

DATED 20 AUGUST 2015

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED  
AS BOND TRUSTEE

CERTAIN FINANCIAL INSTITUTIONS  
AS INITIAL HEDGE COUNTERPARTIES

EUROPEAN INVESTMENT BANK  
AS PBCE PROVIDER

WODS TRANSMISSION TOPCO LIMITED  
AS TOPCO

WODS TRANSMISSION HOLDCO LTD  
AS HOLDCO

WODS TRANSMISSION PLC  
AS OFTO

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED  
AS SECURITY TRUSTEE

HSBC BANK PLC  
AS ACCOUNT BANK

HSBC BANK PLC  
AS PRINCIPAL PAYING AGENT

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SECURITY TRUST AND INTERCREDITOR DEED

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**THIS DEED** is dated 20 August 2015 and made among:

- (1) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as bond trustee (on its own behalf, and on behalf of holders of the Bonds from time to time, the "**Bond Trustee**");
- (2) **CERTAIN FINANCIAL INSTITUTIONS** named on the signing pages as hedge counterparties (the "**Initial Hedge Counterparties**");
- (3) **EUROPEAN INVESTMENT BANK**, having its seat at 100 boulevard Konrad Adenauer, Luxembourg L2950, Luxembourg (the "**PBCE Provider**");
- (4) **WODS TRANSMISSION TOPCO LIMITED** (the "**TopCo**");
- (5) **WODS TRANSMISSION HOLDCO LTD** (the "**HoldCo**");
- (6) **WODS TRANSMISSION PLC** (registered number 9309507) (the "**OFTO**" and, together with HoldCo, the "**Obligors**");
- (7) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as security trustee for the Secured Creditors (the "**Security Trustee**");
- (8) **HSBC BANK PLC** (the "**Account Bank**"); and
- (9) **HSBC BANK PLC** (the "**Principal Paying Agent**").

## **SECTION 1 INTERPRETATION**

**IT IS AGREED** as follows:

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

Unless otherwise defined in this Deed or the context otherwise requires, words used in this Deed have the meanings ascribed to them in the master definitions agreement dated on or about the date hereof between, among others, the parties to this Deed (the "**Master Definitions Agreement**").

#### **1.2 Construction and Interpretation**

Unless otherwise provided in this Deed or the context otherwise requires, expressions used in this Deed are to be construed in accordance with part 2 (*Construction*) of schedule 1 (*Common Definitions*) to the Master Definitions Agreement (*mutatis mutandis*).

#### **1.3 Specific Rules on Construction and Interpretation**

Each party to this Deed (other than the Security Trustee) acknowledges that in exercising any rights, discretions or powers of the Security Trustee under any Finance

Document, the terms of the Security Trustee's appointment as set out in this Deed shall apply in respect of such Finance Document (*mutatis mutandis*).

#### 1.4 Bond Trustee

- (a) Each party to this Deed acknowledges that the Bond Trustee has agreed to become party to this Deed for the purposes of taking the benefit of the contractual provisions expressed to be given in its favour, enabling better preservation and enforcement of its rights under the Bonds and for administrative ease associated with matters where its consent is required.
- (b) In giving any instruction, direction, consent or authorisation pursuant to this Deed, the Bond Trustee shall act on the instructions of the Bondholders, in accordance with the terms of the Bond Trust Deed.
- (c) The exercise of any of the rights and/or discretion of the Bond Trustee hereunder will (as between the Bond Trustee, the Obligors and the Bondholders) be subject to the same protections and immunities (*mutatis mutandis*) as are conferred upon the Bond Trustee in the Bond Trust Deed (including, without limitation, those protections and immunities contained in clauses 17 (*Remuneration and Indemnification of Bond Trustee*) and 18 (*Supplement to Trustee Acts*) of the Bond Trust Deed).
- (d) No provision herein shall require the Bond Trustee to do anything which may be illegal or contrary to applicable law or regulation.

