to the European Commission, the European Court of Auditors, and/or the European Anti-Fraud Office (OLAF);

- (iii) to member states of the European Union (including their representatives) or committees set up by the European Commission and/or member states under any mandate under which the recipient operates, in order to obtain any opinion, consent, or waiver required in connection with the financing of the Project;
  - (iv) in order to protect its interests in the course of any legal or arbitration proceedings to which an Obligor, on the one hand, and the PBCE Provider are a party; or
  - (v) in accordance with the PBCE Provider's Transparency Policy and Anti-fraud Policy (as published on the PBCE Provider's website).
- (c) This Clause 14 supersedes any previous confidentiality undertaking given by a Finance Party in connection with this Agreement prior to it becoming a Party.
- (d) Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.
- (e) Each of the Finance Parties agrees (to the extent permitted by law, regulation, policy and statute of the PBCE Provider) to inform the OFTO:
- (i) of the circumstances of any disclosure of Confidential Information made pursuant to Clause 14(a)(ii)(E) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 14 (*Disclosure of Information*).
- (f) The obligations in this Clause 14 (*Disclosure of Information*) are continuing and, in particular, shall survive and remain binding on each Finance Party until the earlier of:
- (i) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full; and
  - (ii) twelve months from the date on which such Finance Party otherwise ceases to be a Finance Party.

## 15. SEVERABILITY

If a term of a Finance Document is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of such Finance Document or any other Finance Document; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of such Finance Document.

## 16. COUNTERPARTS AND CERTIFICATES

- (a) Each Finance Document may be executed manually or by facsimile in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

- (b) Any certificate required under the Finance Documents to be executed by an officer or director of a Party shall be executed in the capacity as such officer or director (as applicable) and not in the signatory's personal capacity.

## **17. NOTICES**

### **17.1 In writing**

- (a) Any communication must be in writing and, unless otherwise stated in the relevant Finance Document, may be given in person, by post, fax, or email or any other electronic communication approved by the Security Trustee.
- (b) Notwithstanding Clause 17.1(a), all notices or communications to be delivered to the PBCE Provider pursuant to the Finance Documents shall be delivered by way of fax or letter.
- (c) For the purposes of the Finance Documents, an email or any other electronic communication will be treated as being in writing.
- (d) Unless it is agreed to the contrary, any consent or agreement required under a Finance Document must be given in writing.

### **17.2 Contact details**

- (a) Except as provided below, the contact details of each Party for all communications in connection with the Finance Documents are those notified by that Party for this purpose to the Security Trustee on or before the date it becomes a Party.
- (b) The contact details of the Security Trustee for this purpose are:

Address: 8 Canada Square  
Level 27  
London E14 5HQ  
United Kingdom

Fax: +44 (0) 20 7991 4350  
Attention: CTLA Trustee Services Administration  
Email: [ctla.trustee.admin@hsbc.com](mailto:ctla.trustee.admin@hsbc.com)

- (c) The contact details of the Bond Trustee for this purpose are:

Address: 8 Canada Square  
Level 27  
London E14 5HQ  
United Kingdom

Fax: +44 (0) 20 7991 4350  
Attention: CTLA Trustee Services Administration  
Email: [ctla.trustee.admin@hsbc.com](mailto:ctla.trustee.admin@hsbc.com)

(d) The contact details of the OFTO for this purpose are:

Address: WODS Transmission Plc  
The American Barns  
Banbury Road  
Lighthorne  
Warwickshire CV35 0AE

Fax: 01926 350061

Attention: Humza Malik, CEO of Frontier Power  
Email: humza.malik@frontierpower.biz

(e) The contact details of HoldCo for this purpose are:

Address: WODS Transmission Holdco Ltd  
The American Barns  
Banbury Road  
Lighthorne  
Warwickshire CV35 0AE

Fax: 01926 350061

Attention: Humza Malik, CEO of Frontier Power  
Email: humza.malik@frontierpower.biz



(f) The contact details of the Initial Hedge Counterparties for this purpose are:

In respect of Abbey National Treasury Services plc:

Address: 2 Triton Square, Regent's Place, London, NW1 3AN  
Facsimile: +44 (0)8456 042836  
Telephone: +44 (0)20 7756 5601 (for information only)  
Attention: Head of Operations  
Email: ISDA-Notices@santandergbm.com (for information only)

With a copy to the following address:

Address: 2 Triton Square, Regent's Place, London, NW1 3AN  
Facsimile: +44 (0)8456 091746  
Telephone: +44 (0)20 7756 4735 (for information only)  
Attention: Legal Manager of Wholesale Markets Legal

In respect of Lloyds Bank plc:

Address: Lloyds Bank plc  
Faryners House  
25, Monument Street  
London  
EC3R 8BQ

Attention: Commercial Banking  
Facsimile No: 020 7158 3298  
Telephone No: 020 7158 6170  
email: notices@lloydsbanking.com

copied to:

Address: Lloyds Bank plc  
10 Gresham Street  
London  
EC2V 7AE

Attention: Head of Legal, Commercial Banking Legal, Markets

In respect of Royal Bank of Canada:

Address: Royal Bank of Canada  
2nd Floor  
Royal Bank Plaza  
200 Bay Street  
Toronto, Ontario CANADA M5J 2W7

Fax: (416) 842-4334  
Attention: Managing Director, GRM Trading Credit Risk

(g) The contact details of the PBCE Provider for this purpose are:

Address: European Investment Bank  
98-100 Boulevard Konrad Adenaur  
L-2950 Luxembourg  
Fax: +352 4379 67397 and +352 4379 69394  
Attention: psA/NPST/1-NPPD-TENsINFRA and TMR/-/PPF

(h) The contact details of the Account Bank for this purpose are:

Address: 8 Canada Square  
Level 27  
London E14 5HQ  
United Kingdom  
Fax: +44 (0) 84 5587 0429  
Attention: Senior Manager, CT Client Services, Corporate Trust and Loan Agency  
Email: ctla.accountbank@hsbc.com

(i) The contact details of the Principal Paying Agent for this purpose are:

Address: 8 Canada Square  
Level 27  
London E14 5HQ  
United Kingdom  
Fax: +44 (0) 84 5587 0429  
Attention: Senior Manager, CT Client Services, Corporate Trust and Loan Agency  
Email: ctla.payingagency@hsbc.com

(j) Any Party may change its contact details by giving at least five (5) Business Days' notice to the Security Trustee or (in the case of the Security Trustee) to the other Parties.

(k) Where a Party nominates a particular department or officer to receive a communication, a communication will not be effective if it fails to specify that department or officer.

(l) Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 17.2(j) above, or changing its own address or fax number, the Security Trustee shall notify the other Parties.

### **17.3 Effectiveness**

- (a) Except as provided below, any communication in connection with a Finance Document will be deemed to be given as follows:
  - (i) if delivered in person, at the time of delivery;
  - (ii) if posted, five days after being deposited in the post, postage prepaid, in a correctly addressed envelope;
  - (iii) if by fax, when received in legible form; and
  - (iv) if by email or any other electronic communication, when received in legible form.
- (b) A communication given under Clause 17.3(a) above but received on a non-Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day in that place.
- (c) A communication to the Security Trustee or the OFTO will only be effective on actual receipt by it.

### **17.4 The Obligors**

- (a) All communications under the Finance Documents must (unless otherwise specified in a Finance Document) be sent through the Security Trustee.
- (b) All communications under the Finance Documents to or from HoldCo must be sent through the OFTO.
- (c) Any communication given to the OFTO in connection with a Finance Document will be deemed to have been given also to HoldCo.
- (d) The Security Trustee may assume that any communication made by the OFTO is made with the consent of HoldCo and, to the extent necessary to obtain instructions or directions in relation to any matter in respect of which the Security Trustee is entitled to obtain instructions or directions in accordance with the terms of the STID, the Security Trustee shall be entitled to forward a copy of any such communication and any other communication, document or notice received by it to the Secured Creditors or any of them.

### **17.5 Notice and acknowledgement of security**

In satisfaction of clause 5.2(a) (Charged Documents) of the Security Agreement, the relevant Obligor party to that Security Agreement hereby gives notice to each other Party, and each Party hereby accepts, that it has received notice of the Security Interests created in and to that Obligor's rights, title and interest in certain Finance Documents to which it is a party (as further described in the Security Agreement) as required under clause 5.2(b) (Charged Documents) of the Security Agreement as if such Obligor had executed and delivered the same and each Party confirms that, in respect of each such Security Interest, it shall, as a result of executing this Agreement, be deemed to be bound by the terms of the acknowledgement in the form set out in the relevant schedules to the Security Agreement as if it had executed and delivered the same to the Security Trustee.

### **18. LANGUAGE**

- (a) Any notice given in connection with a Finance Document must be in English.
- (b) Any other document provided in connection with a Finance Document must be:

- (i) in English; or
- (ii) accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other official document.

**19. ENTIRE AGREEMENT**

This Agreement and the other Finance Documents together constitute the entire agreement and understanding between the parties in respect of the subject matter of this Agreement and such other Finance Documents.

**20. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

**21. ENFORCEMENT**

**21.1 Jurisdiction**

- (a) Subject to Clause 21.1(c) below, the English courts have exclusive jurisdiction to settle and determine any dispute arising out of, relating to or having any connection with, any Finance Document, including any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purposes of this Clause 21.1, a **Dispute**) and each party submits to the exclusive jurisdiction of the English courts.
- (b) For the purposes of this Clause 21.1, each Obligor waives objection to the English courts on the grounds of inconvenient or inappropriate forum to settle any Dispute.
- (c) To the extent allowed by law, the Finance Parties may, in respect of any Dispute or Disputes take proceedings in any other court with jurisdiction; and concurrent proceedings in any number of jurisdictions.

**21.2 Waiver of immunity**

Each Obligor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by a Finance Party against it in relation to a Finance Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

**21.3 Waiver of trial by jury**

Each party waives any right it may have to a jury trial of any claim or cause of action in connection with any Finance Document or any transaction contemplated by any Finance Document. This Agreement may be filed as a written consent to trial by court.

**21.4 Service of process for the PBCE Provider**

The PBCE Provider hereby appoints the Securities Management Trust Limited of 8 Lothbury, London EC2R 7HH (or such other person as the PBCE Provider may notify to the Security Trustee on no less than five Business Days' notice) as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document.

**21.5 Third Party Rights**

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of a Finance Document.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of this Agreement.

## SCHEDULE 1

### OBLIGOR REPRESENTATIONS

#### 1. Status

- (a) It is a limited liability corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) It has the power and authority to own and operate its assets and carry out the Project.

#### 2. Powers and Authority

- (a) It has the power to enter into, perform and deliver the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (b) It has taken all necessary action to authorise its entry into, performance of and delivery of the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

#### 3. Validity and Admissibility in Evidence

##### (a) All Authorisations required:

- (i) to enable it lawfully to enter into, exercise its rights under and perform and comply in all material respects with its obligations in the Transaction Documents to which it is a party; and
- (ii) to make the Transaction Documents to which it is a party admissible in evidence in any proceedings in its jurisdiction of incorporation,

have been obtained or effected (subject to the necessary registrations being completed) and, subject to the Reservations, are in full force and effect (or will be when required).

- (b) All Authorisations necessary for the conduct of the Permitted Business have been obtained or effected and are in full force and effect.
- (c) As at the date of this Agreement no steps have been taken (nor is it aware of any proposal to take any steps) to challenge, revoke or cancel any such Authorisation.

#### 4. Binding Obligations

Subject to the Reservations:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) without limiting the generality of paragraph (a) above and subject to the Perfection Requirements), each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective and are not subject to any prior or pari passu Security Interests/other than any Permitted Security).

**5. Non-Conflict with Other Obligations**

Subject to the Reservations, the entry into and performance by it of, and the transactions contemplated by, the relevant Transaction Documents and the granting of the Security pursuant to the Security Documents do not and will not conflict with:

- (a) any law or regulation applicable to it and which is material in the context of the transactions contemplated by the Transaction Documents;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument,

to the extent that such conflict could reasonably be determined to have a Material Adverse Effect.

**6. Good Title to Assets**

The OFTO has a good, valid and marketable title to, or valid leases or licences of and all appropriate Authorisations to use, the assets necessary to carry on the Permitted Business, including those over which the Security is granted.

**7. Insolvency**

No:

- (a) corporate action, legal proceeding or other procedure described in paragraph 8(a) (Insolvency Proceedings) of Schedule 3 (Events of Default); or
- (b) creditors' process described in paragraph 8 (Creditors' process) of Schedule 3 (Events of Default),

has been taken or threatened in relation to itself or any other Obligor and none of the circumstances described in paragraph 7 (Insolvency) of Schedule 3 (Events of Default) applies to any Obligor.

**8. No Default**

- (a) No Event of Default and, on the Signing Date and the Initial Issue Date, no Default, is continuing or is reasonably likely to result from the entry into or performance of, any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject (including the Project Documents) which might reasonably be determined to have a Material Adverse Effect.

**9. Group Structure Chart**

The Group Structure Chart delivered to the Security Trustee pursuant to part 1 (Conditions Precedent Documents and Evidence) of schedule 1 (Conditions Precedent to Initial Issuance) to the CP Agreement is true, complete and accurate in all material respects.

**10. Litigation**

No litigation, arbitration, administrative proceedings or investigations of, or before, any court, arbitral body or agency, governmental, regulatory, statutory or similar body or authority has been started or, to the best of each Obligor's knowledge and belief, threatened:

- (a) in relation to the O&M Agreement or the OFTO Licence; or
- (b) against it or in relation to a Project Document (other than the O&M Agreement or the OFTO Licence) which, if adversely determined, would reasonably be likely to have a Material Adverse Effect.

**11. Environmental Compliance**

The OFTO has, in relation to the Project, observed in all respects all Environmental Laws and Environmental Permits applicable to it.

**12. Environmental Claims**

The OFTO has no notice of any material Environmental Claim current, or to the best of its knowledge, pending or threatened against it.

**13. Insurances**

All insurances required under the Transaction Documents to be put in place at the date of this Agreement are in place and in full force and effect.

**14. Pari passu ranking**

Any unsecured and unsubordinated claims of a Secured Creditor against any Obligor under the Finance Documents rank at least *pari passu* with the claims of all that Obligor's other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

**15. Original Financial Statements**

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Standards consistently applied.
- (b) Its most recent Financial Statements:
  - (i) have been prepared in accordance with the Accounting Standards; and
  - (ii) show that, as at the date they were drawn up, an Obligor had no significant liabilities (whether contingent or otherwise) other than as disclosed by, or reserved against in, such Financial Statements.

**16. Forecast**

The Forecast has been prepared in accordance with the Accounting Standards as applied to the Original Financial Statements and the financial projections contained in the Forecast have been prepared on the basis of recent historical information, are fair and based on reasonable assumptions, and have been approved by the directors of the OFTO.



**17. Financial ratios**

The assumptions used in the calculation of the financial ratios referred to in paragraph 2 (Financial ratios) of Part 2 (Financial Information) of Schedule 2 (Obligor Covenants) have been made in good faith and after due and careful consideration.

**18. Full Disclosure**

**18.1 Prospectus**

- (a) Each of the Preliminary Prospectus (at the date of its publication) and the Prospectus contains all material information with respect to the OFTO and the Bonds (including all information which, according to the particular nature of the OFTO and of the Bonds, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the OFTO and of the rights attaching to the Bonds).
- (b) The Preliminary Prospectus (at the date of its publication) and the Prospectus (at the Signing Date) do not and, if amended or supplemented, at the date of any such amendment or supplement will not, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect.
- (c) The statements of fact contained in the Preliminary Prospectus and the Prospectus relating to the OFTO and the Bonds are (or, in respect of the Preliminary Prospectus, were, as at the date of its publication) in every material respect true and accurate and not misleading in any material respect.
- (d) The statements of intention, opinion, belief or expectation contained in the Preliminary Prospectus and the Prospectus are (or, in respect of the Preliminary Prospectus, were, as at the date of its publication) honestly and reasonably made or held.

**18.2 Written Information**

All of the written information and reports supplied to the Finance Parties by or on behalf of any Obligor in connection with the Finance Documents (excluding any report prepared by a third party professional adviser, consultant or expert and upon which the Security Trustee has express reliance):

- (a) in the case of factual information provided by any Obligor, is, to the best of its knowledge and belief, true, and accurate in all material respects as at the date on which that factual information is expressed to be given; and
- (b) in the case of non-factual information, assumptions, forecasts or projections most recently provided by any Obligor to the Finance Parties or otherwise used by any Obligor as the basis for any calculations hereunder, is provided by such Obligor in good faith on reasonable grounds based (where relevant) on recent historical information after careful consideration and enquiry by it in the context of which they were made, genuinely reflected its views as at the relevant date and were consistent with Accounting Standards and the Transaction Documents,

and, in each case, it was not to the best of its knowledge, at the time when the information was so supplied by the relevant Obligor, aware of any facts or circumstances that were not disclosed to the Finance Parties which would have rendered such information materially inaccurate or misleading as at the relevant date.

**18.3 No Material Facts Undisclosed**

To the best of the OFTO's knowledge (after due enquiry), there are no material facts or circumstances which were not disclosed in the information provided by the Obligors in written form to the Finance Parties and the due diligence advisers (excluding information not produced or prepared by the Obligors or by their professional advisers on their behalf).

**19. Choice of law and enforcement**

Subject to the Reservations, the choice of English law to govern the Transaction Documents will be recognised and enforced in the English courts.

**20. No Breach of Laws**

- (a) It has not breached any law or regulation or licence in any material respect.
- (b) Subject to the Reservation, any judgment obtained in England and Wales in relation to a Transaction Document will be recognised and enforced in each Obligor's jurisdiction of incorporation.

**21. Taxation**

- (a) It is not overdue in the filing of any Tax returns.
- (b) No material claims or investigations are being, nor as far as either Obligor is aware (after due and careful enquiry), might reasonably be expected to be, asserted against it with respect to Taxes.
- (c) It is Tax resident only in the United Kingdom.
- (d) It is not necessary for the Finance Documents to be filed, recorded or enrolled with any court or other authority and no stamp, registration, notarial or similar Taxes or fees are payable on or in relation to any Finance Document save for, as at the Signing Date, registration fees payable in respect of the Security Agreement to the Registrar of Companies.
- (e) All Taxes and stamp duties required to be paid by or on behalf of the OFTO or HoldCo have been paid within the applicable time limit, other than unpaid Taxes which are being contested in good faith and by appropriate proceedings.

**22. No other business**

As at the Initial Issue Date, neither the OFTO nor HoldCo has carried on any business, traded or incurred any liabilities or commitments (actual or contingent, present or future) or owned any assets other than:

- (a) in connection with the Transaction Documents; and
- (b) in respect of HoldCo only, matters arising from it being a holding company of the OFTO.

**23. Shares**

- (a) No person has any right to call for the issue or transfer of any share capital or loan stock in the OFTO or HoldCo other than in accordance with the Transaction Documents.
- (b) The shares in the capital of the OFTO are fully paid.

- (c) Subject to the Security Documents, HoldCo is the legal and beneficial owner of all the share capital of the OFTO.

**24. Corrupt gifts**

To the best of the OFTO's or HoldCo's knowledge and belief none of its officers, directors, employees and/ or agents acting on its behalf have offered, given, insisted on, received or solicited any illegal payment or advantage to influence the action of any person in connection with the Project.

**25. Transaction Documents**

As at the date of this Agreement:

- (a) each copy of a Transaction Document (to the best of its knowledge and belief) delivered to the Security Trustee pursuant to the CP Agreement is true, complete and in full force and effect;
- (b) there is no other agreement in connection with, or arrangements which amend, supplement or affect any Transaction Document;
- (c) it is not a party to any agreement other than the Transaction Documents or any document which the OFTO is permitted to enter into pursuant to the Finance Documents; and
- (d) no Obligor is in breach of any Project Document to which it is a party.

**26. Security and Financial Indebtedness**

- (a) No Security Interest or Quasi-Security exists over all or any of the present or future assets of any Obligor other than Permitted Security.
- (b) No Obligor has any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

**27. Ranking of Security**

To the extent permitted by the terms of the Transaction Authorisations, the Crown Estate Lease and each Onshore Lease Agreement, the Security created by the Security Documents has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security other than the Permitted Security.

**28. Nature of Security**

- (a) The Security created pursuant to the Security Agreement (subject to the Reservations) is not liable to be avoided or otherwise set aside on the liquidation or administration of any Obligor or otherwise.
- (b) In respect of HoldCo, the floating charge created by clause 3.11 (Floating charge) of the Security Agreement constitutes a qualifying floating charge for the purposes of Paragraph 14 of Schedule B1 to the Insolvency Act 1986.

**29. Centre of Main Interests**

- (a) Its centre of main interests for the purpose of Council Regulation (EC) No. 1346/2000 is the United Kingdom.
- (b) No Obligor has an establishment for the purposes of Council Regulation (EC) No. 1346/2000 in any jurisdiction other than its jurisdiction of incorporation.

**30. Approval of Prospectus**

- (a) An application will be (or has been) made for the Bonds to be admitted to listing on the official list of the Irish Stock Exchange and to trading on the Irish Stock Exchange's regulated market.
- (b) The Prospectus comprises a prospectus issued in compliance with the Prospectus Directive.

**31. Acquisition Documents**

The Acquisition Documents contain all the terms of the Acquisition.

**32. Illicit Origin**

To the best of its knowledge and belief having made all reasonable enquiries no funds invested in the Project by it or by its Affiliates are of illicit origin, including products of money laundering or linked to the financing of terrorism.

**33. Existing claims and rights**

Other than as disclosed in the Prospectus, the Transmission Assets are, or will be, on the Initial Issue Date free from any claims, third party rights or competing interests other than Permitted Security.

**34. Shares**

The constitutional documents of the OFTO do not restrict or inhibit any transfer of its shares on creation or enforcement of the Security.

**SCHEDULE 2**  
**OBLIGOR COVENANTS**

**PART 1**

**INFORMATION COVENANTS**

**1. Financial Statements**

The OFTO must: (x) supply to the Security Trustee, the PBCE Provider, the Hedge Counterparties, the Rating Agencies and the Bond Trustee in sufficient copies for all the Secured Creditors (other than the Bondholders) and (y) publish on the Designated Website:

- (a) audited financial statements (**Annual Financial Statements**) (consolidated if appropriate) of each Obligor and each Major Project Party, as soon as they are available and, in any event, within 180 days after the end of each Financial Year;
- (b) unaudited management accounts (**Semi-Annual Financial Statements**) (consolidated if appropriate) of each Obligor for the first financial half year in each Financial Year, as soon as they are available and, in any event, within 90 days after the end of such financial half year; and
- (c) the regulatory accounts of the OFTO produced in accordance with Standard Condition B1 (Regulatory Accounts) of the OFTO Licence for each Financial Year, on or before the date on which those accounts are published in accordance with paragraph 4 of Standard Condition B1 (Regulatory Accounts) of the OFTO Licence.

**2. Form of Financial Statements**

- (a) The OFTO must ensure that each set of Financial Statements supplied by it under paragraph 1 of this Part 1 (Information Covenants) of Schedule 2 (Obligor Covenants):
  - (i) is prepared in accordance with the Accounting Standards and includes a cashflow statement, a profit and loss statement and a balance sheet; and
  - (ii) gives (if audited) a true and fair view of or, in the case of any unaudited Financial Statement, fairly presents, its financial condition (consolidated or otherwise) as at the date to which those Financial Statements were drawn up and of the results of its operations during such period.
- (b) The OFTO must, as soon as reasonably practicable, notify (in a form and content accepted by Euroclear and/or Clearstream, Luxembourg) the Security Trustee for onward transmission to the other Secured Creditors by the following means (x) in respect of the Bondholders, by email to the Principal Paying Agent (that is in form and content accepted by Euroclear and/or Clearstream, Luxembourg) for distribution to the Bondholders via Euroclear and/or Clearstream, Luxembourg; and (y) in respect of each other Secured Creditor, by email, of any material change to the basis on which any Financial Statements are prepared.

**3. Forecasts**

- 3.1 The OFTO shall prepare an updated Forecast annually in respect of each Calculation Date falling in December except that, the OFTO shall also prepare an updated Forecast on each

Calculation Date on which an (i) Emergency is subsisting, (ii) the PBCE Letter of Credit is being drawn, (iii) any amounts under the PBCE Letter of Credit remain outstanding, or (iv) in case the availability of the Transmission Assets are or forecasted to be below 98% during the current and next Calculation Period. Each updated Forecast shall be prepared in accordance with this paragraph 3 and shall not be subject to the approval of the Security Trustee or any other Secured Creditor, and the OFTO shall deliver a copy of the updated Forecast to the PBCE Provider as soon as it is available. Each updated Forecast shall include a projected consolidated profit and loss, balance sheet and cashflow statement for the Security Group, projected Operating Costs, the Economic Assumptions, the Key Assumption, the capital expenditure, projections for the Projected DSCR, the Historic DSCR and the Debt Life Cover Ratio for each Calculation Date and a forecast to the end of the Revenue Period.

3.2 If, in respect of any Forecast prepared for the relevant Calculation Dates in accordance with the provisions of this paragraph 3, the OFTO proposes to change (but excluding any increases due to inflation):

- (a) the Key Assumption in the Forecast for the relevant Calculation Dates; or
- (b) the projected Operating Costs set out in the Forecast, in respect of any Calculation Period occurring prior to the Final Maturity Date, in an amount that would be in excess of:
  - (i) 120 per cent. of those costs set out for the corresponding Calculation Period in the previous Forecast; or
  - (ii) 200 per cent. of those costs set out for the corresponding Calculation Period in the Forecast prepared on or about the Initial Issue Date,

the OFTO shall provide:

- (i) in respect of paragraph (a) above, a copy of that amended Key Assumption to the Technical Adviser; or
- (ii) in respect of paragraph (b) above, a summary of those projected Operating Costs to the Technical Adviser and (to the extent that such projected Operating Costs relate (in whole or in part) to Insurances) the Insurance Adviser,

in each case, not later than 35 Business Days and not earlier than 50 Business Days before that Calculation Date.

- (c) The OFTO shall, no later than that Calculation Date, deliver to the Security Trustee and the PBCE Provider, and publish on the Designated Website, a certificate signed by an Authorised Signatory of the OFTO summarising the changes made to the Forecast and confirming that the changes have been approved by the Technical Adviser or the Insurance Adviser (as applicable) in accordance with this paragraph 3 and the Forecast has been updated accordingly.

3.3 If, in respect of any Forecast prepared for the relevant Calculation Dates in accordance with the provisions of this paragraph 3:

- (a) the Key Assumption is the same as that set out for the corresponding Calculation Period in the previous Forecast; and

- (b) the OFTO does not propose to change the projected Operating Costs set out in the Forecast, in respect of any Calculation Period occurring before the Final Maturity Date, in an amount that would be in excess of:
- (i) 120 per cent. of those costs set out for the corresponding Calculation Period in the previous Forecast; or
  - (ii) 200 per cent. of those costs set out for the corresponding Calculation Period in the Forecast prepared on or about the Initial Issue Date,

the OFTO shall, not later than that Calculation Date, deliver to the Security Trustee and the PBCE Provider, and publish on the Designated Website, a certificate signed by an Authorised Signatory of the OFTO confirming the statements set out in paragraphs (a) and (b) above.

- 3.4 Within 10 Business Days following receipt of a notice pursuant to Paragraph 3.2 above or Paragraph 3.9 (below) the Technical Adviser and/or the Insurance Adviser (as applicable) shall confirm whether it believes that the proposed changes to the Key Assumption or the projected Operating Costs (as applicable) are, in its opinion, reasonable and in accordance with Good Industry Practice and a copy of that confirmation (if given) will be provided to the Security Trustee and published on the Designated Website by the OFTO.
- 3.5 If the Technical Adviser and/or the Insurance Adviser (as applicable) does not provide the confirmation contemplated by Paragraph 3.4 above within the time period set out in that paragraph, then the current Forecast (unamended to take account of the proposed amendments to the Key Assumption or the projected Operating Costs (as applicable)) will continue to be the Forecast for the purposes of the Finance Documents.
- 3.6 Any determination or approval by the Technical Adviser and/or the Insurance Adviser in accordance with paragraph 3.4 above will be final and binding on the OFTO and the Forecast shall be deemed to be updated in accordance with any such determination or approval.
- 3.7 The OFTO shall ensure that the Economic Assumptions in each Forecast prepared in respect of the relevant Calculation Dates in accordance with this Paragraph 3 are updated by reference to the relevant source set out in Schedule 7 (Economic Assumptions) prior to any submission of that Forecast under this Paragraph 3.
- 3.8 The OFTO shall pay all the costs and expenses of the Technical Adviser and Insurance Adviser appointed in accordance with this paragraph 3.
- 3.9 If, in any Calculation Period, the OFTO intends to incur any projected Operating Costs which are in excess of:
- (a) 120 per cent. of those costs set out for the corresponding Calculation Period in the then current Forecast; or
  - (b) 200 per cent. of those costs set out for the corresponding Calculation Period in the Forecast prepared on or about the Initial Issue Date,

then, prior to incurring such projected Operating Costs (as applicable), the OFTO shall submit a summary of those projected Operating Costs to the Technical Adviser and/or the Insurance Adviser (as applicable) for review and the process described in Paragraphs 3.4 to 3.6 above shall apply *mutatis mutandis*.

- 3.10 The OFTO shall ensure that each (i) Forecast, (ii) Computer Model, (iii) Investor Report and (iv) technical report to be delivered in accordance with paragraph 5:
- (a) be prepared in good faith and after reasonable due diligence;
  - (b) accurately document historical data and include the OFTO's best estimate of projected receipts, availability and expenditure;
  - (c) be true and accurate in all material respects and not omit anything which would make it misleading in a material respect;
  - (d) comply with the Finance Documents and take into account obligations and rights under the Transaction Documents; and
  - (e) in the case of the Forecast, calculate tax payments on the basis of legislation and practice in force at the time of the preparation of the Forecast.
- 3.11 The OFTO shall, as soon as reasonably practicable, notify the Security Trustee of, and publish on the Designated Website, any error in the Forecast which would affect any financial calculation.

#### 4. **Emergency Capital Expenditure**

- 4.1 Subject to Paragraph 19 (Capital expenditures) of Part 3 (General Covenants) of Schedule 2 (Obligor Covenants), where an Emergency has occurred or is continuing and the OFTO intends to incur any Emergency Capital Expenditure, the OFTO shall notify the Technical Adviser and provide reasonable details of the Emergency and proposed Emergency Capital Expenditure within 35 Business Days of the OFTO becoming aware of the Emergency. Within 20 Business Days following receipt of a proposal from the OFTO regarding the Emergency Capital Expenditure, the Technical Adviser shall:
- (a) confirm whether the OFTO's proposal complies with the Operational Parameters; or
  - (b) discuss amendments to the OFTO's proposal that will enable the OFTO to comply with the Operational Parameters and, following any such discussions and/or amendments being made to the OFTO's proposal, confirm whether or not the OFTO's proposal complies with the Operational Parameters.

For the purpose of this Paragraph 4.1, the **Operational Parameters** are that any step, action and/or decision taken by the OFTO is to be in accordance with Good Industry Practice, the terms of the OFTO Licence and the relevant Transaction Documents.

- 4.2 If the Technical Adviser and the OFTO agree the Emergency Capital Expenditure in accordance with Paragraph 4.1 within 55 Business Days of the OFTO submitting its proposal to the Technical Adviser, the OFTO shall be entitled to incur such Emergency Capital Expenditure.
- 4.3 If the Technical Adviser and the OFTO are unable to agree the Emergency Capital Expenditure in accordance with Paragraph 4.1 within 55 Business Days of the OFTO submitting its proposal to the Technical Adviser, the OFTO shall not be entitled to incur such Emergency Capital Expenditure.
- 4.4 A copy of the confirmation (if given) will be delivered to the Security Trustee and published on the Designated Website by the OFTO.



4.5 The OFTO shall pay all the costs and expenses of the Technical Adviser appointed in accordance with this paragraph 4.

**5. Reports**

The OFTO must supply by email to the Security Trustee, the PBCE Provider, the Hedge Counterparties, the Rating Agencies and the Bond Trustee annually on each anniversary of the Initial Issue Date, the technical report from the Technical Adviser containing the information set out in Schedule 9 (Technical Adviser Reporting).

**6. Notification of Default**

Unless the Security Trustee has already been so notified by another Obligor, each Obligor (or the OFTO on its behalf) must notify (in a form and content accepted by Euroclear and/or Clearstream, Luxembourg) the Security Trustee, for onward transmission to the other Secured Creditors by the following means (x) in respect of the Bondholders, by email to the Principal Paying Agent (that is in form and content accepted by Euroclear and/or Clearstream, Luxembourg) for distribution to the Bondholders via Euroclear and/or Clearstream, Luxembourg; and (y) in respect of each other Secured Creditor, by email, of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

**7. Investor Reports**

The OFTO (on behalf of each Obligor) must, on or before 31 December and 30 June of each year following Completion: (x) supply, to the Security Trustee, the PBCE Provider, the Hedge Counterparties, the Rating Agencies and the Bond Trustee by email; and (y) publish on the Designated Website, an Investor Report.

**8. Annual Presentation**

The OFTO must hold each year an investor update conference call presentation, with an opportunity for questions, made by the OFTO to the Secured Creditors and the Bondholders.

**9. Obligor Information**

So far as not prohibited by any applicable law, regulations or order, each Obligor must supply (in a form and content accepted by Euroclear and/or Clearstream, Luxembourg) to the Security Trustee, except as provided for below, for onward transmission to the other Secured Creditors by the following means (x) in respect of the Bondholders, by email to the Principal Paying Agent (that is in form and content accepted by Euroclear and/or Clearstream, Luxembourg) for distribution to the Bondholders via Euroclear and/or Clearstream, Luxembourg; and (y) in respect of each other Secured Creditor, by email:

- (a) as soon as reasonably practicable after becoming aware of the same, details of any:
  - (i) communication, enquiry, investigation or proceeding with, from or involving any regulator or other governmental authority where such communication relates to a matter which has or could reasonably be expected to have a Material Adverse Effect or where such enquiry, investigation or proceeding, if adversely determined, would have or could reasonably be expected to have a Material Adverse Effect; and
  - (ii) occurrence, fact or circumstance which has or could reasonably be expected to have an effect on the OFTO's compliance with Environmental Law, to the extent

such occurrence, fact or circumstance relates to the Project, the O&M Contractor's compliance with Environmental Law;

- (b) promptly upon becoming aware of them, details of any material litigation, arbitration or administrative proceedings (including Environmental Claims) against the OFTO or HoldCo which are current, threatened or pending or similar proceedings based on an allegation of negligence, default, breach of duty or breach of trust by a director of the OFTO or HoldCo which has been started or threatened;
- (c) any change in its accounting practices having an effect which is material to the interests of the Secured Creditors as a group on the definition of Net Cashflow;
- (d) promptly upon becoming aware of them, details of any claim made under any Insurance where the claim is for a sum in excess of £1,000,000 (before deductibles) or where the amount of the claim when aggregated with all other amounts claimed under any Insurance during the previous six months exceeds £2,000,000;
- (e) any fact or event known to the OFTO, which may substantially prejudice or adversely affect operation of the Project (including providing notice and details of any material outages and unavailability of the Transmission Assets);
- (f) as soon as reasonably practicable, a copy of any proposed material amendment made to, or replacement of, a Project Document or to the articles of association or other constitutional documents of any Obligor or any new Project Document entered into, provided that any such new Project Document shall not be further transmitted by the Security Trustee to the other Secured Creditors other than the PBCE Provider;
- (g) within 15 Business Days of demand, such material information (including hedging information) about the business and financial condition of the OFTO which can be requested by the Security Trustee on a reasonable request of Senior Creditors holding at least 20 per cent. by value of the Senior Voting Debt, provided that, at any time when no Event of Default has occurred and is subsisting, a maximum of one such request for information may be made, in any Financial Year;
- (h) within 15 Business Days of demand, such material information (including hedging information) about the business and financial condition of the OFTO which can be requested by the Security Trustee on the instructions of the PBCE Provider (acting reasonably), provided that, at any time when no Event of Default has occurred and is subsisting, a maximum of one such request for information may be made, in any Calculation Period;
- (i) details of any Insolvency Proceedings in relation to it;
- (j) as soon as reasonably practicable after becoming aware of the same details of any steps which have been taken (or any proposal to take steps) to challenge, revoke or cancel any Authorisation where such challenge, revocation or cancellation has or is reasonably likely to have a Material Adverse Effect;
- (k) as soon as reasonably practicable upon receipt of a copy of any notice that any Authorisation not yet required but which will be required will not be obtained or effected at the time it is required, where such failure to be obtained or effected would have or would reasonably be expected to have a Material Adverse Effect, provided that any such notice shall not be further transmitted by the Security Trustee to the other Secured Creditors other than the PBCE Provider;

- (l) in respect of each Project Document, copies of all communications (including, without limitation, notices relating to contract extension and force majeure) served on it by or received from counterparties to such Project Documents or any third party within 10 Business Days of the Obligor receiving such notice where such communication or the details described in such communication has or is reasonably likely to have a Material Adverse Effect;
- (m) as soon as reasonably practicable, copies of the annual information that is to be provided to Ofgem under Standard Condition E8 (Adequacy of Available Resources) of the OFTO Licence;
- (n) immediately, an E21 Direction received by the OFTO, and as soon as possible all relevant information in relation to any such direction which is threatened, proposed, discussed or otherwise intimated as possible or likely in discussions or correspondence between the OFTO and the Authority, and the OFTO must share any written or other communication with the Authority relating to a potential or actual E21 Direction including, without limitation, any information received from the Authority during such consultation and any plans being made to operate and maintain assets in accordance with the E21 Direction;
- (o) at any time after the Completion Date, as soon as reasonably practicable copies or summaries of any material agreements or contracts that the OFTO has entered into;
- (p) within 15 Business Days of the appointment of a replacement Technical Adviser, notice of such replacement;
- (q) promptly upon becoming aware of it, any change in law which could reasonably be likely to have a Material Adverse Effect;
- (r) upon becoming aware of its occurrence, as soon as reasonably practicable, notification of financial defaults, as well as material disputes, default notices, termination notices and other material notices under the OFTO Licence (and immediately, notification of the issuances of any of the notices under Schedule 2, Paragraphs 1 to 4 of the Generic OFTO Special Licence Conditions), provided that any such notices or notifications shall not be further transmitted by the Security Trustee to the other Secured Creditors other than the PBCE Provider;
- (s) as soon as practicable after receipt, copies of any reports or information received by an Obligor in relation to a material change to the Decommissioning Plan, provided that any such copies of reports shall not be further transmitted by the Security Trustee to the other Secured Creditors other than the PBCE Provider;
- (t) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened in a written communication against the OFTO where such facts or circumstances relate to the Project, the O&M Contractor; and
- (u) within 5 Business Days of receiving notice of any material breach, Default, termination, step-in, suspension, claim, non-compliance or dispute affecting the Project, details of such event and within 10 Business Days of receiving any such notice, details of any action proposed to be taken in relation thereto.

## 10. Licence Trigger Event Remediation

- (a) Following the occurrence of a Licence Trigger Event, the OFTO must immediately notify the Security Trustee and provide copies of all relevant documentation relating to such event. The OFTO must deliver to the Security Trustee, and publish on the Designated Website a preliminary remediation plan (a **Preliminary Licence Trigger Event Remediation Plan**) within 15 Business Days, or such shorter period as is required to ensure that the OFTO remains in compliance with the OFTO Licence, of the occurrence of such Licence Trigger Event, which sets out:
- (i) the remedial action that it proposes to take in such circumstances; and
  - (ii) the manner and timetable in which such remedial action will be carried out (including the date by which it is proposed that such Licence Trigger Event or Licence Trigger Events will be remedied).
- (b) As soon as the OFTO agrees a final remediation plan (a **Final Licence Trigger Event Remediation Plan**) with Ofgem in respect of a Licence Trigger Event, the OFTO shall deliver to the Security Trustee, and publish on the Designated Website such Final Licence Trigger Event Remediation Plan.

## 11. Use of Websites

- (a) Except as provided below, the OFTO shall maintain an open access investor website (the **Designated Website**) on which information under paragraphs 1, 3, 4, 8 and 11 of this Part 1 (Information Covenants) of Schedule 2 (Obligor Covenants) that is required to be delivered to the Secured Creditors shall be published. Without prejudice to its obligations to maintain a Designated Website, the OFTO may designate a third party to operate and manage the Designated Website on its behalf.
- (b) The OFTO shall:
- (i) ensure that the Designated Website allows any third party to register its interest by subscribing to an email notification system (each a **Registered Party**) to be notified that information has either been provided to the Security Trustee for submission by the Principal Paying Agent to the Bondholders via Euroclear and/or Clearstream, Luxembourg pursuant to clause 6 (Events of Default) of this Agreement and paragraphs 7 and 9 of this Part 1 (Information Covenants) of Schedule 2 (Obligor Covenants) or been posted by it on the Designated Website; and
  - (ii) upon each occasion that it provides information to the Security Trustee for submission by the Principal Paying Agent to the Bondholders via Euroclear and/or Clearstream pursuant to clause 6.1(b) (Events of Default) of this Agreement and paragraphs 7, 9 and 10 of this Part 1 (Information Covenants) of Schedule 2 (Obligor Covenants) or it posts information on the Designated Website, notify each Registered Party by email of such event.
- (c) Except as provided below, the OFTO may deliver any information under this Agreement to the Bondholders by posting it on to the Designated Website provided that the OFTO notifies the Bondholders of the address of the Designated Website.
- (d) The OFTO must, as soon as reasonably practicable, upon becoming aware of its occurrence, notify the Security Trustee and the Bond Trustee if:
- (i) the Designated Website cannot be accessed for a period of five (5) Business Days; or

- (ii) the Designated Website or any information on the website is infected by any electronic virus or similar software for a period of five (5) Business Days.

If the circumstances in sub paragraphs (i) or (ii) above occur, each relevant Obligor must supply all information required to be delivered under this Agreement (in a form and content accepted by Euroclear and/or Clearstream, Luxembourg) to the Security Trustee and the Principal Paying Agent as may be requested by any Finance Party for onward transmission to the other Secured Creditors by the following means:

(A) in respect of the Bondholders, by email to the Principal Paying Agent (that is in form and content accepted by Euroclear and/or Clearstream, Luxembourg) for distribution to the Bondholders via Euroclear and/or Clearstream, Luxembourg; and

(B) in respect of each other Secured Creditor, by email.

- (e) The OFTO shall ensure that if one of the circumstances described in paragraph (c)(i) or (ii) above occurs in relation to the Designated Website and is continuing for a period of ten (10) Business Days or more it shall until such event ceases to subsist, set up, operate and manage a replacement open access investor website for information to be published on in accordance with the Finance Documents.

- (f) Nothing in this paragraph 11 shall oblige any Obligor to publish any information on the Designated Website (or otherwise provide any information in paper form as contemplated by paragraph (b) above) if to do so would contravene any applicable law, regulation or order.

## 12. "Know Your Customer" Checks

If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of an Obligor after the date of this Agreement; or
- (c) a proposed assignment or transfer by an Authorised Credit Provider of any of its rights and obligations under any Authorised Credit Facility to a party that is not an Authorised Credit Provider prior to such assignment or transfer,

obliges any Authorised Credit Provider or its agent (or, in the case of the event described in paragraph (c) above, any prospective new Authorised Credit Provider) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall, as soon as reasonably practicable, upon the request of any Authorised Credit Provider or its agent supply, or procure the supply of, such documentation and other evidence as is customary and reasonably requested by the relevant Authorised Credit Provider's agent (for itself or on behalf of such Authorised Credit Provider) or any Authorised Credit Provider (for itself or, in the case of the event described in paragraph (c) above, on behalf of any prospective new Authorised Credit Provider) in order for the Authorised Credit Provider's agent, such prospective new Authorised Credit Provider or, in the case of the event described in paragraph (c) above, any necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**13. Delivery of documents to Secured Parties**

If an Obligor is required to deliver a document to any Secured Creditor (other than the Security Trustee) under the terms of the Finance Documents, the OFTO shall supply that document to the Security Trustee and the Security Trustee shall also deliver such documents to the relevant Secured Creditor(s).

## PART 2

### FINANCIAL INFORMATION

#### 1. Confirmations Regarding Calculations

- (a) The Obligors shall, in each Investor Report pursuant to paragraph 7 (Investor Reports) of Part 1 (Information Covenants), confirm that each of the ratios listed in paragraph 2 (Financial ratios) has been calculated, specify the results of such calculations and provide a copy of the computations made in respect of the calculation of such ratios (including, where applicable, all Equity Cure Amounts that have been applied in each Relevant Period to which that Investor Report relates).
- (b) The Historic DSCR shall be calculated using the Computer Model and the Debt Life Cover Ratio and the Projected DSCR shall be calculated using the Forecast.

#### 2. Financial ratios

The ratios to be calculated by each Calculation Date are as follows:

- (a) the Projected DSCR in respect of the Relevant Period;
- (b) the Historic DSCR in respect of the Relevant Period;
- (c) the Debt Life Cover Ratio in respect of the Relevant Period; and
- (d) if required under paragraph 3(a)(i) (Error! Reference source not found.) of Schedule 8 (PBCE Drawing Mechanism), the PBCE Rebalancing DLCR.