#### 1.5 Obligors

Each party to this Deed acknowledges that neither TopCo nor any Obligor is a Secured Creditor but that TopCo and each Obligor is party to this Deed to subordinate and postpone any claims in respect of any Financial Indebtedness that it may (now or at any time in the future) have against any member of the Security Group.

## 2. ACCESSION

### 2.1 Accession of Additional Hedge Counterparty

- (a) If an Obligor wishes an Additional Hedge Counterparty to become a Secured Creditor under this Deed (other than, for the avoidance of doubt, a successor of a Hedge Counterparty or an assignee or transferee of a Hedge Counterparty whose accession to this Deed, the Common Terms Agreement and the Master Definitions Agreement shall be effected in accordance with Clause 16.2 (*Change of Secured Creditor*)) and to accede as a party to the Common Terms Agreement, the Master Definitions Agreement and this Deed, the relevant Obligor must first notify the Security Trustee thereof in writing.
- (b) On or before the date on which the Additional Hedge Counterparty accedes to this Deed, the Obligors and the proposed Additional Hedge Counterparty (acting through its Secured Creditor Representative) must deliver to the Security Trustee:

- (i) a Creditor Accession Undertaking executed by the OFTO (on behalf of the Obligors), the proposed Additional Hedge Counterparty and the Security Trustee (for itself and on behalf of the other Secured Creditors); and
- (ii) a copy of the relevant Finance Document(s) evidencing or regulating the relevant Secured Liabilities executed by the Obligors and the proposed Additional Hedge Counterparty.

## 2.2 Authorisation of Creditor Accession Undertaking Execution

The Secured Creditors hereby authorise the Security Trustee to execute each Creditor Accession Undertaking (without liability therefor) and agree to be bound by the terms of each such Creditor Accession Undertaking.

## 2.3 Effectiveness of Accession

The parties agree that any Creditor Accession Undertaking delivered pursuant to Clause 2.1 (*Accession of Additional Hedge Counterparty*) will take effect upon the later of (a) the delivery of that Creditor Accession Undertaking to the Security Trustee and (b) the date specified in such Creditor Accession Undertaking as the date upon which such Creditor Accession Undertaking shall become effective.

## 2.4 Third party rights

- (a) Unless expressly provided to the contrary in this Deed, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Rights Act**") to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 15.11 (*Exclusion of liability*) may, subject to this Clause 2.4 and the Third Parties Rights Act, rely on any Clause of this Deed which expressly confers rights on it.

## SECTION 2 RANKING AND CREDITORS

### 3. RANKING AND PRIORITY

#### 3.1 Creditor Liabilities

Each of the Parties agrees that the Liabilities owed by the Obligors to the Creditors shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:

- (a) **first**, the Bond Liabilities and the Hedging Liabilities, *pari passu* and *pro rata* without any preference between them;
- (b) **second**, the PBCE Liabilities; and
- (c) **third**, the Subordinated Intragroup Liabilities,

as more specifically provided in the relevant Priority of Payments.

#### 3.2 Security

Each of the Parties agrees that the Security shall rank and secure the following Secured Liabilities (but only to the extent that such Security is expressed to secure those Secured Liabilities) in the following order:

- (a) **first**, the Bond Liabilities and the Hedging Liabilities, *pari passu* and *pro rata* without any preference between them; and
- (b) **second**, the PBCE Liabilities,

as more specifically provided in the relevant Priority of Payments.

#### 3.3 Subordinated Intragroup Liabilities

- (a) Each of the Parties agrees that the Subordinated Intragroup Liabilities are postponed and subordinated to the Secured Liabilities.
- (b) This Deed does not purport to rank any of the constituent borrowings that comprise Subordinated Intragroup Liabilities as between themselves.