**PART 3**  
**GENERAL COVENANTS**

Each Obligor (as applicable) shall comply with the covenants set out below.

**1. Authorisations**

Each Obligor shall promptly:

- (a) obtain, comply with in all material respects and do all that is necessary to maintain in full force and effect, any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
  - (i) enable it to perform its obligations under the Transaction Documents; and
  - (ii) ensure, subject to the Reservations, the legality, validity, enforceability or admissibility in evidence of any Transaction Document; and
- (b) supply certified copies of any such Authorisation to the Security Trustee upon request.

**2. Compliance with laws and regulation**

Each Obligor shall comply with:

- (a) the OFTO Licence in all material respects; and
- (b) all laws and regulations (other than the OFTO Licence) to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

**3. Environmental Matters**

(a) Each Obligor shall:

- (i) comply with all Environmental Laws in all material respects;
- (ii) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (iii) implement procedures to monitor compliance with and prevent liability under any Environmental Law.

(b) Each Obligor shall, as soon as reasonably practicable, upon becoming aware of the same, inform the Security Trustee in writing of:

- (i) any material Environmental Claim against any Obligor which is current, pending or threatened in writing;
- (ii) any facts or circumstances which are reasonably likely to result in any material Environmental Claim being commenced or threatened against it; and



- (iii) any suspension, revocation, termination, rescission, repudiation or modification of any material Environmental Permit.

#### 4. Taxation

(a) Each Obligor shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith;
- (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Security Trustee; and
- (iii) such payment can be lawfully withheld.

(b) No Obligor may change its residence for Tax purposes.

(c) No Obligor shall surrender or dispose of any group Tax relief:

- (i) to any third party; or
- (ii) to any member of the Security Group,

without the prior written consent of the Security Trustee acting in accordance with the STID, unless, the disposal is for consideration in cash in an amount at least equal to the Tax which such Obligor could have saved by use of such Tax Loss and the proceeds of such surrender or disposal are deposited into the Proceeds Account.

#### 5. Merger

No Obligor shall enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than a Permitted Transaction or a Permitted Disposal.

#### 6. Change of Business

The OFTO undertakes to carry on only Permitted Business from the date of this Agreement..

#### 7. Acquisitions

(a) Except as permitted under paragraph (b) below, no Obligor shall:

- (i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
- (ii) incorporate a company.

(b) Paragraph (a) above does not apply to an acquisition of a company, of shares, securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company which is:

- (i) a Permitted Acquisition; or
- (ii) a Permitted Transaction.

8. **HoldCo**

HoldCo shall not trade, carry on any business, own any assets or incur any liabilities except for:

- (a) the provision of administrative services to other members of the Security Group of a type customarily provided by a holding company to its Subsidiaries;
- (b) the ownership of the OFTO;
- (c) credit balances in bank accounts, cash and Cash Equivalent Investments but only if those credit balances, cash and Cash Equivalent Investments are subject to any Security Document;
- (d) any assets and liabilities and performing obligations under the Transaction Documents to which it is a party and professional fees and administration costs in connection therewith and otherwise in the ordinary course of business as a holding company;
- (e) incurring liability to pay Tax and paying the Tax;
- (f) Permitted Loans or making Restricted Payments; or
- (g) Permitted Payments and all activities reasonably incidental thereto.

9. **Operation and Maintenance**

The OFTO must:

- (a) diligently maintain, or ensure the diligent maintenance of, the Project in a safe, efficient and business-like manner and in accordance with the OFTO Licence, applicable industry codes and standards and Good Industry Practice;
- (b) comply with its material obligations under the OFTO Licence and STC;
- (c) maintain and operate its assets in accordance with the Authorisations in all material respects; and
- (d) maintain its intellectual property rights, if failure to do so would be reasonably like to have a Material Adverse Effect.

10. **Pari Passu ranking**

Subject to the Reservations, each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Secured Creditor against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

11. **Acquisition Documents**

- (a) The OFTO shall promptly pay all amounts payable to the Vendor under the Acquisition Documents as and when they become due.
- (b) The OFTO shall take all reasonable and practical steps to preserve and enforce its rights and pursue any claims and remedies arising under any Acquisition Documents.

**12. Negative Pledge**

Except as permitted under paragraph (c) below:

- (a) no Obligor shall create or permit to subsist any Security Interest over any of its assets.
- (b) no Obligor shall:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Paragraphs (a) and (b) above do not apply to any Security Interest or (as the case may be) Quasi-Security, which is Permitted Security, a Permitted Disposal or a Permitted Transaction.

**13. Disposals**

- (a) Except as permitted under paragraph (b) below, no Obligor shall enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:
  - (i) a Permitted Disposal; or
  - (ii) a Permitted Transaction.

**14. Arm's Length Basis**

- (a) Except as permitted by paragraph (b) below, no Obligor shall enter into any transaction with any person, except on arm's length terms and for fair market value.
- (b) The following transactions shall not be a breach of this provision:
  - (i) loans between Obligors and any Investor Funding Loans permitted under paragraph 15 (Loans or Credit);
  - (ii) fees, costs and expenses payable to Secured Creditors under the Transaction Documents in the amounts set out in the Transaction Documents; and
  - (iii) a transaction expressly permitted by the Transaction Documents or any Permitted Payment.

**15. Loans or Credit**

- (a) Except as permitted under paragraph (b) below, no Obligor shall be a creditor in respect of any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to:
  - (i) a Permitted Loan; or
  - (ii) a Permitted Transaction.

**16. No Guarantees or Indemnities**

- (a) Except as permitted under paragraph (b) below, no Obligor shall incur or allow to remain outstanding any guarantee in respect of any obligation of any person.
- (b) Paragraph (a) above does not apply to a guarantee which is:
  - (i) a Permitted Guarantee; or
  - (ii) a Permitted Transaction.

**17. Restricted Payments**

- (a) Except as permitted under paragraph (b) below, no Obligor shall make a Restricted Payment unless the Restricted Payment Conditions are satisfied.
- (b) Paragraph (a) above does not apply to:
  - (i) a Permitted Payment; or
  - (ii) a Permitted Transaction.

**18. Financial Indebtedness**

- (a) Except as permitted under paragraph (b) below, no Obligor shall incur or allow to remain outstanding any Financial Indebtedness.
- (b) Paragraph (a) above does not apply to Financial Indebtedness which is:
  - (i) Permitted Financial Indebtedness; or
  - (ii) a Permitted Transaction.

**19. Capital expenditures**

Subject to Paragraph 4 of Part 1 (Information Covenants) of Schedule 2 (Obligor Covenants), the OFTO must not incur any capital expenditure other than:

- (a) as permitted in accordance with the criteria and parameters set out in the current Forecast without first obtaining the consent of the Security Trustee (acting in accordance with the STID);
- (b) as a result of an Emergency or other unforeseen event or circumstance that require immediate action provided that such capital expenditure is not prohibited under the OFTO

Licence and is required to discharge the OFTO's obligations or to avoid or mitigate costs and revenue deductions from Real Transmission Revenue, in each case, under the OFTO Licence; or

- (c) as a result of requirements under Licence Condition E17.

**20. Procurement procedure**

The OFTO shall purchase equipment, secure services and order works for the Project (a) in so far as they apply to it or to the Project, in accordance with EU law in general and in particular with the relevant European Union Directives and (b) in so far as European Union Directives do not apply, by procurement procedures which respect the criteria of economy and efficiency.

**21. Share Capital**

No Obligor shall issue any shares except pursuant to:

- (a) a Permitted Share Issue; or
- (b) a Permitted Transaction.

**22. Insurance**

- (a) The OFTO must comply with Schedule 6 (Insurances).
- (b) All Insurance and any other insurance required to be effected under any Transaction Document (other than any terrorism insurance) will be provided by a Qualifying Insurer or as agreed by the Security Trustee in accordance with the STID.
- (c) The OFTO shall, in accordance with Good Industry Practice, apply the proceeds relating to any loss or damage to the Transmission Assets or to any property or assets of the OFTO to reinstate, replace, restore or repair the Transmission Assets, property or assets in respect of which such proceeds or compensation were paid.

**23. Litigation**

The OFTO shall defend any dispute (whether under the relevant dispute resolution procedure or otherwise), action, claim or other proceeding relating to any Project Document which is likely to have a financial impact in excess of £5,000,000 (Indexed) or to result in a Material Adverse Effect unless it has been advised by reputable independent legal counsel that there is no realistic prospect of success, in which case it shall take all steps necessary to reach a settlement in respect of such action, claim or other proceeding.

**24. Access**

- (a) The OFTO must ensure that the Technical Adviser is (after it has given prior reasonable notice to the OFTO) given access to inspect the Project and any records of the Project (including all drawings and specifications) during normal business hours and to take copies of any documents inspected to the extent this is permitted under the OFTO Licence and the O&M Agreement.
- (b) The OFTO must maintain up-to-date statutory books, books of account, bank statements and other records of the OFTO in accordance with good business practice and all applicable laws.

- (c) If an Event of Default is continuing or the Security Trustee suspects a Default is continuing, each Obligor shall to the extent it is able to do so under existing contractual arrangements and applicable law, permit the Security Trustee and/or accountants or other professional advisers and contractors of the Security Trustee free access at all reasonable times and on reasonable notice at the risk and cost of the Obligor to (a) the premises, assets, books, accounts and records of each Obligor and (b) meet and discuss matters with senior management of the Security Group. Each of the Security Trustee and/or accountants or other professional advisers and contractors of the Security Trustee must, when accessing the premises with the Transmission Assets, comply with all health and safety requirements of the O&M Contractor as notified to it.

**25. Amendments to Finance Documents**

No Obligor shall amend, vary, novate, supplement, supersede, waive or terminate any term of a Finance Document, except in accordance with the provisions of the STID and its own terms.

**26. Amendments to constitutional documents and other documents**

No Obligor may, without the prior written consent of the Security Trustee, change its memorandum or articles of association or other constitutional documents in a way which would have a Material Adverse Effect.

**27. Project Documents**

- (a) The OFTO must exercise and enforce its material rights and comply with its material obligations under each Project Document to which it is a party in a proper and timely manner.
- (b) The OFTO must not assign, transfer, novate, dispose of, terminate, suspend or abandon the O&M Agreement or the O&M Guarantees except as otherwise expressly permitted by the Finance Documents.
- (c) The OFTO must not amend or waive:
- (i) the Management Services Agreement, the O&M Agreement or the O&M Guarantees in any material respect unless:
- (A) that amendment or waiver is required by the Authority, law or regulation; or
- (B) in the case of the Management Services Agreement and O&M Agreement only, the amendment to the Management Services Agreement or O&M Agreement relates to an extension of the existing term of the O&M Agreement with the existing O&M Contractor or the Management Services Agreement with the existing Management Services Provider; or
- (C) in respect of the Management Services Agreement, O&M Agreement or a change to the O&M Contractor, an O&M Guarantor or the Management Services Provider, the OFTO certifies in writing to the Technical Adviser and the Security Trustee that its proposal for a new O&M Contractor, O&M Guarantor, Management Services Provider or proposed amendment to the O&M Agreement or Management Services Agreement complies with the following conditions:
- I. is not a Substantial Amendment to the O&M Agreement or the Management Services Agreement;

- II. is in compliance with the terms of the other Project Documents, the Finance Documents, the OFTO Licence and Good Industry Practice;
- III. the risk profile of the new O&M Agreement is substantially and materially the same as the then existing O&M Agreement or is a reasonable and appropriate risk profile taking into account similar O&M arrangements that are available in the market at that time; and
- IV. the new O&M Contractor, O&M Guarantor, Management Services Provider (as applicable) have the requisite technical experience, are sufficiently financially robust/credit-worthy and have the resources available to it to perform its obligations under the O&M Agreement, Management Services Agreement and in accordance with the OFTO Licence and Good Industry Practice, and
- V. the Technical Adviser does not notify the OFTO that it disagrees with the OFTO's certification under this sub-paragraph (C) within 10 Business Days of receiving such certification,

and where the Technical Adviser disagrees with the OFTO's certification under sub-paragraph (C) above and has notified the OFTO of its disagreement within 10 Business Days of receiving such certification, no amendment or change shall be permitted.

For the purposes of Paragraph I above, **Substantial Amendment** means an amendment that would lead to (i) any material increase in the amount of consideration payable thereunder, (ii) an amendment that brings forward the termination date; or (iii) an amendment that is technical in nature and which materially affects the operation of the OFTO, other than any amendments that are reasonable and appropriate to make taking into account similar O&M arrangements that are available in the market at that time;

- (ii) all or any part of a Project Document (other than the Management Services Agreement, the O&M Agreement or the O&M Guarantees) where to do so has or would reasonably be expected to have a Material Adverse Effect unless that amendment or waiver is required by the Authority, law or regulation; or
  - (iii) all or any part of an Authorisation other than any administrative, procedural, or other minor variations which are immaterial to the interests of the Finance Parties or which rectify any manifest error or which comply with any court order, adjudication, or arbitration decision which is binding on the OFTO
- (d) The OFTO must not and must not agree to, without the written consent of the Security Trustee (acting in accordance with the STID and having regard to the relevant time limits in the Project Documents):
- (i) assign, transfer, novate or dispose or take any other similar action in relation to a Project Document (other than the OFTO Licence, the O&M Agreement or the O&M Guarantees) (in the case of each Project Document only, where the same would have a Material Adverse Effect) or Authorisation;
  - (ii) terminate, suspend or abandon a Project Document (in the case of each Project Document only, where the same would have a Material Adverse Effect) or Authorisation or take any steps to do so; or

- (iii) assign, transfer, novate or dispose or take any similar action in relation to the OFTO Licence in any material respect unless it is required to do so by the Authority pursuant to the OFTO Licence, or by law or regulation,

in each case, except as otherwise expressly permitted by the Finance Documents .

- (e) No Obligor shall enter into any material agreements, arrangements or documents (other than the Transaction Documents) without the prior written consent of the Security Trustee (acting in accordance with the STID).

## 28. Treasury Transactions

- (a) No Obligor shall enter into any Treasury Transaction other than the hedging transactions documented by the Hedging Agreements, which:

- (i) for each Calculation Period, hedge the inflation rate risk in relation to the revenues of the OFTO from its operations such that the aggregate of the notional amounts of any such inflation hedging is at any time equal to greater than 95% of the RPI Hedged Amount but does not exceed 110% of the RPI Hedged Amount;

- (ii) are subject to and governed by a Hedging Agreement which provides for "two way payments" on termination of a Hedging Agreement;

- (iii) to the extent entered into after the Signing Date, are on the same terms or on terms which are substantially no worse (other than in relation to economic terms) for an Obligor as the Treasury Transactions and related Hedging Agreements entered into on the Signing Date and in substantially the same form as the Treasury Transactions and related Hedging Agreements entered into on the Signing Date or otherwise be on terms and in a form and substance satisfactory to the Security Trustee (acting in accordance with the STID);

- (iv) must comply with clause 5.13 (*Terms of Hedging Agreements*) of the STID; and

- (v) the rights of the Obligor under or in relation to Treasury Transaction and the related Hedging Agreement must be assigned to the Security Trustee by way of security or otherwise secured in favour of the Security Trustee, and in a manner acceptable to, the Security Trustee (acting in accordance with the STID).

- (b) The OFTO shall on or around the Signing Date enter into Treasury Transactions which in aggregate hedge the inflation rate risk in relation to the revenues of the OFTO from its operations in an amount which is at least equal to the revenue required for Debt Service.

- (c) The OFTO shall maintain at all times Treasury Transactions that hedge the inflation rate risk within the levels set out in paragraph (a)(i) above. If the Treasury Transactions that hedge the inflation rate risk are:

- (i) greater than those set out in paragraph (a)(i) above the OFTO shall as soon as reasonably practicable terminate the Treasury Transactions (or part thereof) pro-rata between the Hedge Counterparties to ensure that they are no greater than those set out in paragraph (a)(i) above; or

- (ii) lower than those set out in paragraph (a)(i) above the OFTO shall as soon as reasonably practicable enter into additional Treasury Transactions to ensure that they are no lower than those set out in paragraph (a)(i) above.



- (d) An Obligor may only enter into a Hedging Agreement with a Hedge Counterparty:
- (i) (A) whose short-term unsecured and unsubordinated debt obligations are assigned a rating by the Rating Agencies which is no less than A-1 by S&P, F-1 by Fitch or P-1 by Moody's or any equivalent short term rating by another Rating Agency and whose long-term unsecured and unsubordinated debt obligations are assigned a rating by the Rating Agencies which is no less than A- by S&P, A- by Fitch or A3 by Moody's or any equivalent long-term rating by another Rating Agency; or
  - (B) whose long-term unsecured and unsubordinated debt obligations are assigned a rating by the Rating Agencies which is no less than the then current rating of the Notes,
- at the date on which that Hedging Agreement is entered into, provided that a transfer by novation of a Hedge Counterparty's interest in a Hedging Agreement in accordance with clause 5.13(g)(i) (Terms of the Hedging Agreements) of the STID shall be deemed to be in compliance with this paragraph (d); or
- (ii) where a guarantee is provided by an institution that meets the criteria set out in paragraph (i) above.
- (e) Subject to paragraph (f) below, no Obligor shall be deemed to be in breach of paragraph (a)(i) above (and will not be required to take any action in accordance with paragraph (c) above) unless:
- (i) on any Calculation Date it is forecast to fail to comply with paragraph (a)(i) for the following four consecutive Calculation Periods following that date according to the then current Forecast;
  - (ii) on any Calculation Date:
    - (A) it has failed to comply with the provisions of paragraph (a)(i) in one or more of the Calculation Periods preceding that Calculation Date; and
    - (B) it (or any other Obligor) is forecast to fail to comply with paragraph (a)(i) in one or more of the following consecutive Calculation Periods,

such that the aggregate total number of consecutive breaches (both immediately preceding and following that Calculation Date) of the relevant limits referred to in paragraph (a)(i) by it (or any other Obligor) is equal to or more than four; or
  - (iii) it has failed to comply with the provisions of paragraph (a)(i) in four or more Calculation Periods (whether or not consecutive),
- (f) In respect of:
- (i) sub-paragraphs (e)(i) and (ii) above, the relevant Obligor shall be required to reduce or increase (as the case may be) the notional amount of the relevant Treasury Transactions in respect of the fourth consecutive Calculation Period for which a breach of limits set out in paragraph (a)(i) above is forecast, and in respect of any subsequent Calculation Period for which a breach is forecast; and
  - (ii) sub-paragraph (e)(iii) above, the relevant Obligor shall be required to reduce or increase (as the case may be) the notional amount of the relevant Treasury Transactions in

respect of each Calculation Period following the Calculation Period on which the provisions of paragraph (a)(i) have been breached for the fourth time.

**29. Further Assurance**

- (a) Each Obligor shall, as soon reasonably practicable, do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may specify (and in such form as the Security Trustee may require in favour of the Security Trustee or any of its nominees):
- (i) to perfect the Security Interests created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Security Interest over all or any of the assets which are, or are intended to be, the subject of any Security Document) or for the exercise of any rights, powers and remedies of the Security Trustee or the Secured Creditors provided by or pursuant to the Finance Documents or by law;
  - (ii) to confer on the Security Trustee or confer on the Secured Creditors a Security Interest over any property and assets of that Obligor (as applicable) located in any jurisdiction equivalent or similar to the Security Interest intended to be conferred by or pursuant to any Security Document; and/or
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of any Security Document.
- (b) Each Obligor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security Interest conferred or intended to be conferred on the Security Trustee or the Secured Creditors by or pursuant to the Finance Documents.

**30. Credit Rating**

- (a) The OFTO shall use reasonable endeavours to maintain a long term credit rating of BBB- from at least one Rating Agency for the Bonds issued by the OFTO.
- (b) Each Obligor shall cooperate with the Rating Agencies in connection with any reasonable request for information in respect of the maintenance of a rating and with any review of its business which may be undertaken by one or more of the Rating Agencies after the Initial Issue Date.

**31. Accounting Reference Date**

No Obligor may change its Accounting Reference Date.

**32. Cash Management**

Each Obligor shall comply with the provisions of Schedule 5 (Cash Management).

**33. Auditors**

- (a) Each Obligor will at all times retain Auditors as its auditors.
- (b) Each Obligor shall, as soon as reasonably practicable, inform the Security Trustee of any change to its auditors.

**34. Insolvency**

Each Obligor must not take any step for the winding-up, administration of or dissolution of, or any insolvency proceeding, or for a voluntary arrangement, scheme of arrangement or other analogous step in relation to themselves or to each other.

**35. Project Accounts**

No Obligor shall, except with the prior consent of the Security Trustee, open or maintain any account or enter into a banking relationship with any branch of any bank or other financial institutions providing similar services, other than the holding of the Accounts with the Account Bank.

**36. Operating Costs**

Unless approved in accordance with, or permitted under, Paragraph 3 (Forecasts) of Part 1 (Information Covenants) of Schedule 2 (Obligor Covenants), the OFTO shall not incur or pay any cost or expense where that cost or payment exceeds:

- (a) 120 per cent. of the projected Operating Costs for the corresponding Calculation Period as set out in the then current Forecast; or
- (b) 200 per cent. of the projected Operating Costs set out for the corresponding Calculation Period set out in the Forecast prepared on or about the Initial Issue Date.

**37. Redemption upon receipt of Claim Proceeds, Relevant Disposal Proceeds and Insurance Proceeds**

- (a) Within 60 days of receipt by the OFTO of any Claim Proceeds or Relevant Disposal Proceeds the OFTO shall (and each Obligor (other than the OFTO) shall ensure that the OFTO will) apply an amount equal to the sum of the amount of the Claim Proceeds or Relevant Disposal Proceeds:
  - (i) first, to repay amounts outstanding under the PBCE Letter of Credit which have not been repaid or reimbursed pursuant to clause 4 (Reimbursement and Fees) of the PBCE Letter of Credit and Reimbursement Deed; and
  - (ii) second, either to:
    - (A) voluntarily redeem the Bonds in accordance with Condition 6.2(c) (6.2 Mandatory Redemptions for a PBCE Rebalancing Event and in respect of Claim Proceeds, Relevant Disposal Proceeds, Insurance Proceeds, any Equity Cure Amount and acceleration of the Guarantee) on the next Interest Payment Date; or
    - (B) purchase Bonds in the secondary market for immediate cancellation,
- (b) As soon as reasonably possible following receipt by the OFTO of any Insurance Proceeds, the OFTO shall (and each Obligor (other than the OFTO) shall ensure that the OFTO will) apply the Insurance Proceeds in the following order:
  - (i) first, to the extent that amounts have been withdrawn from the Debt Service Reserve Account as contemplated by paragraph 3(c)(i) (Debt Service Reserve Account) of Schedule 5 (Cash Management) and/or the Working Capital Reserve Account as contemplated by paragraph 6(c)(iv) (Working Capital Reserve Account) of Schedule 5 (Cash Management),

to transfer to the Debt Service Reserve Account and/or the Working Capital Reserve Account (as applicable) an amount equal to the amount withdrawn for those purposes from such account;

(ii) second, to repay amounts outstanding under the PBCE Letter of Credit which have not been repaid or reimbursed pursuant to clause 4 (Reimbursement and Fees) of the PBCE Letter of Credit and Reimbursement Deed; and

(iii) third, either to:

(A) voluntarily redeem the Bonds in accordance with Condition 6.2(c) (Mandatory Redemptions for a PBCE Rebalancing Event and in respect of Claim Proceeds, Relevant Disposal Proceeds, Insurance Proceeds, any Equity Cure Amount and acceleration of the Guarantee) on the next Interest Payment Date; or

(B) purchase Bonds in the secondary market for immediate cancellation.