#### 3.4 Undertakings of Secured Creditors

Each Secured Creditor (other than the Security Trustee) agrees with the other Secured Creditors that, at any time prior to the Senior Discharge Date, and unless otherwise permitted by the express terms of this Deed, it will not:

- (a) permit or require any Obligor to discharge any of the Secured Liabilities owed to it, except to the extent and in the manner permitted under this Deed and as further specified in the other Finance Documents to the extent that the provisions of such Finance Documents are consistent with the relevant provisions of this Deed;

- (b) without prejudice to the generality of paragraph (a) above, accelerate, or permit or require any Obligor to accelerate, cancel, pay, prepay, repay, redeem, purchase, terminate early or voluntarily terminate or otherwise acquire any of the Secured Liabilities except: (i) to the extent and in the manner permitted by this Deed and (ii) as further specified in the other Finance Documents to the extent that the provisions of such Finance Documents are not inconsistent with the relevant provisions of this Deed;
- (c) waive, amend or take any action which would have the effect of waiving or amending any provision of a Finance Document to which it is a party where (and to the extent that) such waiver, amendment or other action would be a breach of the Common Terms Agreement and/or this Deed;
- (d) take, accept or receive the benefit of any security, guarantee, indemnity, collateral (including cash collateral) or other assurance against financial loss from any Obligor in respect of any of the Secured Liabilities owed to it except pursuant to the Finance Documents and in accordance with this Deed;
- (e) take, receive or recover from any Obligor by set off, any right of combination of accounts, proceedings of any kind or in any other manner whatsoever (save where permitted in paragraphs (a) to (d) above) the whole or any part of the Secured Liabilities owed to it, except:
  - (i) in accordance with the provisions of this Deed and as further specified in the other Finance Documents to the extent the provisions of such Finance Documents are consistent with the provisions of this Deed; or
  - (ii) in respect of the Account Bank, to the extent permitted under the Account Bank Agreement;
- (f) take any Enforcement Action in respect of the Security except in accordance with the provisions of this Deed and the other Security Documents; or
- (g) extend reliance under any Adviser Report to any other person except to an Additional Hedge Counterparty or a person who has acceded to this Deed in accordance with Clause 16 (*Changes to the Parties*).

### 3.5 Enforcement Action

Each Secured Creditor (other than the Security Trustee) agrees with the other Secured Creditors that, at any time prior to the Senior Discharge Date, and unless otherwise permitted by the express terms of this Deed:

- (a) only the Security Trustee is entitled to take Enforcement Action against any Obligor or take proceedings or to exercise any rights, discretions or powers, or to grant any consents or releases under any Finance Document or in respect of the Security given under or pursuant to the Security Documents or otherwise have direct recourse to the Security;
- (b) neither it nor any person acting on its behalf (other than the Security Trustee or a Receiver and/or other Representative appointed by the Security Trustee) shall have any right to take or initiate any proceedings or steps against an

Obligor to enforce the Security including, without limitation, by way of attachment, execution or diligence;

- (c) no Secured Creditor (other than the Security Trustee or a Receiver and/or other Representative appointed by the Security Trustee) shall have the right to take or join any person in taking steps against any Obligor for the purposes of obtaining payment of any amount due whatsoever from such Obligor to such Secured Creditor, including the appointment of a Receiver, **provided that** nothing shall prevent a Secured Creditor from proving for the full amount owed to it by an Obligor in the liquidation of such Obligor;
- (d) neither it nor any person acting on its behalf (other than the Security Trustee or any Receiver appointed by the Security Trustee) shall initiate or join any person in initiating howsoever an Insolvency Event in relation to any Obligor; and
- (e) it shall not be entitled to take any steps or proceedings which would result in the Priority of Payments not being observed.

#### **4. BOND LIABILITIES**

##### **4.1 Payment of Bond Liabilities**

The Obligors may only make Payments of the Bond Liabilities in accordance with the relevant Priority of Payments.

##### **4.2 Amendments and Waivers: Bond Documents**

The Obligors and the Bond Trustee may not amend or waive the terms of the Bond Documents except in accordance with Clause 22 (*Consents, Amendments and Override*).

##### **4.3 Designation of Bond Documents**

If the terms of a document effect a change by way of amendment to, or waiver of, the terms of a Bond Document which would have required the prior consent of the Hedge Counterparties or the PBCE Provider under Clause 22 (*Consents, Amendments and Override*), then such change shall not be effective for the purposes of this Deed or any other Finance Document, without the prior consent of the Hedge Counterparties or the PBCE Provider, as the case may be.