(c) Where Excluded Claim Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of Excluded Claim Proceeds or Excluded Insurance Proceeds), the OFTO shall ensure that those amounts are used for that purpose and, if requested to do so by the Security Trustee (acting in accordance with the STID), shall deliver a certificate to the Security Trustee at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

### **38. Mandatory Redemption upon PBCE Rebalancing**

(a) Subject to paragraph (b) below, upon the occurrence of a PBCE Rebalancing Event, the OFTO shall (and each other Obligor shall procure that the OFTO will) mandatorily redeem the Bonds at their Outstanding Principal Amount in accordance with Condition 6.3 on the immediately following Interest Payment Date in an amount equal to the amount to be drawn under the PBCE Letter of Credit for that PBCE Rebalancing Event.

(b) The provisions of paragraph (a) above will not apply in respect of a PBCE Excess Draw Rebalancing Event if a PBCE Rebalancing Cure has occurred on or before the PBCE Rebalancing Cure Date.

### **39. OFTO Licence**

The OFTO shall not exercise any of following rights or discretions under the OFTO Licence in a manner which has or would be reasonably likely to have a Material Adverse Effect:

(a) (without prejudice to the OFTO's obligations to inform the Authority of an income adjustment that has led to a cost saving under paragraph 14 (Formula for the Income Adjusting Event Revenue Adjustment (IATt) of amended standard condition E12-J3) making any representation or submission to the Authority on the calculation of the pass through revenue adjustment term under amended standard conditions E12-J2 to E12-J9;

(b) exercising any rights in relation to any proposed changes to the STC and/or CUSC; or

(c) giving notice to the Authority of any challenge to any order under section 27 of the Electricity Act 1989.

**40. Technical Adviser and Insurance Adviser**

The Security Trustee shall (on instruction of the Secured Creditors in accordance with the STID), at any time any such Secured Creditor reasonably believes that the Technical Adviser and/or Insurance Adviser is not performing its role to the standard it is required to observe under the Finance Documents, give notice of such matter to the OFTO. Following such notice the OFTO shall respond promptly confirming either:

- (a) the steps that it is taking to ensure that the Technical Adviser and/or Insurance Adviser meets the standard of performance reasonably expected of it by the Secured Creditors; or
- (b) the steps that it shall take to replace the Technical Adviser and/or Insurance Adviser with a person demonstrably capable of performing such role and which is of international repute and with equivalent experience in transactions and projects of a similar nature to the Project.

**41. Adviser Reports**

On or after the Signing Date none of the Obligors shall request that any provider of an Adviser Report extend its reliance to any additional Secured Creditor without the prior written consent of the Security Trustee (acting in accordance with the STID).

**42. Availability Incentive Financial Security Plan**

On or before the date being three months prior to the date falling on the first date of the sixteenth year after the date of the Initial Issue Date, the OFTO shall provide to the Security Trustee a plan which sets out how the OFTO will satisfy its obligations to procure the financial security pursuant to and in compliance with paragraphs 14 and 15 of Amended Standard Condition E12-J4.

**43. Voluntary redemption or purchase**

The OFTO shall only make a voluntary redemption of the Bonds or any voluntary purchase of the Bonds provided that it has sufficient funds available to make any resulting termination payments under the relevant Hedging Agreements in accordance with the relevant Priority of Payments.

**44. Bond specific covenants**

The OFTO shall:

- (a) give or procure to be given to the Bond Trustee such opinions, certificates, information and evidence as it shall reasonably require and in such form as it shall reasonably require (including without limitation the procurement by the OFTO of all such certificates called for by the Bond Trustee pursuant to clause 18.3 (Supplement to Trustee Acts) of the Bond Trust Deed) for the purpose of the discharge or exercise of the duties, trusts, powers, authorities and discretions vested in it under these presents or any other Finance Document or by operation of law;
- (b) cause to be prepared and certified by its Auditors in respect of each financial accounting period accounts in such form as will comply with all relevant legal and accounting requirements and all requirements for the time being of the Central Bank of Ireland and/or the Irish Stock Exchange;

- (c) at all times keep proper books of account and allow the Bond Trustee and any person appointed by the Bond Trustee to whom the OFTO shall have no reasonable objection free access to such books of account at all reasonable times during normal business hours;
- (d) at all times maintain a Principal Paying Agent in accordance with the Conditions;
- (e) procure the Principal Paying Agent to notify promptly the Bond Trustee in the event that the Principal Paying Agent does not, by the time specified in the Agency Agreement for any payment to it in respect of the Bonds or any of the relative Coupons or Receipts, receive unconditionally, pursuant to and in accordance with the Agency Agreement, payment of the full amount in the requisite currency of the moneys payable on such due date on the Bonds, Coupons or Receipts as the case may be;
- (f) in the event of the unconditional payment to the Principal Paying Agent or the Bond Trustee of any sum due in respect of the Bonds or any of the relative Coupons or Receipts being made after the time specified in the Agency Agreement for such payment promptly give or procure to be given notice to the relevant Bondholders in accordance with the Conditions that such payment has been made;
- (g) use its best endeavours to maintain the listing of the Bonds on the official list of the Irish Stock Exchange and the admission of the Bonds to trading on the Irish Stock Exchange or, if it is unable to do so having used its best endeavours or if the Bond Trustee considers that the maintenance of such listing and/or admission to trading is unduly onerous and the Bond Trustee is of the opinion that to do so would not be materially prejudicial to the interests of the Bondholders, use its best endeavours to obtain and maintain a quotation or listing of the Bonds on such other stock exchange or exchanges or securities market or markets as the OFTO may (with the prior written approval of the Bond Trustee) decide and shall also upon obtaining a quotation or listing of the Bonds on such other stock exchange or exchanges or securities market or markets enter into a trust deed supplemental to the Bond Trust Deed to effect such consequential amendments to these presents as the Bond Trustee may require or as shall be requisite to comply with the requirements of any such stock exchange or securities market;
- (h) give notice to the Bondholders in accordance with the Conditions of any appointment, resignation or removal of any Principal Paying Agent in accordance with the terms of the Agency Agreement or any change of the Principal Paying Agent's specified office and (except as provided by the Agency Agreement or the Conditions) at least thirty (30) days prior to such event taking effect; provided always that so long as any of the Bonds, Coupons or Receipts remain outstanding in the case of the termination of the appointment of the Principal Paying Agent no such termination shall take effect until a new Principal Paying Agent (as the case may be) has been appointed in accordance with the terms of the Agency Agreement;
- (i) send to the Bond Trustee, not less than fourteen (14) days prior to the date on which any such notice is to be given, the form of every notice to be given to the Bondholders in accordance with the Conditions and obtain the prior written approval of the Bond Trustee to, and promptly give to the Bond Trustee two copies of, the final form of every notice to be given to the Bondholders in accordance with the Conditions (such approval, unless so expressed, not to constitute approval for the purposes of Section 21 of the FSMA of a communication within the meaning of Section 21 of the FSMA));
- (j) comply with and perform all its obligations under the Agency Agreement and each other Finance Document and shall exercise all rights that are available to it under those documents to procure that the Principal Paying Agent, Euroclear, Clearstream, Luxembourg,

and each party to any of the other Finance Documents comply with and perform all their respective obligations thereunder and (in the case of the Principal Paying Agent) any notice given by the Bond Trustee pursuant to clause 3.1.1(a) (Bond Trustee's requirements regarding the Principal Paying Agent) of the Bond Trust Deed and not make any amendment or modification to such agreement or any other Bond Document without the prior written approval of the Bond Trustee and use all reasonable endeavours to make such amendments to such agreement or any other Bond Document as the Bond Trustee may require;

- (k) in order to enable the Bond Trustee to ascertain the principal amount of Bonds for the time being outstanding for any of the purposes referred to in the proviso to the definition of **outstanding** in the Master Definitions Agreement, deliver to the Bond Trustee forthwith upon being so requested in writing by the Bond Trustee a certificate in writing signed by a director of the OFTO setting out the total number and aggregate principal amount of Bonds which are at the date of such certificate held by, for the benefit of, or on behalf of, the OFTO, any Holding Company of the OFTO or any other Subsidiary of such Holding Company;
- (l) procure that the Principal Paying Agent makes available for inspection by Bondholders at its specified office copies of the Bond Trust Deed and the other Finance Documents and the then latest audited Annual Financial Statements of the OFTO;
- (m) give notice to the Bond Trustee of the proposed redemption of the Bonds at least five (5) Business Days prior to the giving of any notice of redemption in respect of such Bonds in accordance with the Conditions;
- (n) at all times use all reasonable endeavours to procure that Euroclear and Clearstream, Luxembourg (as the case may be) issue(s) any record, certificate or other document requested by the Bond Trustee as contemplated by the Bond Trust Deed as soon as possible after such request; and
- (o) at any time within 14 days of a demand therefor from the Bond Trustee or the Security Trustee, deliver to the Bond Trustee and the Security Trustee a certificate signed by two directors of the OFTO certifying that so far as it is aware there did not exist, up to a specified date not earlier than five business days before the date of such certificate (the **Certification Date**), any Default or other breach of any of the Transaction Documents since the most recent (i) the Certification Date of the last certificate provided pursuant to this paragraph (o) (or if there is no such certificate, the date of this Agreement) or (ii) the date of the last Investor Report or, if it is aware that a Default or other such breach did then exist had been delivered, specifying the same.

## SCHEDULE 3

### EVENTS OF DEFAULT

Each of the events set out in this Schedule 3 is an Event of Default under each Finance Document other than any Hedging Agreement.

#### 1. Non Payment

Any amount payable by the OFTO under the Finance Documents (other than a Direct Agreement) is not paid on the due date as required under such documents, unless (a) its failure to pay is caused by administrative or technical error and payment is received within five Business Days of the due date or (b) (only to the extent that the OFTO has insufficient funds to meet such obligation having regard to the priority of payments in paragraph 2 of Schedule 5 (Cash Management)) such amount is an amount referred to in paragraph 2(xiv) of Schedule 5 (Cash Management).

#### 2. Breach of Financial Covenant and other obligations

(a) Subject to paragraph (b) below:

- (i) the Projected DSCR;
- (ii) the Historic DSCR; and/or
- (iii) the Debt Life Cover Ratio,

in each case, in respect of the Relevant Period as at the relevant Calculation Date as stated in the Investor Report provided to the Security Trustee, is not equal to or greater than the applicable Default Ratio Level and provided that an Event of Default under paragraph (i), (ii) or (iii) may be cured by exercise of any Equity Cure Right and/or a PBCE Rebalancing.

(b) For the purpose of this paragraph 2 (Breach of Financial Covenant and other obligations), the amount of Net Cashflow will take into account the undrawn balance of the PBCE Letter of Credit as at the start of the Relevant Period applicable to the relevant Calculation Date when calculating each of the Projected DSCR, the Historic DSCR and the Debt Life Cover Ratio.

#### 3. Breach of Other Obligations

(a) Any Obligor does not comply with any provision of the Finance Documents (other than those referred to in paragraphs 1 and 2 above and/or prior to the Senior Discharge Date, those provisions set out in clause 2.4 (Covenants of the Obligor) of the PBCE Letter of Credit and Reimbursement Deed).

(b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within twenty (20) Business Days of the earlier of (i) the Security Trustee giving notice to the OFTO and (ii) the OFTO becoming aware of the failure to comply.

#### 4. STID

- (a) Any party to the STID (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the STID; or
- (b) a representation or warranty given by that party in the STID is incorrect in any material respect



and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within fifteen (15) Business Days of the earlier of (i) the Security Trustee giving notice to that party or (ii) that party becoming aware of the non-compliance or misrepresentation.

## **5. Misrepresentation**

- (a) Any representation or statement made by an Obligor in any Finance Document (other than a Direct Agreement) or in any other document delivered by or on behalf any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any respect when made or deemed to be repeated.
- (b) No Event of Default under paragraph (a) above will occur if the failure or event or circumstance giving rise to the breach is capable of remedy and is remedied within 20 Business Days of the earlier of (i) the Security Trustee giving notice to the OFTO and (ii) the OFTO becoming aware of the event or circumstance.

## **6. Cross Default**

- (a) Any of the following occurs in respect of an Obligor:
  - (i) non-payment of amounts payable after the expiry of any originally applicable grace period in respect of any of its Financial Indebtedness (other than in respect of the Secured Debt or the Subordinated Intragroup Liabilities) in excess of £100,000 (Indexed) or its equivalent; or
  - (ii) as a result of an event of default (howsoever described) an amount of its Financial Indebtedness (other than in respect of the Secured Debt or the Subordinated Intragroup Liabilities) in excess of £100,000 (Indexed) or its equivalent:
    - (A) is declared due and payable prior to its specified maturity;
    - (B) is cancelled or suspended by a creditor; or
    - (C) is capable of being declared by a creditor to be prematurely due and payable prior to its specified maturity.

## **7. Insolvency**

- (a) Subject to paragraph (c) below, any Obligor:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) is deemed to, or declared to, be unable (other than pursuant to section 123(i)(a) of the Insolvency Act 1986) to pay its debts under applicable law;
  - (iii) suspends or threatens to suspend making payments on any of its debts; or
  - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with its creditors generally with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of any Obligor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

- (c) There shall be no Event of Default under paragraph (a) above, where the relevant indebtedness arises under any Subordinated Intragroup Liabilities or any loan or guarantee between the Obligor.

## **8. Insolvency Proceedings**

- (a) Any corporate action, legal proceedings or other procedure or step is taken in relation:
- (i) 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 any Obligor;
  - (ii) a composition, compromise, assignment or arrangement with creditors generally of any Obligor (as part of a general composition, compromise, assignment or arrangement affecting such Obligor's creditors generally) other than a composition compromise, assignment or arrangement with respect to any Subordinated Intragroup Liabilities or any loan or guarantee between any Obligor;
  - (iii) the appointment of a liquidator, Receiver, administrator, compulsory manager, energy administrator or other similar officer in respect of any Obligor or any of its assets; or
  - (iv) enforcement of any Security Interest over any assets of any Obligor,
- or any analogous procedure or step is taken in any jurisdiction.

- (b) Paragraph (a) shall not apply to:

- (i) any winding-up petition which is (A) being contested in good faith and with due diligence by any Obligor; or (B) frivolous or vexatious; and (C) in any event, is discharged, stayed or dismissed within 20 Business Days of commencement or, if earlier, the date on which it is advertised; or
- (ii) any step or procedure contemplated by paragraph (b) of the definition of Permitted Transaction.

## **9. Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Obligor having an aggregate value of £1,000,000 and is not discharged within 30 days.

## **10. Cessation of business**

An Obligor ceases, or threatens to cease, to carry on business.

## **11. Unlawfulness and Invalidity**

- (a) It is or becomes unlawful for an Obligor to perform any of its material obligations under the Finance Documents or any Security Interest created or expressed to be created or evidenced by the Security Documents ceases to be effective or any subordination created under the STID is or becomes unlawful.
- (b) Any obligation or obligations of any Obligor under any Finance Documents are not (subject to the Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively adversely affects the interests of the Secured Creditors under the Finance Documents.

- (c) Any Finance Document ceases to be in full force and effect or any Security Interest or any subordination created under the STID ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

## **12. Repudiation and Rescission of Agreements or Authorisations**

- (a) An Obligor:
- (i) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document; or
  - (ii) evidences an intention to rescind or repudiate a Transaction Document.
- (b) The Lease is terminated or repudiated, where such termination or repudiation has, or is likely to have, a Material Adverse Effect.
- (c) Any Authorisation:
- (i) is not obtained or effected by the time it is required;
  - (ii) is revoked or cancelled or otherwise ceases to be in full force and effect;
  - (iii) is not renewed or is renewed on revised terms; or
  - (iv) is varied or waived,

and, in each case, this has or could have a Material Adverse Effect. For the avoidance of doubt, this Paragraph 12(c) shall not apply where a Default has occurred and is outstanding in relation to an Authorisation under Paragraph 3 (Breach of Other Obligations) of this Schedule 3 (Events of Default) by virtue of a breach by the OFTO of Paragraphs 27(c)(iii) and (d) (Project Documents) of Part 3 (General Covenants) of Schedule 2 (Obligor Covenants) in respect of such Authorisation.

## **13. OFTO Licence**

- (a) The OFTO receives notice that the OFTO Licence will be terminated or revoked or the OFTO Licence is terminated or revoked except in circumstances in which it is or will be replaced immediately by a further licence or licences granted to the OFTO on equivalent terms which permit the OFTO to carry on the Permitted Business as it was carried out on the first day of the Revenue Period taking into account any changes in the regulatory environment since that date.
- (b) There is a breach of the OFTO Licence which has a Material Adverse Effect.
- (c) It is or becomes unlawful for any party to perform any of its material obligations under any Transaction Authorisation.

## **14. Nationalisation**

The ability of the OFTO to conduct its business as carried on at the Completion Date is limited or curtailed to a material extent by any expropriation, confiscation, compulsory acquisition, requisition or nationalisation by or on behalf of any Government Entity in relation to any of the OFTO's assets or all or a material part of the OFTO's rights under any Transaction Document is forfeited, suspended by or on behalf of any Government Entity.

**15. Material Proceedings**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in writing against the OFTO, or the enforcement of any execution proceedings in relation to any assets of the Obligor, each of which have, or would reasonably be likely to have a Material Adverse Effect.

**16. Project Documents other than any Transaction Authorisation**

(a) Subject to paragraphs (b) and (c) below:

(i) it is or becomes unlawful for any party to perform any of its material obligations under the Project Documents (other than any Transaction Authorisation) or any Project Document (other than any Transaction Authorisation) ceases to be effective;

(ii) any obligation or obligations of any party under any Project Document (other than any Transaction Authorisation) are not or cease to be legal, valid, binding or enforceable subject to the Reservations; or

(iii) any Project Document (other than the OFTO Licence) is terminated in accordance with its terms and (if that termination right has been asserted by the counterparty to such Project Document) the OFTO:

(A) has not challenged such termination within the prescribed period; and/or

(B) has exhausted all rights of challenging such termination in accordance with the terms of the relevant Project Document.

(b) Paragraphs (i) to (iii) above (inclusive) shall not apply if, in respect of any such Project Document (other than any Transaction Authorisation, the O&M Agreement or the O&M Guarantee), such event does not have or would not reasonably be expected to have a Material Adverse Effect.

(c) If an Event of Default arises solely as a result of an event or circumstance affecting the O&M Contractor, an O&M Guarantor or the Management Services Provider, whether directly or indirectly as a result of an event which is or would be likely to be materially adverse to the ability of the O&M Contractor, the O&M Guarantor or the Management Services Provider to perform its material obligations under any Project Document, and such Event of Default can be remedied by replacing the O&M Contractor, the Management Services Provider or the O&M Guarantor (as applicable) then such Event of Default shall not be deemed to have occurred (although a Potential Event of Default will subsist) if the provisions of Paragraph 27(c)(i)(C) of Part 3 of Schedule 2 (Obligor Covenants) are complied with (provided that (y) such Event of Default shall be deemed to have occurred if any of the provisions of Paragraph 27(c)(i)(C) of Part 3 of Schedule 2 (Obligor Covenants) are not complied with and (z) this paragraph is without prejudice to the occurrence and subsistence of any other Event of Default and in each such case the Secured Creditors shall be entitled to exercise all the rights and remedies in relation to Events of Default under and in accordance with the Finance Documents as are available to them).

(d) Notwithstanding paragraph 16(c) above, an Event of Default will occur under this paragraph 16 if the OFTO has, in accordance with paragraph 16(c) above, certified that it is entering into, or intends to enter into, a replacement agreement and/or guarantee (and such certification has not been withdrawn) but is not taking appropriate steps to pursue that designated course of action.

**17. Change of control**

At any time on or after the Signing Date the OFTO ceases to be a wholly-owned Subsidiary of HoldCo.

**18. Final Licence Trigger Event Remediation Plan**

The OFTO fails to comply with any part of a Final Licence Trigger Event Remediation Plan by the time or within the time periods which are agreed within the relevant Final Licence Trigger Event Remediation Plan.

**19. Insurance**

(a) Any Insurance or any other insurance required to be effected under any Transaction Document:

- (i) is not, or ceases to be, in full force and effect;
- (ii) is unavailable at the time it is required to be effected;
- (iii) is repudiated, avoided or suspended; or
- (iv) (in the case of any Insurance only) ceases to be provided by a Qualifying Insurer; or

(b) Any insurer is entitled to avoid, repudiate or suspend (in each case to any extent) or otherwise reduce its liability under the policy relating to any Insurance or other insurance required to be effected under any Transaction Document,

and, in each case, the OFTO has not replaced such insurance provider in accordance with Paragraph **Error! Reference source not found.** of Part 1 (Insurance Undertakings) of Schedule 6 (Insurances) within 20 Business Days of the OFTO becoming aware of such cessation, ineffectiveness, unavailability or repudiation.

**20. Equity Cure**

(a) If an Investor Report to be delivered to the Security Trustee for any period shows that there would be a breach in respect of a Financial Ratio Event of Default or a PBCE DLCR Rebalancing Event would occur, the Investors may provide or procure the provision of Additional Equity in an amount at least sufficient for the amount necessary to cure the relevant breach (the **Equity Cure Amount**) by applying that Equity Cure Amount in:

- (i) making market purchases of Bonds for a purchase price not exceeding the aggregate of (A) par and (B) any premium which would be payable were the OFTO to redeem such Bonds at such time (provided that such Bonds are then cancelled in accordance with their terms);
- (ii) prepayment of Bonds;
- (iii) payments into the Defeasance Account; and
- (iv) payment of any related Repayment Costs,

(an **Equity Cure Right**).

(b) The exercise of the Equity Cure Right:

- (i) shall be subject to any limitations thereon in any Authorised Credit Facility; and
  - (ii) in any event, shall not be exercised more than three times from the date of this Agreement to the Final Maturity Date of the Bonds or in respect of two consecutive Calculation Dates.
- (c) Any Equity Cure Amount must be provided on or prior to the date falling 10 Business Days after the delivery of the relevant Investor Report.
- (d) On application of the Equity Cure Amount in accordance with paragraph (a) above, the applicable financial ratio specified in paragraph 2 (Financial ratios) of Part 2 (Financial Information) of Schedule 2 (Obligor Covenants) of this Agreement will be re-calculated on a pro forma basis:
- (i) if the Financial Ratio Event of Default is a breach of the Historic DSCR, as if the Equity Cure Amount had been applied at the commencement of the applicable historic Relevant Period, such that the Debt Service shall be deemed as at the relevant Calculation Date to have been reduced by the amount of Debt Service which is attributable to the Senior Debt which has been prepaid, purchased and/or defeased;
  - (ii) if the Financial Ratio Event of Default is a breach of the Projected DSCR, as if the Equity Cure Amount had been applied on the Calculation Date in respect of such Relevant Period in accordance with paragraph (a) above, such that the Debt Service shall be deemed as at the relevant Calculation Date to have been reduced by the amount of Debt Service which is attributable to the Senior Debt which has been prepaid, purchased and/or defeased; and/or
  - (iii) if the Financial Ratio Event of Default is a breach of the Debt Life Cover Ratio or a PBCE DLCR Rebalancing Event, as if the Equity Cure Amount had been applied on the Calculation Date in respect of such Relevant Period in accordance with paragraph (a) above, such that the Senior Debt outstanding shall be deemed as at the relevant Calculation Date to have been reduced by the amount of Senior Debt which has been prepaid, purchased and/or defeased.
- (e) If after the applicable financial ratio specified in paragraph 2 (Financial ratios) of Part 2 (Financial Information) of Schedule 2 (Obligor Covenants) of this Agreement is re-calculated, the breach has been prevented or cured, that financial ratio shall be deemed to have been satisfied on the date of the relevant Investor Report as though no breach had ever occurred and any related Financial Ratio Event of Default or PBCE DLCR Rebalancing Event shall be deemed not to occur or have occurred, as applicable.

**21. Protected rights of the OFTO as holder of the OFTO Licence**

- (a) Notwithstanding any other provision of any Finance Document but to the extent required by paragraph 1(d) of condition E10 of the OFTO Licence only, if an Event of Default occurs solely as a result of any act, omission or state of affairs in existence which relates only to HoldCo the power to take any Enforcement Action shall be deemed not to have arisen as against the OFTO for so long as the OFTO is the holder of the OFTO Licence as regards all sums owed by the OFTO under the Finance Documents until the OFTO ceases to hold the OFTO Licence.
- (b) The provisions of paragraph (a) above shall not operate so as to limit the rights of any Secured Creditor to take any Enforcement Action:
- (i) in any other circumstances;

(ii) in the circumstances set out in paragraph (a) above (including, without limitation, under paragraph (c) of the definition of that term),

against HoldCo in accordance with the provisions of the Finance Documents or of the Security Trustee to exercise all or any of its rights and remedies against HoldCo on or following the occurrence of such an Event of Default nor shall the provisions of paragraph (a) above qualify the Security Trustee's ability to exercise such powers, rights and remedies against HoldCo in its own discretion or if so instructed by the Secured Creditors in accordance with the STID.

**SCHEDULE 4**  
**FORM OF INVESTOR REPORT**  
**Template for Investor Report**

**General Overview**

***Present Status:***

Investors: [●]

O&M Contractor: [●]

O&M Guarantors: [●]

Security Trustee: [●]

Principal Paying Agent: [●]

Technical Adviser: [●]

Insurance Adviser: [●]

Ratings by [Moody's/S&P/Fitch]: [●]

Outstanding Principal Amount: [●]

[Insert any relevant information including general performance including but not limited to availability of the Transmission Assets and maintenance of the OFTO including availability deductions in each case showing performance against the current Forecast]

[Copies of any material communication or report delivered by the OFTO or NETSO pursuant to the terms of any Transaction Authorisation during the preceding half-year.]

[Further information]/[Information] is available at [●] and [insert relevant paragraph] of the Financial Statements.

**Regulatory and business update**

1. New significant regulatory and business and performance developments
2. Significant announcements/publications by the Authority by or relating to the Security Group
3. Significant changes to the board of directors or senior management

**Current Hedging Position**

4. General overview of the current hedging position.

**Current availability / drawn amounts under the PBCE**

5. General overview of PBCE position including the likelihood of any future drawings.



## Project Documents

6. Summary of any material amendments to, or replacement of, a Project Document since the date of the last Investor Report.

## Ratios

7. We confirm that the ratios (together the Ratios) are as detailed in the tables below:

Ratio	Ratio for Relevant Period/Date (excluding undrawn PBCE)	Lock-Up Ratio Level (excluding undrawn PBCE)	Ratio for Relevant Period/Date (including undrawn PBCE)	Default Ratio Level (includes undrawn PBCE)
Projected DSCR:		[●]x		[●]x
Historic DSCR:		[●]x		[●]x
Debt Life Cover Ratio:		[●]x		[●]x

8. We confirm that the Ratios have been calculated using the most recently available financial information required to be provided by the Obligors under Schedule 2 (Obligor Covenants) of the Common Terms Agreement.

9. We set out below the computation of the Ratios for your information:

- (a) Projected DSCR

*[insert in reasonable detail the computations necessary to demonstrate compliance including any Equity Cure Amounts applied where relevant]*

- (b) Historic DSCR

*[insert in reasonable detail the computations necessary to demonstrate compliance including any Equity Cure Amounts applied where relevant]*

- (c) Debt Life Cover Ratio

*[insert in reasonable detail the computations necessary to demonstrate compliance including any Equity Cure Amounts applied where relevant]*

10. We confirm that:

- (a) [no Default has occurred and is continuing][a Default has occurred and is continuing and the following steps are being taken to remedy such Default:[●]];
- (b) the statements set out in this Investor Report are accurate in all material respects;
- (c) the amount of any Restricted Payment made since the date of the previous Investor Report (or, if none, the Initial Issue Date) is [●]; and

(d) *[other]*.

Yours faithfully,

.....

Director

Signing without personal liability, for and on behalf of

**[OFTO]**

## SCHEDULE 5

### CASH MANAGEMENT

#### 1. General

- (a) The OFTO shall open and maintain the following accounts with the Account Bank:
- (i) the Proceeds Account;
  - (ii) the Debt Service Reserve Account;
  - (iii) the Maintenance Reserve Account;
  - (iv) the Working Capital Reserve Account; and
  - (v) the Debt Service & PBCE Account.
- (b) Following the Initial Issue Date, as and when required by the relevant Transaction Documents, the OFTO shall open and maintain the following accounts with the Account Bank:
- (i) the DECC Decommissioning Reserve Account; and
  - (ii) the Defeasance Account.
- (c) HoldCo shall open and maintain the HoldCo Account with the Account Bank.
- (d) Each Obligor shall maintain the Accounts and operate them in accordance with the Account Bank Agreement and this Agreement.

#### 2. Proceeds Account

- (a) Unless a Finance Document expressly requires an amount to be paid into any other Account, the OFTO must ensure that any amount payable to the OFTO is paid promptly into the Proceeds Account.
- (b) Unless a Finance Document expressly provides otherwise, the OFTO may only withdraw amounts from the Proceeds Account if they are applied (without double counting) for the following purposes in the following order:
- (i) **first, *pro rata and pari passu*** towards the costs, fees, expenses, charges, liabilities and indemnities (if any) of the Security Trustee and any Receiver appointed by the Security Trustee;
  - (ii) **second,** towards the costs, fees, expenses, charges, liabilities and indemnities (if any) of the Bond Trustee;
  - (iii) **third, *pro rata and pari passu*** towards costs, fees, expenses, charges, liabilities and indemnities (if any) of the Account Bank and each Agent;
  - (iv) **fourth, *pro rata and pari passu*** the in payment of any Project Costs due but unpaid;
  - (v) **fifth, *pro rata and pari passu*** in payment of any Operating Costs and Taxes due but unpaid;

- (vi) **sixth, *pro rata and pari passu* towards:**
  - (A) costs, fees and expenses of the Technical Adviser and the Insurance Adviser; and
  - (B) costs and expenses payable by the PBCE Provider to third parties in its capacity as creditor in respect of the PBCE Documents;
- (vii) **seventh, *pro rata and pari passu* in payment of:**
  - (A) scheduled interest and scheduled principal outstanding under the Bonds; and
  - (B) scheduled payments (including Deferred Payments (as defined in the Hedging Agreement) but excluding any other termination payments) on Hedging Agreements;
- (viii) **eighth, *pro rata and pari passu* in payment of:**
  - (A) interest and principal (other than on a voluntary redemption basis) which is due and payable under the Bonds; and
  - (B) termination payments (excluding Deferred Payments) and any other payments due on Hedging Agreements other than a termination payment resulting from the termination of a Hedging Agreement following the occurrence of a Qualifying Default (as defined in the relevant Hedging Agreement) in relation to a Hedge Counterparty to which part 1(j)(viii) of the schedule to the relevant Hedging Agreement applies;
- (ix) **ninth, on the Initial Issue Date and on each Calculation Date a transfer to the Debt Service Reserve Account to the extent required by this Agreement;**
- (x) **tenth, on the Initial Issue Date and on each Calculation Date a transfer to the Maintenance Reserve Account to the extent required by this Agreement;**
- (xi) **eleventh, on the Initial Issue Date and on each Calculation Date a transfer to the Working Capital Reserve Account to the extent required by this Agreement;**
- (xii) **twelfth, on the Initial Issue Date and on each Calculation Date a transfer to the DECC Decommissioning Reserve Account to the extent required by this Agreement;**
- (xiii) **thirteenth, in or towards payment of costs, fees and expenses of the PBCE Provider to the extent that such amounts have not been met under paragraph (vi)(B) above;**
- (xiv) **fourteenth, other amounts payable to the PBCE Provider to be applied in the following order:**
  - (A) amounts of indemnities and accrued but unpaid (and uncapitalised) interest on principal amounts owing to the PBCE Provider following a demand being made under the PBCE Letter of Credit;
  - (B) principal amounts (representing capitalised interest) owing to the PBCE Provider following a demand being made under the PBCE Letter of Credit;
  - (C) all remaining principal amounts owing to the PBCE Provider following a demand being made under the PBCE Letter of Credit; and

- (D) any other sum due but unpaid under the PBCE Letter of Credit and Reimbursement Deed;
- (xv) **fifteenth**, in or towards payment of termination payments following the occurrence of a Qualifying Default (as defined in the relevant Hedging Agreement) in relation to a Hedge Counterparty to which part 1(j)(viii) of the schedule to the relevant Hedging Agreement applies;
- (xvi) **sixteenth**, in or towards satisfaction of any total voluntary redemption of the Bonds or any voluntary purchase of the Bonds (including, without limitation, any voluntary redemption or voluntary purchase of the Bonds in full pursuant to Conditions 6.2 and 6.6, as the case may be); and
- (xvii) **seventeenth**, subject to satisfaction of the Restricted Payment Condition and provided that such payment is within 30 days of a Calculation Date, to make a Restricted Payment.

(the **Pre-enforcement Priority of Payment**).

### **3. Debt Service Reserve Account**

#### **(a) Required DSRA Balance**

- (i) On and after the Initial Issue Date, the OFTO must ensure that the amount standing to the credit of the Debt Service Reserve Account is not less than the Required DSRA Balance.
- (ii) The Required DSRA Balance will be applicable from the date on which it is calculated until the next Calculation Date.

#### **(b) Payments in**

Subject to the terms of this Agreement, the OFTO must on the Initial Issue Date and each Calculation Date, transfer from the Proceeds Account to the Debt Service Reserve Account:

- (i) an amount sufficient to ensure that the amount standing to the credit of the Debt Service Reserve Account on that date is equal to the Required DSRA Balance; or
- (ii) if less, the amount available for that purpose in accordance with this Agreement.

#### **(c) Withdrawals**

The OFTO may only withdraw amounts from the Debt Service Reserve Account if they are applied for the following purposes in the following order:

- (i) to pay any amount contemplated by paragraphs 2(b)(vii) to 2(b)(viii) (inclusive) falling due and payable under the Finance Documents at that time but only to the extent that there are insufficient funds in the Proceeds Account to meet those payments; and
- (ii) to transfer to the Proceeds Account on a Calculation Date, but only to the extent that the balance standing to the credit of the Debt Service Reserve Account following the transfer, equals or exceeds the Required DSRA Balance on that Calculation Date.

### **4. Maintenance Reserve Account**

#### **(a) Payments in**

Subject to the terms of this Agreement, the OFTO must on each Calculation Date, transfer from the Proceeds Account to the Maintenance Reserve Account:

- (i) an amount sufficient to ensure that the amount standing to the credit of the Maintenance Reserve Account on that date is equal to the Maintenance Reserve Amount; or
- (ii) if less, the amount available for that purpose in accordance with this Agreement.

**(b) Withdrawals**

The OFTO may withdraw amounts from the Maintenance Reserve Account if they are applied for the following purposes and in the following order:

- (i) in the case of the Final Maturity Date, in order to make the final repayment of the Senior Debt in accordance with the Finance Documents on such date;
- (ii) to meet any Additional Budgeted Maintenance Costs as they fall due for payment provided that no withdrawal under this sub-paragraph (ii) may be made unless, at least ten Business Days prior to such withdrawal, the OFTO has:
  - (A) certified in writing to the Security Trustee that such Additional Budgeted Maintenance Costs are due and payable and the costs to be paid are properly reflected in the most recent Forecast provided to the Security Trustee pursuant to this Agreement; and
  - (B) supplied copy invoices in relation thereto, together with the details of the identity and nature of the works or services that have been (or will be) carried out,

provided that, in relation to any relevant Additional Budgeted Maintenance Cost, the OFTO shall only be entitled to withdraw from the Maintenance Reserve Account an amount equal to that which it has credited to the Maintenance Reserve Account specifically for such Additional Budgeted Maintenance Cost, as evidenced by the most recent Forecast provided to the Security Trustee pursuant to this Agreement; and

- (iii) to the extent that the most recent Forecast evidences that the amount standing to the credit of the Maintenance Reserve Account exceeds the then applicable Maintenance Reserve Amount, the OFTO may transfer the whole or part of the excess to the Proceeds Account within five Business Days of such Forecast being agreed in accordance with Paragraph 3 (Forecasts) of Part 1 (Information Covenants) of Schedule 2.

**5. DECC Decommissioning Reserve Account**

**(a) Required DRA Balance**

- (i) On and after the first day of the eleventh year following the commencement of the Revenue Period, the OFTO must ensure that the amount standing to the credit of the DECC Decommissioning Reserve Account is not less than the Required DRA Balance.
- (ii) The Required DRA Balance will be applicable from the date on which it is determined until the next Calculation Date.

**(b) Payments in**

Subject to the terms of this Agreement, the OFTO must on the Initial Issue Date and each Calculation Date transfer from the Proceeds Account to the DECC Decommissioning Reserve Account:

- (i) an amount sufficient to ensure that the amount standing to the credit of the DECC Decommissioning Reserve Account on that date is equal to the Required DRA Balance; or
- (ii) if less, the amount available for that purpose in accordance with this Agreement.

(c) **Withdrawals**

The OFTO may withdraw amounts from the DECC Decommissioning Reserve Account if they are applied for the following purposes in the following order:

- (i) at any time, to satisfy any projected decommissioning costs in relation to the Project falling due and payable as set out in the Computer Model; and
- (ii) to transfer to the Proceeds Account on a Calculation Date, but only to the extent that the balance standing to the credit of the DECC Decommissioning Reserve Account following the transfer equals or exceeds the Required DRA Balance on that Calculation Date.

(d) **Secretary of State**

- (i) If DECC requires rights in relation to the DECC Decommissioning Reserve Account as part of its approval of the Decommissioning Plan, the Secured Creditors shall, if requested by DECC or the OFTO:

- (A) release the security granted over the DECC Decommissioning Reserve Account pursuant to the Security Agreement in order to allow the OFTO to grant those rights to DECC over that account; and

- (B) effect any consequential amendments to the Finance Documents as are necessary to reflect that release and the grant of those rights to DECC.

- (ii) The OFTO shall use reasonable endeavours to obtain DECC's consent to allow the Security Trustee (or its nominee) to participate in any discussions with DECC in relation to the granting of rights to DECC as contemplated by paragraph (i) above.

**6. Working Capital Reserve Account**

- (a) The OFTO must ensure that on or before the Initial Issue Date, the Working Capital Reserve Account is funded in an amount equal to £5,000,000 Indexed (the **Required WCRA Balance**).

(b) **Payments in**

Subject to the terms of this Agreement, the OFTO must on each Calculation Date transfer from the Proceeds Account to the Working Capital Reserve Account:

- (i) an amount sufficient to ensure that the amount standing to the credit of the Working Capital Reserve Account on that date is equal to the Required WCRA Balance; or
- (ii) if less, the amount available for that purpose in accordance with this Agreement.

(c) **Withdrawals**

The OFTO may withdraw amounts from the Working Capital Reserve Account if they are applied for the following purposes in the following order:

- (i) to pay any insurance deductible due and payable under the Finance Documents in relation to the Insurances;
- (ii) at any time, to satisfy any reactive maintenance expenditure attributable to outages or repairs then due and payable to the extent that there are no funds available for that purpose in the Proceeds Account;
- (iii) to transfer to the Proceeds Account on a Calculation Date, but only to the extent that the balance standing to the credit of the Working Capital Reserve Account following the transfer, equals or exceeds the Required WCRA Balance on that Calculation Date;
- (iv) if there is no amount standing to the credit of the Debt Service Reserve Account, for any purpose set out in paragraph 3(c)(i) above; and
- (v) to transfer to the Proceeds Account for inclusion in the calculation of Gross Revenues (pursuant to paragraph (f) of the definition of that term) if, without the inclusion of that amount, a Financial Ratio Event of Default would occur on the next Calculation Date in respect of the Projected DSCR and/or the Historic DSCR (provided that the amount transferred shall be the minimum amount required in order to ensure compliance with the relevant Financial Ratio Event of Default as at the next Calculation Date).

**7. Debt Service & PBCE Account**

(a) **Payments in**

- (i) Any amounts drawn under the PBCE Letter of Credit (other than amounts drawn to fund a PBCE Rebalancing, which will be paid directly to the Principal Paying Agent) must be deposited into the Debt Service & PBCE Account.
- (ii) On or prior to the date falling 10 Business Days prior to any Calculation Date, the OFTO shall transfer from the Proceeds Account to the Debt Service & PBCE Account the funds available to pay the amounts contemplated by paragraph 2(b)(vii) of this Schedule 5 falling due and payable under the Finance Documents at the next Calculation Date but only to the extent that:
  - (A) there are sufficient funds standing to the credit of the Proceeds Account; and
  - (B) those funds are not required to pay any amount contemplated by paragraphs 2(b)(i) to 2(b)(vi) (inclusive) of this Schedule 5 which are falling due and payable under the Finance Documents in next 45 days.

(b) **Withdrawals**

The OFTO may withdraw amounts from the Debt Service & PBCE Account:

- (i) to pay the amounts contemplated by paragraph 2(b)(vii) of this Schedule 5 or, if applicable, paragraphs (g) and (h) of the Post-enforcement Priority of Payments, falling due and payable under the Finance Documents at that time;



- (ii) in respect of any sums drawn under the PBCE Letter of Credit pursuant to clause 3.3.2 (PBCE Rebalancing) of the PBCE Letter of Credit and Reimbursement Deed, to transfer such amounts to the Principal Paying Agent for payment to the Bondholders by way of mandatory partial redemption of the Bonds; and
- (iii) in respect of any sums drawn under the PBCE Letter of Credit pursuant to clause 3.3.3 (Accelerated Payments) of the PBCE Letter of Credit and Reimbursement Deed, to pay any amount due in respect of interest and principal under Condition 9.2 (Consequences of the service of Enforcement Notice and taking of Enforcement Action) of the Bonds and any close-out amounts due and payable on termination of the Hedging Agreements in accordance with the Post-enforcement Priority of Payment.

## **8. Defeasance Account**

### **(a) Payments in**

Amounts may be credited to the Defeasance Account (and corresponding entries made on the Defeasance Account Ledger) by the OFTO as follows:

- (i) pursuant to Paragraph 37(b)(iii) (Redemption upon receipt of Claim Proceeds, Relevant Disposal Proceeds and Insurance Proceeds) of Part 3 (General Covenants) of Schedule 2 (Obligor Covenants); and
- (ii) pursuant to Paragraph 20 (Equity Cure) of Schedule 3 (Events of Default).

### **(b) Withdrawals**

The OFTO may at any time in its absolute discretion withdraw amounts standing to the credit of the Defeasance Account to:

- (i) redeem the Bonds in accordance with Condition 6.2(c) (Mandatory Redemption for a PBCE Rebalancing Event and in respect of Insurance Proceeds, Relevant Disposal Proceeds or Claim Proceeds); and/or
- (ii) make market purchases of Bonds for a purchase price not exceeding the aggregate of (A) par and (B) any premium which would be payable were the OFTO to redeem such Bonds at such time (provided that such Bonds are then cancelled in accordance with their terms).

### **(c) OFTO Enforcement**

Following the service of an Enforcement Notice, amounts standing to the credit of the Defeasance Account shall be applied solely in repayment of the Bonds without regard to the Post-enforcement Priority of Payments.

### **(d) Defeasance Account Ledger**

- (i) In the event that the OFTO elects to deposit any amount into the Defeasance Account pursuant to paragraph (a) above for the first time, the OFTO (or its cash manager on its behalf) shall establish a Defeasance Account Ledger and shall make a corresponding credit entry on the Defeasance Account Ledger in respect of any such deposit; and
- (ii) thereafter each time that the OFTO deposits an additional amount into the Defeasance Account, the OFTO (or its cash manager on its behalf) shall make a corresponding credit entry on the Defeasance Account Ledger.

On each occasion that an amount is withdrawn from the Defeasance Account pursuant to paragraph (b) above, the OFTO (or its cash manager on its behalf) shall make a corresponding debit entry on the Defeasance Account Ledger.

**9. HoldCo Account**

- (a) HoldCo must ensure that any amount payable to HoldCo is paid promptly into the HoldCo Account.
- (b) HoldCo shall only withdraw amounts standing to the credit of the HoldCo Account if those amounts are to be applied for a purpose expressly permitted under the Transaction Documents.

**10. Cash Equivalent Investments**

- (a) The OFTO may invest in Cash Equivalent Investments from such part of the amounts standing to the credit of any of the Reserve Accounts from time to time as is prudent.
- (b) The OFTO may only invest in Cash Equivalent Investments which are held to its order.
- (c) The OFTO will at all times:
  - (i) ensure to the best of its knowledge that a prudent spread of any Cash Equivalent Investments is maintained; and
  - (ii) liquidate (or ensure the liquidation of) Cash Equivalent Investments to the extent necessary for the purposes of payment of any amount due under the Finance Documents.
- (d) Whenever the Account Bank receives any Investment Proceeds it must transfer those funds upon receipt of instructions from the OFTO to the OFTO (to the account specified by the OFTO) who will apply such funds towards:
  - (i) reinvesting them in further Cash Equivalent Investments nominated by the OFTO; or
  - (ii) paying them into the Account concerned with the Cash Equivalent Investment from which the Investment Proceeds derive.
- (e) Following the occurrence of an Event of Default which is continuing, if any document of title or other documentary evidence of ownership with respect to Cash Equivalent Investments comes into the possession or control of the OFTO, it must ensure the same is delivered as soon as practicable to, or to the order of, the Security Trustee.
- (f) Whenever the Account Bank or the OFTO receives any Income it (upon receipt of instructions from the OFTO) must:
  - (i) pay the Income into the Account concerned with the Cash Equivalent Investment from which the Income derives; or
  - (ii) if the Cash Equivalent Investment from which the Income derives is to be retained after the Income is received by the OFTO, reinvest the same in that Cash Equivalent Investment.
- (g) The OFTO must give directions under paragraph (d) above and otherwise exercise its rights under this Agreement in such manner as will ensure compliance with the applicable provisions of the Finance Documents with respect to Accounts, Cash Equivalent Investments, Investment Proceeds and Income.

- (h) The OFTO shall procure that the maximum average life of a Cash Equivalent Investment is appropriate having regard to the credits to be made to the Proceeds Accounts and payments to be made from the Proceeds Accounts or the Reserve Accounts from time to time.
- (i) If any investment ceases to be a Cash Equivalent Investment, the OFTO must as soon as reasonably practicable after becoming aware of that fact (and in any event, no more than 30 Business Days after that time) replace the investment with a Cash Equivalent Investment or with cash as soon as it is reasonably practicable to do so.
- (j) Any reference in any Finance Document to the balance standing to the credit of one of the Accounts will be deemed to include a reference to the Cash Equivalent Investments in which all or part of such balance is for the time being invested. In the event of any dispute as to the value of any Cash Equivalent Investment for the purpose of determining the amount deemed to be standing to the credit of an Account, that value will be determined in good faith by the OFTO).

#### **11. Incremental Investment Debt Sold**

Where at any time, the OFTO is required to fund Incremental Investment Amounts as required by Standard Licence Condition E17 of the OFTO Licence the OFTO may incur Financial Indebtedness to fund such amounts pursuant to Condition 15 (Further Bonds).

## SCHEDULE 6

### INSURANCES

#### PART 1

##### INSURANCE UNDERTAKINGS

References in this Schedule 6, Part 1 to paragraphs and Parts shall be construed as references to the paragraphs and Parts of this Schedule 6 unless the context otherwise requires. For the avoidance of doubt, all actions to be taken, discretions to be exercised and other rights vested in the Security Trustee under this Schedule 6 will only be exercisable as provided for or permitted in the STID.

#### **1. Insurances to be Effected**

##### **1.1 Insurance Cover**

The OFTO shall procure that:

- (a) with effect from the date of this Agreement, the Insurances identified in Part 2 are taken out and maintained for the periods specified in Part 2;
- (b) the OFTO shall, as an overriding provision, ensure that the Secured Creditors retain an interest in the Insurances as co-insureds until all amounts owing to them have been repaid in full and all security therefore irrevocably released.

##### **1.2 Minimum Requirement**

The Insurances are the minimum cover required by the Finance Parties to be in place during the term of the Project and the OFTO shall ensure that such Insurances are maintained at all relevant times.

##### **1.3 Undertakings**

The OFTO shall procure that the Insurances:

- (a) include only the exclusions specified in the relevant paragraph of Part 2 of this Schedule 6 (as varied from time to time in accordance with this Schedule 6) and such other exclusions as are standard within the insurance industry for the type or size of risk and liabilities covered by that type of Insurance and is not otherwise insurable;
- (b) are effected against the risks and liabilities and maintained in the amount specified in the relevant paragraph of Part 2 of this Schedule 6 (as varied from time to time in accordance with this Part 1);
- (c) contain a clause to the effect that the insurance shall not be invalidated by any act or omission or by any alteration whereby the risk of destruction or damage is increased, unknown to or beyond the control of the insured;
- (d) without prejudice to anything else in this paragraph, are increased from time to time during the term of the Project to such amounts as would be effected by a reasonable and prudent person carrying out the OFTO's obligations during such periods which does not self insure (except by means of deductibles) and having regard to all the circumstances; and

- (e) include only such provisions for self-insurance (whether by deductible or otherwise) which are no greater than those which are specified in the relevant paragraph of Part 2 of this Schedule 6 (as may be varied from time to time in accordance with this Part 1).
- (f) be with a reputable insurance office or underwriter that is rated by S&P with at least A- or its equivalent (if rated in such a manner by any other internationally recognised credit rating agency);

## **2. Additional Coverages**

Without prejudice to the other provisions of this Part 1, during the periods referred to in paragraph 1 (Insurances to be Effected) above, the OFTO shall from time to time effect and maintain in full force those insurances which:

- (a) the OFTO is required to effect by any applicable law or by the terms of any Transaction Document; and
- (b) would be effected by a reasonable and prudent person which does not self-insure (except by means of deductibles) and having regard to all the circumstances of the Project (together with the insurances detailed in (a) above, the "Additional Insurances").

The Additional Insurances shall form part of the "Insurances" and shall be subject to the same undertakings and conditions as attach to all other Insurances.

## **3. Voluntary Coverages**

- (a) The OFTO shall be entitled to effect other insurances in addition to or supplementing those referred to elsewhere in this Schedule 6 (other than the Additional Insurances) provided that the terms of any such insurances (**Voluntary Coverages**) shall be disclosed to the Security Trustee and the Insurance Adviser within fifteen Business Days of such coverage being effected, and the OFTO shall ensure that no Voluntary Coverage taken out adversely affects in any way the Insurances or any other Insurances taken out hereunder.
- (b) The OFTO represents and warrants to and for the benefit of each party to this Agreement that, except for those required to be effected pursuant to this Schedule 6, there are no Insurances (other than director's and officer's liability insurance and Public Offering Securities Insurance) which have been effected by the OFTO (or any party on behalf of the OFTO) which are presently in effect and under which the OFTO is insured or has any rights.

## **4. Provisions Common to all Insurances**

### **4.1 Premiums**

The OFTO shall pay or procure the due and punctual payment when due of all premiums payable in respect of any and all Insurance effected pursuant to this Schedule 6 in accordance with the terms of the relevant policy.

### **4.2 Extension or Renewal of Insurances**

- (a) No later than 45 Business Days before the date of any renewal or extension of the Insurances, the OFTO shall deliver to the Insurance Advisers the OFTO's proposals for the renewal or extension of the Insurances. The proposals shall set out, inter alia, the following:
  - (i) details of the risks or liabilities to be insured and the reasons for any changes to be effected;

- (ii) the reinstatement value of all assets required to be insured on a reinstatement value basis (and in case of the cables and the offshore platform, the Estimated Maximum Loss), the sum insured or the limit of indemnity (as the case may be);
  - (iii) the insurance arrangements in respect of all other risks required to be insured;
  - (iv) the amount of deductibles applicable; and
  - (v) show in reasonable detail how amounts have been calculated.
- (b) The OFTO shall immediately on request also provide the Insurance Adviser with any other information relating to the matters set out in each such proposal referred to in (a) above as the Insurance Adviser may require. The OFTO shall immediately on request also provide to the Security Trustee copies of any documents delivered to the Insurance Advisers in accordance with this paragraph 4.2.
- (c) In the case of Insurances in respect of the cables where the OFTO proposes to insure the cabling on the basis of the Estimated Maximum Loss, the OFTO shall deliver every 5 years together with the proposal referred to in (a) above a risk assessment which includes an assessment of the calculation of the Estimated Maximum Loss (an "EML Assessment") conducted by an appropriately qualified surveyor approved by the Security Trustee (acting on the written advice of the Insurance Adviser).
- (d) The OFTO shall, upon delivery of any proposal under paragraph 4.2(a) above and the information required under paragraph 4.2(b) and/or (c) above (as appropriate), instruct the Insurance Adviser (and in the case of an EML Assessment, the Technical Adviser) to consider the proposal and to advise the Security Trustee in writing, within 10 Business Days of such receipt, as to whether or not it is satisfied that the proposal is materially consistent with the requirements of Part 2 (Insurance Requirements) of this Schedule 6.
- (e) If:
- (i) the Security Trustee receives written advice from the Insurance Adviser that it is satisfied (acting reasonably) that the proposals made by the OFTO under paragraph 4.2(a) above are materially consistent with the requirements of Part 2 (Insurance Requirements) of this Schedule 6, then the OFTO shall be entitled to renew or replace the Insurances in accordance with the proposals made in paragraph 4.2(a) above and shall notify the Security Trustee of any related renewal or replacements of the relevant Insurance(s).
  - (ii) the Security Trustee receives written advice from the Insurance Adviser that it is not satisfied (acting reasonably) that the proposals made by the OFTO under paragraph 4.2(a) above are materially consistent with the requirements of Part 2 (Insurance Requirements) of this Schedule 6, then the OFTO shall either:
    - (A) provide details of and put in place insurances that satisfy the Insurance Adviser that they are materially consistent with the requirements of Part 2 (Insurance Requirements) of this Schedule 6 (and notify the Security Trustee of the same); or
    - (B) request that the Qualifying Secured Creditors (following receipt of advice from the Insurance Adviser) consent to any alterations to the requirements of this Agreement in relation to Insurances as an Ordinary Voting Matter,

provided that, if the Qualifying Secured Creditors do not consent to the alteration(s) to the requirements of this Agreement in relation to Insurances in accordance with paragraph 4.2(e)(ii)(B),

the OFTO shall provide details of and put in place insurances that satisfy the Insurance Adviser in accordance with paragraph 4.2(e)(ii)(A).

- (f) Promptly following any agreement or determination under paragraph 4.2(e) above, the OFTO shall insure against the risks in the amounts and with the deductibles so agreed, notified or determined with effect from the relevant date of renewal or extension thereof and throughout the insurance period immediately following that date.
- (g) The OFTO shall obtain evidence of such renewal or extension and a copy thereof certified in a manner acceptable to the Security Trustee (acting on the written advice of the Insurance Adviser) shall be forwarded to the Insurance Adviser and the Security Trustee as soon as possible.
- (h) If having agreed or had determined any matters pursuant to these provisions, in the event that the same differs from any position reached with a counterparty to a Project Document, the OFTO shall either (i) request the consent of the Qualifying Secured Creditors to effect those insurances which the OFTO considers (with such supporting advice as may be provided by the Insurance Advisor) as offering the best protection for the OFTO whilst complying with the requirements both of these provisions and those agreed or determined pursuant to such Project Document or (ii) effect such other arrangements as consented to by the Qualifying Secured Creditors.

#### 4.3 Changes to Insurances

- (a) Subject to paragraph 8 (Changes in circumstances and determining insurance) below, if the OFTO elects to change a policy of insurance, the OFTO shall certify to the Security Trustee that:
  - (i) the replacement policy of insurance is in line with other relevant policies purchased in respect of comparable projects that are familiar to the Insurance Adviser; and
  - (ii) the replacement policy is substantially consistent with the requirements of Part 2 (Insurance Requirements) of this Schedule 6 or is the best available on reasonably commercial terms in the market at that time.
- (b) If the Security Trustee (acting on the written advice of the Insurance Adviser) confirms its agreement with the OFTO's certification under paragraph 4.3(a) above, then the OFTO shall be entitled to renew or replace the insurance(s) in accordance with that proposal.
- (c) If the Security Trustee (acting on the written advice of the Insurance Adviser) does not confirm its agreement as provided in paragraph (b) above, the OFTO will request that the Qualifying Secured Creditors (following receipt of advice from the Insurance Adviser) consent to any alterations to the requirements of the insurance programme as an Ordinary Voting Matter.

#### 4.4 Notification of Claims

The OFTO shall ensure that any regular claims reports are also sent to the Security Trustee and the Insurance Adviser. In addition, the OFTO shall notify the Security Trustee and the Insurance Adviser of any circumstances which may give rise to any claim in respect of any of the Insurances in excess of £250,000 for each claim or any claim which when aggregated with all prior claims made in the preceding twelve months exceeds £500,000 promptly upon becoming aware of the same.

#### 4.5 Survey

Where any risk or insurance survey is conducted pursuant to the Insurances effected under this Schedule 6, the OFTO shall promptly supply copies of the results of the same (including any

relevant report) to the Security Trustee and the Insurance Adviser. The OFTO shall comply with all requirements of any such surveys or reports.

#### **4.6 Risk Management**

With effect from the date of this Agreement, the OFTO shall designate or appoint an insurance and risk manager (the **Risk Manager**) who should be of a standard acceptable to a reasonable and prudent operator and notify details of the same to the Security Trustee. Such person shall be responsible for dealing with all insurance and risk management matters on behalf of the OFTO, including ensuring compliance by the OFTO with its obligations under this Schedule 6 and advising and reporting to the OFTO on such matters. The OFTO shall comply with all recommendations made by the Risk Manager in connection with insurance and risk management matters.

#### **4.7 Undertaking**

The OFTO shall not take or fail to take any action or (insofar as it is within its power) permit or allow others to take or fail to take any action (including failure to disclose any fact) whereby any of the Insurances maintained pursuant to this Schedule 6 may be rendered void, voidable, unenforceable or suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part or which may reduce any amount payable under any relevant policy; and

### **5. Disclosure**

#### **5.1 Disclosure to Insurers**

Without prejudice to the OFTO's general obligation to disclose to the insurers all material information, the OFTO shall use its best endeavours to ensure that full disclosure is made to the insurers and shall (insofar as it is within its power) procure that full disclosure (including all matters referred to in paragraphs 5.1(a) and 5.1(b) below) is made by its agents, employees and contractors. In particular, the OFTO shall ensure that the following matters are disclosed to the insurers providing any Insurance required under this Schedule 6 :

- (a) all information which the OFTO, acting in accordance with good industry practice and in good faith reasonably considers to be material to the relevant Insurance and/or acting in accordance with the advice of its insurance advisers believes that the relevant insurers require, including details of any material change in the methods or procedures used in the performance of the OFTO's obligations during the term of the Project; and
- (b) all information which such insurers specifically request be disclosed.

#### **5.2 Internal Reporting**

The OFTO shall put in place appropriate internal reporting procedures for the purposes of satisfying its obligations under paragraph 5.1 above.

### **6. Brokers' Undertakings**

The OFTO shall procure that each broker or agent through whom any Insurance policy required to be effected or renewed under Part 2 of this Schedule 6 is effected or renewed delivers to the Security Trustee a letter substantially in the form set out in Part 5 of this Schedule 6 immediately upon each such Insurance policy being effected or renewed.



## **7. Policies**

The OFTO shall procure that each policy and Insurance taken out pursuant to this Schedule 6 shall:

- (a) be placed and maintained through such brokers and with such insurers or underwriters as a reasonable prudent person carrying out the OFTO's obligations would use and in the case of Insurance required to be effected under any Transaction Document (other than terrorism insurance) must be provided by an insurer a reasonable prudent person carrying out the OFTO's obligations would use.
- (b) be in such form and substance consistent with the obligations of the OFTO under this Schedule 6;
- (c) be the subject of a notice of assignment duly given in the form set out in Part 4 and have attached to it an endorsement substantially in the appropriate form set out in Part 3;
- (d) be primary with no right of contribution from any other insurance available to any of the insured parties; and
- (e) name the OFTO and the Secured Creditors as co-insured parties.

## **8. Changes in circumstances and determining insurance**

### **8.1 Market Capacity**

- (a) Notwithstanding any provisions of this Schedule 6 other than paragraph 8.1(b) (Market Capacity) below, the OFTO shall not be in breach of its obligations under this Schedule 6 if, but only to the extent that and for so long as:
  - (i) Insurances and/or policy endorsements required to be taken out or maintained hereunder are not, in the reasonable opinion of the Insurance Adviser, available to the OFTO on reasonable commercial terms in the international insurance market; or
  - (ii) the premiums in respect of any such Insurances are, in the opinion of the Insurance Adviser unreasonable having regard to the risks being covered and the interests of the Secured Creditors under the Finance Documents.
- (b) If any breach of the OFTO's obligations under this Schedule 6 is excused pursuant to this paragraph 8.1 (Market Capacity):
  - (i) the OFTO shall be required at the end of every quarter from the date upon which its obligations are so excused, to make all reasonable enquiries to ascertain whether the Insurances and/or policy endorsements and/or the premiums with respect thereto required to be taken out or maintained hereunder have become (in the reasonable opinion of the Insurance Adviser) available to it on reasonable commercial terms; and
  - (ii) the Insurance Adviser may notify the OFTO (copying the Security Trustee) that:
    - (A) the Insurances and/or policy endorsements and/or the premiums with respect thereto required to be taken out or maintained hereunder have become (in the reasonable opinion of the Insurance Adviser) available to the OFTO on reasonable commercial terms; and thus

(B) the OFTO is obliged to comply with its obligations under this Schedule 6.

- (c) Following any ascertainment by the OFTO pursuant to paragraph 8.1(b)(i) (Market Capacity) above or following the giving of any notification to the OFTO pursuant to paragraph 8.1(b)(ii) (Market Capacity) above, the OFTO's obligations under this Schedule 6 shall be immediately reinstated to the extent thereof, with the effect that the OFTO shall be required to obtain the relevant Insurances and/or policy endorsements as soon as reasonably practicable thereafter unless the Security Trustee (acting on the written advice of the Insurance Adviser) has agreed to alternative arrangements in accordance with paragraphs 8.2 and 8.3 below.
- (d) To the extent that the unavailability of cover required to be maintained or the unacceptability of its terms is particular to the Project and is the direct result of a failure by the OFTO to operate and maintain the Project in accordance with the standards of a reasonable and prudent operator, the OFTO shall not be relieved of any of its obligations under this Schedule 6.

## 8.2 Review of Amounts and Scope of Insurances

In respect of all Insurances, if an Insurance required by this Agreement is not available in accordance with paragraph 8.1 (Market Capacity) from insurers that comply with the requirements of this Agreement and the OFTO reasonably considers that such Insurance shall not become available within the next 3 months, the OFTO shall, not later than the date (each, in this Schedule, an **OFTO's Proposal Date**) falling 21 days prior to the renewal or expiry date in respect of any Insurance, deliver to the Security Trustee and the Insurance Adviser a notice stating the OFTO's proposals as to:

- (a) the changes (if any) since the date of this Agreement or the previous OFTO's Proposal Date (if later) with regard to that Insurance (in this Schedule, the **Relevant Insurance**) in the risks or liabilities to be insured pursuant to this Schedule 6 that are required to maintain the Insurances;
- (b) the insured amounts in respect of all other risks required to be insured pursuant to the Relevant Insurance;
- (c) the amount of the deductibles applicable to the Insurance;
- (d) scope of cover; and
- (e) any change of insurers, reinsurers or brokers,

in each case, for the proposed term of the proposed renewed or replacement policy together with information showing in reasonable detail how the same are calculated and any other information relating thereto that demonstrates that the proposed renewals comply with paragraph 22 of Part 3 (General Covenants) of Schedule 2 (Insurances).

## 8.3 Result of change in deductibles

If the OFTO elects to change the policy of Insurance and the relevant deductible increases as a result, the Insurance Adviser will be required to certify that the Working Capital Reserve Account required balance will be increased (if necessary) by an amount equal to any increased deductible amount. If the OFTO elects to change the policy of Insurance and the relevant deductible decreases as a result, the OFTO may decrease the required balance of the Working Capital Reserve Account by no more than an amount equal to the amount by which the relevant deductible has decreased as a result of the change in policy of Insurance (but such deduction shall not, in any event, result in a reduction of the

Required WCRA Balance required to be maintained in the Working Capital Reserve Account in accordance with this Agreement).

#### 8.4 Insurance Review

- (a) If the Security Trustee receives written advice from the Insurance Adviser that it is satisfied (acting reasonably) that the proposals made by OFTO under paragraph 8.2 above are materially consistent with the requirements of Part 2 (Insurance Requirements) of this Schedule 6, then the OFTO shall be entitled to renew or replace the Insurances in accordance with the proposals made in paragraph 3.2 above.
- (b) If the Security Trustee receives written advice from the Insurance Adviser that it is not satisfied (acting reasonably) that the proposals made by the OFTO under paragraph 8.2 above are materially consistent with the requirements of Part 2 (Insurance Requirements) of this Schedule, then OFTO shall either:
  - (i) provide details of and put in place insurances that satisfy the Insurance Adviser (acting reasonably) that they are materially consistent with the requirements of Part 2 (Insurance Requirements) of this Schedule 6; or
  - (ii) request that the Qualifying Secured Creditors (following receipt of advice from the Insurance Adviser) consent to any alterations to the requirements of this Agreement in relation to Insurances as an Ordinary Voting Matter;

provided that, if the Qualifying Secured Creditors do not consent to the alteration(s) to the requirements of this Agreement in relation to Insurances in accordance with paragraph 8.4(b)(ii), the OFTO shall provide details of and put in place insurances that satisfy the Insurance Adviser in accordance with paragraph 8.4(a).

## PART 2

### THE INSURANCE PROGRAMME

#### 1. All Risks (Including Machinery Breakdown) Insurance

- Minimum Cover:** All risks of Physical Loss or Physical Damage in respect of Onshore and Offshore Property connected with the Project, including but not limited to plant, equipment, outfit, machinery, cables, materials and all other property of whatsoever description.
- Minimum Sum Insured:** An amount equal to the full replacement value of the Project Assets (including demolition costs and any increased costs of construction to comply with governmental regulations and requirements), or
- An amount equal at least equal in respect of the Project's offshore substations and submarine cables, to the estimated maximum loss (the estimated maximum loss to be determined based on a risk assessment conducted by qualified surveyor plus the full replacement value of all other Project Assets (including demolition costs and any increased costs of construction to comply with governmental regulations and requirements)).
- Maximum Deductible:** Not to exceed:
- (a) £5,000,000 in the first four years (commencing on the date on which the OFTO acquires the Transmission Assets);
  - (b) £5,500,000 in the subsequent six years following the end of the period ended in paragraph (a) above; and
  - (c) £6,000,000 in the subsequent years following the end of the period ended in paragraph (b) above ,
- each and every claim (or as agreed between the OFTO and the Security Trustee according to the provisions of 1.2 (b)).
- Co Insureds:** The OFTO, the Finance Parties, O&M Contractor, and each counter party to any of the Project Documents required to be insured.
- Required Extensions:** Waiver of subrogation rights as required by written contract prior to loss.
- Automatic reinstatement of sum insured clause.
- Professional fees.
- Expediting expense (subject to a minimum sub-limit of GBP 2,000,000).
- Removal of debris and wreckage (subject to a minimum sub-limit of 25% of the Sum Insured).
- Evacuation expenses (subject to a minimum sub-limit GBP 2,500,000).
- Temporary removal (subject to a minimum sub-limit GBP 2,500,000).

Public authority clause. (subject to a minimum sub-limit of GBP 2,500,000)

Minor works clause (up to GBP 5,000,000 per contract).

Faulty Design (consequential loss only) – excluding cables.

Sue and Labour 25% of each effected value or component.

Salvage and recoveries clause.

Residual property. (subject to a minimum sub-limit of GBP 2,500,000).

Lenders' Clauses.

Standby Charges (subject to a minimum sub-limit of GBP 2,000,000).

Pollution (subject to a minimum sub-limit of GBP 2,000,000).

Tests, Leak, Damage Search costs (subject to a minimum sub-limit of GBP 2,000,000).

**Permitted Exclusions:**

War and Civil War Exclusion Clause (NMA 464);

Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause (CI 370);

Sabotage and Terrorism (if separate policy purchased);

Consequences of Computer Failure – unless this results in physical loss or damage;

Electronic Data Recognition Clause;

Wear and Tear;

Failure of computer systems – (pure loss only);

Blue prints, plans and specifications;

Inventory shortage or mysterious disappearance;

Machinery or plant being subject to experiments of overload or similar tests;

Dishonest or criminal acts of the Insured;

Subsidence and Heave unless resulting in physical loss or damage;

Asbestos material removal.

**Geographical Scope:**

United Kingdom.

## 2. Terrorism Physical Damage Insurance

<b>Minimum Cover:</b>	Terrorism Physical Loss insurance as per market standard cover.
<b>Minimum Sum Insured:</b>	<p>An amount equal to the full replacement value of the Project Assets (including demolition costs and any increased costs of construction to comply with governmental regulations and requirements), or</p> <p>An amount equal at least, in respect of the Project's offshore substations and submarine cables, to the estimated maximum loss (the estimated maximum loss to be determined based on a risk assessment conducted by qualified surveyor plus the full replacement value of all other Project Assets (including demolition costs and any increased costs of construction to comply with governmental regulations and requirements),</p>
<b>Maximum Deductible:</b>	<p>Not to exceed:</p> <ul style="list-style-type: none"><li>(a) £5,000,000 in the first four years (commencing on the date on which the OFTO acquires the Transmission Assets);</li><li>(b) £5,500,000 in the subsequent six years following the end of the period ended in paragraph (a) above; and</li><li>(c) £6,000,000 in the subsequent years following the end of the period ended in paragraph (b) above.</li></ul>
<b>Co Insureds:</b>	The OFTO, the Finance Parties, the O&M Contractor and each counter party to any of the Project Documents required to be insured.
<b>Permitted Exclusions:</b>	As per market standard cover.
<b>Geographical Scope:</b>	United Kingdom.

## 3. Third Party Liability Insurance

<b>Minimum Cover:</b>	<p>All sums which the insured shall be legally liable for compensation or damages in respect of:</p> <ul style="list-style-type: none"><li>(a) death of or injury to or disease contracted or illness or mental illness or anguish sustained by any person; or</li><li>(b) damage to property;</li></ul> <p>arising out of the ownership, construction, operation, exploitation, extension and maintenance of the Insured Property, or related activities, happening within the Geographical Limits during the period of insurance and professional costs and expenses incurred in dealing with any claim.</p>
<b>Minimum Sum Insured:</b>	Primary policy: GBP25,000,000 any one occurrence. Excess policy (in respect of liability under the crossing agreements: GBP 100,000,000 any one occurrence (or such other amount as fulfils the OFTO's obligations under the crossing agreements).
<b>Maximum Deductibles:</b>	GBP100,000 each and every occurrence.

<b>Co-insureds</b>	The OFTO, the Finance Parties, the O&M Contractor, and each counterparty to any of the Project Documents required to be insured, and their respective officers, directors, employees and agents.
<b>Required Extensions:</b>	<p>Cross liabilities clause;</p> <p>Contractual liability;</p> <p>Charterers liability;</p> <p>Contribution from other insurances waiver and subrogation waiver;</p> <p>Expenses, attorneys fees, defence costs in addition to the limit of indemnity;</p> <p>Legal liability in respect of third party removal of wreck (following a fortuity only);</p> <p>Sudden and accidental pollution cover;</p> <p>Worldwide jurisdiction (but for claims brought in USA and Canada: excluding punitive and exemplary damages, excluding seepage and pollution and costs inclusive);</p> <p>Disputes clause (English Law);</p> <p>Products liability (subject to policy aggregate limit of GBP 25,000,000);</p> <p>Lenders' clauses.</p>
<b>Permitted Exclusions:</b>	<p>War and Civil War Exclusion Clause (NMA 464).</p> <p>Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause CL 370 (dated 10/11/03);</p> <p>Institute Cyber Attack Exclusion Clause CL 380 (dated 10/11/03);</p> <p>Sabotage and Terrorism;</p> <p>Errors and omissions;</p> <p>Directors and officers;</p> <p>Occupational disease;</p> <p>Ownership of any automobile or aircraft;</p> <p>Workers' compensation;</p> <p>Employers Liability;</p> <p>Fines and penalties;</p>

Completed operations;

Asbestos, tobacco, electromagnetic fields, coal dust and other substances;

Professional indemnity;

Failure to supply;

Liability arising from non-fortuitous events;

Liability arising from mobile equipment whilst in a racing contest;

Liability arising from the sale of alcoholic beverages;

Liability arising out of property sold, abandoned or given away;

Liability arising from the product or work of the insured where there is no physical damage or bodily injury;

Fines, penalties and exemplary damages;

Liability arising from wrongful termination, humiliation, discrimination, sexual harassment of employees;

Liability arising out of personal injury to a leased employee;

**Geographical Limits:**

United Kingdom and elsewhere in the world.



## PART 3

### ENDORSEMENTS

The endorsements required under paragraph 7 of Part 2 of this Schedule are as follows:

"Notwithstanding any other provision of this policy, the following endorsement shall take effect immediately:

#### 1. Definitions

In this endorsement:

**Account Bank** means HSBC Bank plc in its capacity as account bank under the Finance Documents and includes its successors in title, permitted assigns and permitted transferees;

**Common Terms Agreement** means the agreement dated 20 August 2015 between, amongst others, the OFTO and the Security Trustee;

**OFTO** means WODS Transmission PLC, a OFTO incorporated in England and Wales (registered no. 9309507), whose registered office is at The American Barns, Banbury Road, Lighthorne, Warwickshire, CV35 0AE;

**Finance Parties** has the meaning given to it in the Common Terms Agreement and includes each of their successors in title, permitted assigns and permitted transferees;

**Insured** means those parties so described in the Contract Schedule;

**Insurers** means the insurer or insurers underwriting this insurance Contract;

**Project** has the meaning given to it in the Common Terms Agreement; and

**Security Trustee** means HSBC Corporate Trustee Company (UK) Limited in its capacity as security trustee for the Finance Parties and includes its successors in title, permitted assigns and permitted transferees.

#### 2. Non Vitiating

The Insurers undertake to each Insured that the policy shall not be invalidated as regards the respective rights and interest of each Insured and that the Insurers will not seek directly or indirectly to avoid any liability under this policy because of any act, neglect, error or omission made by any other Insured (whether occurring before or after the inception of the policy), including without limitation, any fraud or failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured, any breach or non-fulfilment by any other Insured whether or not any such act, neglect, error or omission, could, if known at any time, have affected any decision of the Insurers to grant the policy, to agree to any particular term or terms of the policy (including without limitation this provision) and the amount in relation to this policy or to liability which might arise thereunder.

#### 3. Duty of Disclosure

The Finance Parties shall have no duty of disclosure.

#### **4. Subrogation Waiver**

The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any of the Insured and their officers, directors, employees and assigns arising out of any occurrence in respect of which any claim is admitted hereunder.

#### **5. Primary Cover**

The Insurers agree that this Insurance shall be primary to and not excess to (except in respect of layers of third party cover (if any) effected specifically for the Project) or contributing with any other Insurance maintained by any Insured. The Insurers waive all rights of contribution against any other Insurance effected by the Finance Parties.

#### **6. Separate Policy**

Each of the parties comprising the Insured shall for the purpose of this Policy be considered a separate entity, the words 'The Insured' applying to each as if they were separately and individually insured for their respective rights and interests provided that the total liability of the Insurers under each section of this Policy to the Insured collectively shall not (unless the Policy specifically permits otherwise) exceed the Limit of Indemnity stated to be insured thereby.

#### **7. No Obligation for Premium Payment**

The Finance Parties and their respective directors, employees and assigns shall (whether or not they are the Insured under the policy) in no circumstances be liable for the payment of any premium or to perform any other obligation owed to the Insurers although the Finance Parties may elect to pay the premium. This shall not relieve the OFTO from its obligation to pay any premium due under this policy.

#### **8. Acknowledgement of Assignment**

The Insurers acknowledge that they have notice under a notice of assignment dated 25 August 2015, that by a first ranking assignment contained in a Security Agreement dated 25 August 2015 made between the OFTO and the Security Trustee, the OFTO assigned by way of security to the Security Trustee all existing and future rights in and to the proceeds of all Insurances relating to the Project (including all claims of whatsoever nature thereunder and return of premiums in respect of thereof) taken out by it or on its behalf or in which it has an interest to the extent of that interest, except as otherwise agreed by the Security Trustee and that Insurance proceeds shall be paid as set out below in paragraph 9 (Loss Payee).

#### **9. Loss Payee**

The Insurers undertake that:

- (a) Insurances other than legal liability insurance: All monies payable by the Insurers to the Insured in respect of the Insurances shall be paid to the Proceeds Account of the OFTO with the Account Bank unless and until Insurers receive written notice from the Security Trustee to the contrary, in which event Insurers should make all future payments as then directed by the Security Trustee.
- (b) Insurers shall not set off premiums or other amounts payable by the Insureds nor deduct such amounts from claims monies.

- (c) Legal liability insurances: Subject to the provisions of any applicable legislation and notwithstanding the assignments referred to above, all sums in respect of any claim hereunder by an Insured shall be paid directly to the person whose claim(s) constitutes the risk or liability insured against, provided that such person has executed a discharge of all claims made against the Insured in respect of the risk or liability in relation to which the claim was made, save in cases where (notwithstanding the policy terms to the contrary) Insurers accept liability to indemnify the Insured in respect of the claims or liabilities which the Insured has settled directly with the claimant in which case payment under the policy of such sums shall be made into the Proceeds Account unless and until Insurers receive written notice from the Security Trustee to the contrary, in which event Insurers shall make all payments in respect of these amounts in accordance with the instructions of the Security Trustee.

#### **10. Co-Insured**

The Finance Parties and their respective officers, directors, employees and assigns are each co-insureds under this policy and the premium specified in this policy provides consideration for their being co-insured parties.

#### **11. Changes in Cover**

No reductions in limits or coverage or increases in deductibles, exclusions or exceptions shall be made under the policy without the prior written consent of the Security Trustee.

#### **12. Amendments to Endorsements**

During the term of the policy, the provisions of this endorsement may only be amended by written agreement between the OFTO, the Insurers and the Security Trustee, such amendment to be endorsed on the policy.

#### **13. Non-Renewal/Non-Payment of Premium**

In addition to any other requirements relating to such Insurance, the OFTO shall ensure and agrees to procure that each of its primary Insurers shall ensure in relation to each such policy of Insurance that it acknowledges that the OFTO is the OFTO under loans with the Finance Parties and that the following provisions shall apply to the policy:

- (a) the Insurer undertakes to advise the Security Trustee of any circumstances regarding the renewal or non-renewal of the Insurance or failure to pay the premium so that there is not, under any circumstances, a break in the period of Insurance and to pass outstanding premium notices to the Security Trustee who (notwithstanding paragraph 7 (No Obligation for Premium Payment) may pay the premium on behalf of the Insured;
- (b) in the event of failure to pay the premium by the Insured, the Insurer undertakes, where the premium is paid by or on behalf of the Security Trustee, to issue an endorsement modifying the policy, with effect from the preceding due date to take account of any requirements of the Security Trustee.

#### **14. Cancellation**

The Security Trustee shall be advised in writing:

- (a) at least 60 days before:

- (i) any suspension or cancellation is to take effect if any Insurer or Insured suspends or cancels or gives notice of such suspension or cancellation of any Insurance relating to the Project for any reason including non-payment of premium; and
- (ii) any alteration to, or termination prior to the expiry of the Insurances is to take effect;
- (b) forthwith of any default on the payment of any premium for any of the Insurances;
- (c) at least 60 days prior to the expiry of the Insurances if the Insurers have not received renewal instructions from the OFTO and/or any co-Insured or the agent of any such party, and if the Insurers receive instructions to renew, to advise the Security Trustee promptly of the details thereof; and
- (d) of any act or omission or of any event or circumstance of which the Insurer or the insurance advisers to the OFTO has knowledge and which might invalidate or render unenforceable in whole or in part any of the Insurances.

## **15. Communications**

All notices or other communications under or in connection with this policy will be given in writing or by telex or fax. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered;
- (b) if by telex, when despatched but only if, at the time of transmission the correct answerback appears, at the start and end of the sender's copy of the notice; and
- (c) if by fax, when transmitted but only if, immediately after the transmission, the transmission report shows the correct fax number.

The address, telex number and fax number of the Security Trustee for all notices under or in connection with this policy are those notified from time to time by the Security Trustee and Security Trustee for this purpose to the OFTO's insurance broker at the relevant time. The initial address, telex number and fax of the Security Trustee are as follows:

Address: 8 Canada Square  
Level 27  
London E14 5HQ  
United Kingdom

Fax No: +44 (0) 20 7991 4350

Attention: CTLA Trustee Services Administration

Email: [ctla.trustee.admin@hsbc.com](mailto:ctla.trustee.admin@hsbc.com)

## **16. Notice of Claims**

Notice of claim by the Security Trustee or the Finance Parties or any other party entitled to indemnity under the policy shall, in the absence of manifest error, be accepted by insurers as a valid notification of claim on behalf of all other Insurers subject to the full terms of the policy.

**17. Compromise of Claims**

No claim in respect of any loss exceeding £250,000 may be settled or otherwise compromised by the OFTO without the prior written consent of the Security Trustee.

**18. Continuation of Cover**

The cover under this Insurance shall (notwithstanding any intervening expiry or renewal date or the non-payment of any premium by the OFTO, any party co-insured with the OFTO or the agent of any such person, and notwithstanding any suspension or cancellation of any cover by operation of law (unless such Insurer is thereby prevented from maintaining such coverage) or by any Insurer or Insured pursuant to the terms of the Insurances) continue in full force and effect and unaltered for the benefit of the Finance Parties, for a period of at least 60 days or as may be agreed between the Insurers and the Security Trustee after written notice of such expiry, non-payment, suspension or cancellation has been given to the Security Trustee.

**19. Role of the Security Trustee**

The Security Trustee is not the agent of any party other than the Finance Parties for receipt of any notice or any other purpose in relation to this Insurance.

## PART 4

### NOTICE OF ASSIGNMENT AND ACKNOWLEDGEMENT

The Insurers shall acknowledge assignment of the Insurances, in the form set out below:

To: [The Insurers] (Insurers)

Address:

HSBC Corporate Trustee Company (UK) Limited (the **Security Trustee**) and WoDS Transmission PLC (the **OFTO**) GIVE NOTICE that by an assignment contained in a Security Agreement dated [●] 2015 made between the OFTO and the Security Trustee, the OFTO assigned to the Security Trustee by way of security all its right, title and interest in and to the benefit of all the insurances details of which are set out in the attached schedule, effected or required to be effected (the **Insurances**) (including the benefit of all claims arising and all money payable under the Insurances, including all returns of premiums):

#### **Insurances other than legal liability insurance**

All monies payable by the Insurers to the Insured in respect of the Insurances shall be paid to the account of the OFTO with [●], sort code [●] account number [●] (designated the **Proceeds Account**) unless and until Insurers receive written notice from the Security Trustee to the contrary, in which event Insurers should make all future payments as then directed by the Security Trustee.

- Insurers shall not set off premiums or other amounts payable by the Insureds nor deduct such amounts from claims monies.

#### **Legal liability insurance**

Subject to the provisions of any applicable legislation and notwithstanding the assignment referred to above, all sums in respect of any claim by the OFTO shall be paid directly to the person whose claim(s) constitute the risk or liability insured against, provided that such person has executed a discharge of all claims against the OFTO in respect of the risk or liability in relation to which the claim was made, save in cases where (notwithstanding the policy terms to the contrary) Insurers accept liability to indemnify the OFTO in respect of claims or liabilities which the OFTO has settled directly with the claimant and in which case payment under the policy of such sums shall be made into the Proceeds Account unless and until Insurers receive written notice from the Security Trustee to the contrary, in which event Insurers shall make all payments in respect of these amounts in accordance with the instructions of the Security Trustee.

Insurers shall not set off premiums or other amounts payable by the Insureds nor deduct such amounts from claims monies.

This authority and instruction is irrevocable without the prior written consent of the Security Trustee.

Insurers should acknowledge receipt of this Notice of Assignment and confirm that they will pay all monies in respect of the Insurances as directed by or pursuant to this Notice of Assignment by signing the acknowledgement on the attached copy of this Notice of Assignment and returning the same to the Security Trustee at 8 Canada Square, Level 27, London E14 5HQ, United Kingdom marked for the attention of CTLA Trustee Services Administration, with a copy to the OFTO at The American Barns, Banbury Road, Lighthome, Warwickshire, CV35 0AE, marked for the attention of CTLA Trustee Services Administration.

.....

For and on behalf of  
WoDS Transmission PLC

(the OFTO)

.....

For and on behalf of  
HSBC Corporate Trustee Company (UK) Limited

(as Security Trustee)

We acknowledge receipt of the Notice of Assignment of which this is a copy and agree that we will comply with its terms.

.....

For and on behalf of  
[The Insurers]

---

**SCHEDULE OF ASSIGNED INSURANCES**  
**[SET OUT DETAILS OF THE ASSIGNED INSURANCES]**



## PART 5

### FORM OF BROKER'S LETTER OF UNDERTAKING

To: HSBC Corporate Trustee Company (UK) Limited (as Security Trustee),

In each case acting for and on behalf of the Finance Parties (as defined in the Common Terms Agreement (as defined below)).

Date: [●] 2015

Dear Sirs

#### WODS OFFSHORE TRANSMISSION SYSTEM PROJECT

1. We refer to the Common Terms Agreement (the **Common Terms Agreement**) dated [●] 2015, between, among others, the OFTO, the Finance Parties and the Security Trustee and in particular the insurances (the **Insurances**) specified in the attached Schedule 1 (Insurance Schedule) (the **Insurance Schedule**). Terms defined in the relevant Common Terms Agreement and the Insurance Schedule shall have the same meaning in this letter.
2. We have acted as insurance broker to WoDS Transmission PLC, a OFTO incorporated in England and Wales (registered no. 9309507), whose registered office is at The American Barns, Banbury Road, Lighthorne, Warwickshire, CV35 0AE (the **OFTO**) with respect to the Insurances.
3. We confirm that:
  - (a) the Insurances are, as at today's date, in full force and effect on and in respect of the risks and liabilities as set out in the attached policies/cover notes and include the matters required under the Insurance Schedule and name the Finance Parties and such other persons as are required to be named under Part 2 of the Insurance Schedule for their respective interests;
  - (b) we have sent to each insurer in respect of the Insurances (the **Insurers**) the Notice of Assignment (a copy of which is attached hereto in Schedule 2) signed by the OFTO and asked each such insurer to return the acknowledgement of the Notice of Assignment to us;
  - (c) all premiums due to date in respect of the Insurances are paid;
  - (d) the Insurances are placed with insurers, which, as at the date of this letter, are rated at least A by S&P and A2 by Moody's. We do not however make any representations or confirmation regarding such insurers' current or future solvency or ability to pay claims;
  - (e) the relevant endorsements set out in Schedule 3 which is attached hereto are as at today's date included in the Insurances evidenced in the attached policies or cover-notes; and
  - (f) we have advised the OFTO of their obligation to disclose to Insurers the information which ought to be known to the OFTO and which is material to the Insurances.
4. Pursuant to instructions received from the OFTO in connection with the Insurances, we hereby undertake:
  - (a) to notify you:

- (i) if any Insurer or Insured suspends or cancels or gives notice of suspension or cancellation of any Insurance at least 30 days before such suspension or cancellation is to take effect (unless we are notified less than 30 days before, in which case we shall notify you as soon as reasonably practicable upon receipt of notice of suspension or cancellation);
  - (ii) promptly if any premiums for any of the Insurances are not paid on or before their due date so as to give you an opportunity of paying such premiums outstanding before cancellation on behalf of the Insurers;
  - (iii) at least 30 days prior to the expiry of the Insurances if we have not received instructions from the OFTO to negotiate renewal of the Insurances, and, in the event of our receiving instructions to renew, to advise you promptly of the details thereof;
  - (iv) promptly on becoming aware of any act or omission or breach or default of which we have been notified which in our reasonable assessment may either invalidate or render unenforceable in whole or in part any of the Insurances;
  - (v) as soon as reasonably practicable upon receipt of notice of any material changes notified to us which are proposed to be made or which we are instructed by the OFTO to make in the terms of the Insurances and which, if effected, in our reasonable opinion as insurance brokers would result in any reduction in limits or coverage (including those resulting from extensions) or increase in deductibles, exclusions or exceptions;
  - (vi) at least 30 days prior to our ceasing to act as brokers to the OFTO (unless owing to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as reasonably practicable prior to our ceasing to act or, if impracticable, promptly after our ceasing to act as broker);
- (b) to pay to Insurers from time to time all premia received by us for the account of an Insurer in respect of the Insurances;
  - (c) to pay to or to the order of the Security Trustee without any set-off or deduction of any kind for any reason any and all proceeds from the Insurances received by us from the Insurers (including refunds of premia) except as might be otherwise permitted in the relevant loss payable clauses;
  - (d) subject to the prior written consent of the OFTO, to disclose to the Insurers and to you all information provided to those of our employees directly involved in the placement and/ or administration of the Insurances in our capacity as insurance broker to the OFTO, any fact, change of circumstances or occurrence notified to such employees, which in our reasonable opinion is material to the risks insured against under the Insurances and which properly should be disclosed to insurers, or in accordance with the policy terms and conditions of the relevant Insurance, as soon as possible after we are in receipt of such information, fact, change of circumstance or occurrence;
  - (e) subject to the prior written consent of the OFTO, to hold copies of the Policies (together with any renewals thereof), any new or substitute policies and confirmations of payment of premiums, to the extent held by us, to the order of the Security Trustee and to make the same available to you on request;
  - (f) to have endorsed on each and every Policy as and when the same is renewed and/or replaced endorsements substantially in the form set out in Part III of the Insurance Schedule (unless

otherwise expressly agreed by you), to send to any relevant insurer to whom such a Notice of Assignment has not previously been delivered in respect of such replacement or renewal Insurance a copy of the Notice of Assignment in the form set out in Schedule 2 to this letter signed by the OFTO, to ask each such insurer to return the acknowledgement of the Notice of Assignment to us.

5. The above undertakings are given subject to:
  - (a) any Insurer's right of cancellation (if any) following default in payment of premiums, but we undertake to advise you promptly if any such premiums are not paid to us before the due date so as to give you an opportunity of paying such amounts of such premiums outstanding before cancellation on behalf of the Insurers; and
  - (b) our continuing appointment for the time being as insurance brokers to the OFTO.
6. Save insofar as we have given agreements or representations in this letter, it is to be understood by the Security Trustee and the Finance Parties that they may not rely on any advice which we have given to the OFTO, and we do not represent that the Insurances are suitable or sufficient to meet the needs of the Security Trustee and the Finance Parties which must take steps and advice of its own as it considers necessary in order to protect its own position.
7. For the avoidance of doubt all undertakings and other confirmations given in this letter relate solely to the Insurances. They do not apply to any other insurances and nothing in this letter should be taken as providing any undertakings or confirmations in relation to any insurance that ought to have been placed or may at some future date be placed by ourselves or by other brokers.
8. This letter is addressed to and has been prepared exclusively for the use of the Security Trustee in each case acting for and on behalf of the Finance Parties. This letter may not be reproduced by you or used for any other purpose without our prior written consent.
9. The representations and obligations set out in this letter are subject to our continuing appointment as insurance brokers to the OFTO in relation to the Insurances concerned, and following termination of such appointment our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination (save for the obligation to notify you of our ceasing to act as broker), and subject to any right of lien we may have over the policy and policy documents regarding the Insurances, arising through common law or otherwise.
10. Our aggregate liability to any persons companies or organisation who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Insurances, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of £3,000,000, even if we are negligent. We do not limit liability for our fraud, wilful misconduct or any other liability which cannot be excluded or limited.
11. This letter is given by us on the instructions of the OFTO and with their full knowledge and consent as to its terms.
12. This letter shall be governed by and construed in all respects in accordance with English Law and any disputes to its terms shall be submitted to the exclusive jurisdiction of the courts of England and Wales.

Yours faithfully

.....

for and on behalf of

**Marsh Ltd**

We consent to the giving of this Letter of Undertaking by our insurance brokers and hereby consent to the matters referred to in paragraphs 4(d) and 4(e) above.

.....

For and on behalf of

[●]

**SCHEDULE 1 TO THE BROKER'S LETTER OF UNDERTAKING**

**Insurance Schedule**

**[insert Part II of Schedule 4 to the CTA]**

**SCHEDULE 2 TO THE BROKER'S LETTER OF UNDERTAKING**

**Form of Notice of Assignment**

**[Form of Notice of Assignment to be attached to Broker's Letter of Undertaking - see Part 4 of Schedule 4 to the CTA]**

**SCHEDULE 3 TO THE BROKER'S LETTER OF UNDERTAKING**

**Endorsements**

**[Insert Part III of Schedule 4 to the CTA]**

**SCHEDULE 4 TO THE BROKER'S LETTER OF UNDERTAKING**

**Policies / Cover Notes**

**[Policies and cover notes to be attached to the Broker's letter]**

## **SCHEDULE 7**

### **ECONOMIC ASSUMPTIONS**

1. **Economic Assumptions** means assumptions as to the following matters used in the preparation of a Forecast:
  - (a) RPI;
  - (b) Corporate Tax Rate;
  - (c) VAT Rate; and
  - (d) Deposit Rates.
  
2. **Sources of Economic Assumption**

The assumption in items (a) – (d) shall be as determined by reference to the following:

- (a) in the case of RPI: the Retail Price Index;
- (b) in the case of the Corporate Tax Rate: the rates as confirmed in writing by the OFTO's auditors;
- (c) in the case of the VAT Rate: the rates as confirmed in writing by the OFTO's auditors; and
- (d) in the case of Deposit Rates: the 6 month London interbank offered rate administered by the British Bankers' Association (or any other person which takes over the administration of that rate) for Sterling displayed on pages LIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate).

## SCHEDULE 8

### PBCE DRAWING MECHANISM

#### 1. Account Balances and Scheduled Debt Service

By no later than 10 a.m. (London time) on the day falling eleven (11) Business Days prior to each Scheduled Payment Date (the **PBCE Test Date**), the OFTO shall provide to the PBCE Provider and the Security Trustee a certificate (substantially in the form set out in Schedule 10 hereto, the **PBCE Drawing Confirmation Certificate**) containing the following information:

- (a) the aggregate amount of the Bond Debt Service;
- (b) the aggregate amounts of Scheduled Debt Service that will be due and payable under the relevant Hedging Agreements on such Scheduled Payment Date (**Hedging Debt Service**);
- (c) the aggregate balances standing to the credit of the Debt Service & PBCE Account, the Debt Service Reserve Account and, if applicable, the Working Capital Reserve Account respectively, as at the date falling twelve (12) Business Days prior to the relevant Scheduled Payment Date, together with statements of account from the Account Bank evidencing the same (**Cash Available**);
- (d) a calculation of the amount of any excess of (i) the aggregate of the Bond Debt Service amount and Hedging Debt Service amount over (ii) the Cash Available (the amount of such excess being a **Debt Service Shortfall**), or a confirmation that there is no Debt Service Shortfall;
- (e) the PBCE Available Amount most recently notified to it by the PBCE Provider; and
- (f) the amount, if any, which needs to be drawn pursuant to the Notice of Demand which shall be an amount (the **PBCE Utilisation Amount**) equal to the lesser of (i) the Debt Service Shortfall, and (ii) the PBCE Available Amount.
- (g) certification of whether or not a PBCE Rebalancing will be required on such Scheduled Payment Date;
- (h) if there is a Debt Service Shortfall and no PBCE Rebalancing will be required on such Scheduled Payment Date, an instruction to the Security Trustee to deliver to the PBCE Provider a Notice of Demand in accordance with paragraph 2 below.

#### 2. Drawing to fund Debt Service Shortfall

In the event that, in respect of any Scheduled Payment Date the PBCE Drawing Confirmation Certificate (delivered to the Security Trustee by the OFTO pursuant to paragraph 1 above) indicates that there is a Debt Service Shortfall, unless a PBCE Rebalancing will be required on such Scheduled Payment Date (as certified by the OFTO to the Security Trustee in the PBCE Drawing Confirmation Certificate), the Security Trustee shall deliver to the PBCE Provider (with a copy of the same to the OFTO), by no later than 10 a.m. (London time) on the Business Day immediately following a PBCE Test Date (if the Security Trustee shall have received the relevant PBCE Drawing Confirmation Certificate by no later than 10 a.m. (London time) on the PBCE Test Date) a Notice of Demand under the PBCE Letter of Credit, requesting a drawing of an amount equal to the PBCE

Utilisation Amount (as set out in the PBCE Drawing Confirmation Certificate delivered to the Security Trustee by the OFTO pursuant to paragraph 1 above), provided that the Security Trustee shall not be liable to anyone for any delay in delivering or failure to deliver any such Notice of Demand under the PBCE Letter of Credit.

### 3. PBCE Rebalancing

(a) On each Scheduled Payment Date on which the PBCE Letter of Credit is to be drawn to pay Scheduled Debt Service on that Scheduled Payment Date, the OFTO shall determine the following and shall certify the same to the PBCE Provider and the Security Trustee, in a separate certificate to be delivered by the relevant Scheduled Payment Date:

- (i) the PBCE Rebalancing DLCR on such Scheduled Payment Date on the basis of the then current Forecast;
- (ii) the sum of the PBCE Utilisation Amount to be drawn on the relevant Scheduled Payment Date and all amounts that have been drawn under the PBCE Letter of Credit and not repaid by the OFTO pursuant to clause 4.1.1(a) (Reimbursement) of the PBCE Letter of Credit and Reimbursement Deed (the **PBCE Outstanding Balance**);
- (iii) the figure representing 25 per cent. of the aggregate Bond Debt Service falling due on the Scheduled Payment Date on which the PBCE Letter of Credit is drawn to pay Scheduled Debt Service and on the following Scheduled Payment Date (the **PBCE 3 Month Level**);
- (iv) whether or not the PBCE Outstanding Balance exceeds the PBCE 3 Month Level on such Scheduled Payment Date; and
- (v) whether or not the PBCE Letter of Credit is being drawn on such Scheduled Payment Date for the fourth consecutive Scheduled Payment Date.

(b) If on any Scheduled Payment Date:

- (i) the Bonds have not been accelerated in accordance with Condition 9.2;
- (ii) on such Scheduled Payment Date, the PBCE Letter of Credit has been drawn to pay Scheduled Debt Service on such Scheduled Payment Date; and
- (iii) (A) the PBCE Rebalancing DLCR as at that Scheduled Payment Date was below 1.10:1;  
or  
(B) on that Scheduled Payment Date the PBCE Outstanding Balance exceeds the PBCE 3 Month Level; and/or  
(C) the PBCE Letter of Credit is being drawn for the fourth consecutive Scheduled Payment Date,

then a PBCE Rebalancing Event will have occurred in respect of such Scheduled Payment Date provided that, if the PBCE Letter of Credit is drawn to pay Scheduled Debt Service on a Scheduled Payment Date and (i) a copy of an irrevocable payment instruction from the OFTO to immediately repay to the PBCE Provider the principal amount of such drawing (together with any related interest) is provided to the PBCE Provider by no later than the Business Day immediately following such Scheduled Payment Date and (ii) such funds are received by the PBCE Provider within three (3) Business Days of such Scheduled Payment Date, a PBCE Rebalancing Event will be deemed not to



have occurred on such Scheduled Payment Date and the OFTO shall certify the same to the PBCE Provider and the Security Trustee.

- (c) If either of the following circumstances occurs in respect of a PBCE Rebalancing Event, the OFTO shall certify to the PBCE Provider and the Security Trustee by no later than 10a.m. (London time) on the day falling eleven (11) Business Days prior to a PBCE Rebalancing Date that, on or prior to the relevant PBCE Rebalancing Cure Date:

either

- (i) following the occurrence of a PBCE DLCR Rebalancing Event, an Equity Cure Amount has been applied in accordance with paragraph 20 (Equity Cure) of Schedule 3 (Events of Default) of this Common Terms Agreement and the PBCE Rebalancing DLCR (after recalculation of the ratios in accordance with paragraph 20 (Equity Cure) of Schedule 3 (Events of Default) of this Common Terms Agreement) is no longer below 1.10:1;

or

- (ii) following the occurrence of a PBCE Excess Draw Rebalancing Event:
- (A) Insurance proceeds (in respect of a loss incurred and claimed for before the Scheduled Payment Date in respect of which the PBCE Excess Draw Rebalancing Event occurred) have been agreed and received by the OFTO on or before the PBCE Rebalancing Cure Date; and
- (B) the PBCE Letter of Credit would not have needed to be drawn down to meet Scheduled Debt Service on the Scheduled Payment Date in respect of which the PBCE Excess Draw Rebalancing Event occurred, or the PBCE Excess Draw Rebalancing Event would not have occurred, if such Insurance proceeds had been received by the OFTO on or before the Scheduled Payment Date in respect of which the PBCE Excess Draw Rebalancing Event occurred.

#### **4. Drawing to fund PBCE Rebalancing**

4.1 If:

- (a) the steps set out in paragraph 3 above indicate that a PBCE Rebalancing Event has occurred in respect of a Scheduled Payment Date (and no PBCE Rebalancing Cure has occurred prior to the PBCE Rebalancing Cure Date); and
- (b) the PBCE Letter of Credit has not previously been drawn in connection with a PBCE Rebalancing Event;

then

- (i) the OFTO shall by no later than 10a.m. (London time) on the day not less than eleven (11) Business Days prior to the relevant Scheduled Payment Date deliver to the PBCE Provider and the Security Trustee a certificate (substantially in the form set out in Schedule Schedule 11 hereto, the **PBCE Rebalancing Draw Certificate**) stating:
- (A) that a PBCE Rebalancing Event has occurred in respect of the immediately preceding Scheduled Payment Date;

- (B) that no PBCE Rebalancing Cure has occurred prior to the PBCE Rebalancing Cure Date;
  - (C) that the PBCE Letter of Credit has not previously been drawn in connection with a PBCE Rebalancing Event (pursuant to clause 3.3.2 (PBCE Rebalancing) of the PBCE Letter of Credit and Reimbursement Deed); and
  - (D) the PBCE Available Amount which needs to be drawn pursuant to the Notice of Demand; and
- (ii) the Security Trustee shall, following receipt of such PBCE Rebalancing Draw Certificate provided such certificate is received by the Security Trustee not later than 10a.m. (London time) eleven (11) Business Days prior to the relevant Scheduled Payment Date (the **PBCE Rebalancing Test Date**), deliver to the PBCE Provider (with a copy of the same to the OFTO) by no later than 10a.m. (London time) on the Business Day immediately following the PBCE Rebalancing Test Date a Notice of Demand under the PBCE Letter of Credit requesting a drawing of the full PBCE Available Amount (as set out in the PBCE Rebalancing Draw Certificate delivered by the OFTO in accordance with paragraph 4.1(i) above) provided that the Security Trustee shall not be liable to anyone for any delay in delivering or failure to deliver any such Notice of Demand under the PBCE Letter of Credit.

In the event that a PBCE Rebalancing will be required on the relevant Scheduled Payment Date, the OFTO shall, by no later than 10 a.m. (London time) on the day falling five (5) Business Days prior to the relevant Scheduled Payment Date deliver to the PBCE Provider (with a copy to the Security Trustee) a notice confirming the full amount (the **Final PBCE Utilisation Amount**) of the drawing to be applied in respect of the Debt Service shortfall, taking into account any additional revenues that the OFTO may have received subsequent to the PBCE Test Date and confirming the final and conclusive amount to be drawn under the PBCE Letter of Credit to fund a PBCE Rebalancing (being the full PBCE Available Amount less the Final PBCE Utilisation Amount for that Scheduled Payment Date).

## **SCHEDULE 9**

### **TECHNICAL ADVISER REPORTING**

#### **ANNUAL REPORTS**

Yearly reports on each anniversary of the Initial Issue Date covering, among other things, the following:

- (a) Comment and report to the Secured Creditors on the adequacy of the draft Forecast prepared by the OFTO, giving particular attention to the split between Ordinary and Additional Services and Additional Budgeted Maintenance Costs (including revisions to cable surveys frequencies).
- (b) Review asset condition reports/analysis/interpretation/assessment of cable burial and bathymetric surveys prepared by the OFTO and comment on the adequacy and completeness of the annual maintenance plan (particular attention will be given to the offshore cable maintenance regime).
- (c) Comment on the adequacy of the health and safety rules and procedures of the OFTO and the O&M Contractor and recommendations for further work if found not to be inadequate.
- (d) Comment on the adequacy of the Forecast Decommissioning Cost.
- (e) Comment on the emergency response plan and recommendations for further work if found not to be adequate.
- (f) Comment on the interface between the OFTO, the wind farm owner, the Management Services Provider and the O&M Contractor and on the ongoing working relationship.
- (g) The preparation of this yearly report will involve an annual meeting with the OFTO and the Management Services Provider.

## SCHEDULE 10

### FORM OF PBCE DRAWING CONFIRMATION CERTIFICATE

To: HSBC Corporate Trustee Company (UK) Limited  
The European Investment Bank

[insert date]

#### RE: WODS TRANSMISSION PLC – PBCE DRAWING CONFIRMATION CERTIFICATE

Reference is hereby made to the Common Terms Agreement dated [●] 2015 between, among others, The European Investment Bank, HSBC Bank PLC and ourselves (the CTA), specifically to Schedule 8 (PBCE Drawing Mechanism) thereto. Capitalised terms not otherwise defined in this certificate have the meaning given to them in the CTA.

In accordance with paragraph 1 of that Schedule 8 (PBCE Drawing Mechanism) to the CTA, and as of [insert date] (being the **PBCE Test Date** for the purposes of this certificate), I hereby certify as follows:

- (a) the aggregate amount of the Bond Debt Service as at the PBCE Test Date is [●];
- (b) the aggregate amounts of Scheduled Debt Service that will be due and payable under the relevant Hedging Agreements on such Scheduled Payment Date (**Hedging Debt Service**) is [●];
- (c) the aggregate balances standing to the credit of:
  - (i) the Debt Service & PBCE Account is: [●]
  - (ii) the Debt Service Reserve Account is: [●]
  - (iii) the Working Capital Reserve Account is: [Not Applicable][●],as at the date falling twelve (12) Business Days prior to the relevant Scheduled Payment Date, together with statements of account from the Account Bank evidencing the same
- (d) [the current Debt Service Shortfall is [●]][there is no current Debt Service Shortfall]<sup>1</sup>;
- (e) the PBCE Available Amount (as most recently notified by the PBCE Provider to the OFTO) is: [●];  
and
- (f) the PBCE Utilisation Amount<sup>2</sup>: [●][none]
- (g) Will a PBCE Rebalancing be required on the next Scheduled Payment Date: [no][yes]

<sup>1</sup> Determined by calculating the amount of any excess of (i) the aggregate of the Bond Debt Service amount and Hedging Debt Service amount over (ii) the Cash Available

<sup>2</sup> Being the amount equal to the lesser of (i) the Debt Service Shortfall, and (ii) the PBCE Available Amount

[*Select one of the following:*]

**[No action to be taken by the Security Trustee**

[*Select one of the following as appropriate*][Being that item (d) above indicates that there is no Debt Service Shortfall, the Security Trustee is not required to take any action.][ *OR*][ Being that item (d) above indicates that there is a Debt Service Shortfall but item (g) indicates that there will be a PBCE Rebalancing on the next Scheduled Payment Date, the Security Trustee is not required to take any action in accordance with paragraph 2 of Schedule 8 (PBCE Drawing Mechanism) to the CTA.]]

[*OR*]

**[Action to be taken by the Security Trustee**

In accordance with paragraph 2 of Schedule 8 (PBCE Drawing Mechanism) to the CTA, being that item (d) above indicates that there is a Debt Service Shortfall and item (g) indicates that there will not be a PBCE Rebalancing on the next Scheduled Payment Date, the OFTO hereby instructs the Security Trustee to deliver to the PBCE Provider (with a copy to the OFTO) a Notice of Demand under the PBCE Letter of Credit by no later than 10a.m. (London time) on the Business Day immediately following the date of this certificate, in accordance with paragraph 2 of Schedule 8 (PBCE Drawing Mechanism) to the CTA.]

WODS TRANSMISSION PLC

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Authorised Signatory

## SCHEDULE 11

### FORM OF PBCE REBALANCING DRAW CERTIFICATE

To: HSBC Corporate Trustee Company (UK) Limited

The European Investment Bank

[insert date]

#### RE: WODS TRANSMISSION PLC – PBCE REBALANCING DRAW CERTIFICATE

Reference is hereby made to the Common Terms Agreement dated [●] 2015 between, among others, The European Investment Bank, HSBC Bank PLC and ourselves (the CTA), specifically to Schedule 8 (PBCE Drawing Mechanism) thereto. Capitalised terms not otherwise defined in this certificate have the meaning given to them in the CTA.

In accordance with paragraph 4 of that Schedule 8 (PBCE Drawing Mechanism) to the CTA, I hereby certify that:

- (a) a PBCE Rebalancing Event has occurred in respect of the immediately preceding Scheduled Payment Date;
- (b) no PBCE Rebalancing Cure has occurred prior to the PBCE Rebalancing Cure Date;
- (c) the PBCE Letter of Credit has not previously been drawn in connection with a PBCE Rebalancing Event (pursuant to clause 3.3.2 (PBCE Rebalancing) of the PBCE Letter of Credit and Reimbursement Deed); and
- (d) the PBCE Available Amount which needs to be drawn pursuant to the Notice of Demand is [●].

#### Action to be taken by the Security Trustee

In accordance with paragraph 4.1(ii) of Schedule 8 (PBCE Drawing Mechanism) to the CTA, the OFTO hereby instructs the Security Trustee to deliver to the PBCE Provider (with a copy to the OFTO) a Notice of Demand under the PBCE Letter of Credit by no later than 10a.m. (London time) on the Business Day immediately following the date of delivery of this certificate, in accordance with paragraph 4.2 of Schedule 8 (PBCE Drawing Mechanism) to the CTA.

WODS TRANSMISSION PLC

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Authorised Signatory

**SIGNATORIES**

This Agreement has been entered into on the date stated at the beginning of this Agreement.


**The OFTO**

**EXECUTED** by  
**WODS TRANSMISSION PLC**  
acting by

)  
)  
)  
)  
  
JAVIER FALCAO

**HoldCo**

**EXECUTED** by **WODS TRANSMISSION**  
**HOLDCO LTD**  
acting by

)  
)  
)  
)  
  
JAVIER FALCAO.

**PBCE Provider**

**EXECUTED by**  
**THE EUROPEAN INVESTMENT BANK**  
acting by

)  
)  
)

Maria Teresa Nassrad



Lérick Honath - Gilletet





**Bond Trustee**

**SIGNED** for and on behalf of **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

by



Leticia Wilson  
Director

Name of signatory

**Security Trustee**

**SIGNED** for and on behalf of **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

by



Leticia Wilson  
Director

Name of signatory

**Principal Paying Agent**

**EXECUTED** by HSBC BANK PLC  
acting by



Jenny Pennell  
Authorised Signatory

**Account Bank**

**EXECUTED** by HSBC BANK PLC  
acting by



Jenny Pennell  
Authorised Signatory


**Initial Hedge Counterparty**

**EXECUTED** by ABBEY NATIONAL TREASURY  
**SERVICES PLC**  
acting by



**Initial Hedge Counterparty**

**EXECUTED** by LLOYDS BANK PLC  
acting by



**CHINTHAKA RATNAYAKE**

**Initial Hedge Counterparty**  
**EXECUTED** by ROYAL BANK OF CANADA  
acting by