##### **4.4 Security: Bond Creditors**

The Bond Creditors may take, accept or receive the benefit of any Security Interest in respect of the Bond Liabilities from the Obligors in addition to the Security which is, at the same time, also offered to the Security Trustee as trustee for the other Secured Creditors in respect of their Secured Liabilities and ranks in the same order of priority as that contemplated in Clause 3.2 (*Security*).



## 5. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

### 5.1 Identity of Hedge Counterparties

No entity providing hedging arrangements to an Obligor shall be entitled to share in any of the Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities and obligations arising in relation to those hedging arrangements nor shall those liabilities and obligations be treated as Hedging Liabilities unless that entity is or becomes:

- (a) a Party to this Deed as a Hedge Counterparty; and
- (b) a party to the Common Terms Agreement and the Master Definitions Agreement.

### 5.2 Restriction on Payment: Hedging Liabilities

No Obligor shall make any Payment of the Hedging Liabilities at any time unless that Payment is permitted under Clause 5.3 (*Permitted Payments: Hedging Liabilities*) and is in accordance with the relevant Priority of Payments.

### 5.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, an Obligor may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:
  - (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement (including, for the avoidance of doubt, any Deferred Payments);
  - (ii) to the extent that such Obligor's obligation to make the Payment arises as a result of the operation of any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the 2002 ISDA Master Agreement;
  - (iii) to the extent that such Obligor's obligation to make the Payment arises as a result of Enforcement Action which is permitted in accordance with Clause 5.9 (*Permitted Enforcement: Hedge Counterparty*) or required in accordance with Clause 5.10 (*Required Enforcement: Hedge Counterparties*);
  - (iv) to the extent that such Obligor's obligation to make the Payments arises as a result of the operation of Clause 5.12(f) (*Termination of hedging transactions due to a Hedge Counterparty default*); or
  - (v) to the extent the Payment is in relation to Deferred Payments which have been accelerated in accordance with part 1(i) of the schedule to the relevant Hedging Agreement.

- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to any Obligor under a Hedging Agreement is due and unpaid after any Payment Netting. For the avoidance of doubt, this Clause 5.3(b) shall not prevent an Obligor from making Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under a Hedging Agreement in circumstances where that Hedge Counterparty is not obliged to make payment by virtue of the operation of section 2(a)(iii) of the ISDA Master Agreement.
- (c) Failure by any Obligor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 5.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Obligor under that Hedging Agreement.

#### **5.4 Payment obligations continue**

No Obligor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Finance Document by the operation of Clauses 5.2 (*Restriction on Payment: Hedging Liabilities*) and 5.3 (*Permitted Payments: Hedging Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

#### **5.5 No acquisition of Hedging Liabilities**

No Obligor shall directly or indirectly enter into any Liabilities Acquisition in respect of any of the Hedging Liabilities.

#### **5.6 Amendments and Waivers: Hedging Agreements**

The Obligors and the Hedge Counterparties may not amend or waive the terms of any Hedging Agreement except in accordance with Clause 22 (*Consents, Amendments and Override*).

#### **5.7 Security: Hedge Counterparties**

The Hedge Counterparties may not take, accept or receive the benefit of any Security Interest, guarantee, indemnity or other assurance against loss from any Obligor in respect of the Hedging Liabilities other than:

- (a) the Security;
- (b) any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of the Hedging Agreements;
- (c) any guarantee, indemnity or other assurance against loss contained in:
  - (i) the original form of the relevant Hedging Agreement;
  - (ii) this Deed; or
  - (iii) any Common Assurance; and

(d) as otherwise contemplated by Clause 4.4 (*Security: Bond Creditors*).

#### 5.8 **Restriction on Enforcement: Hedge Counterparties**

Subject to Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 5.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clause 13.2 (*Quorum and voting requirements in respect of an Enforcement Instruction Notice and a Further Enforcement Instruction Notice*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

#### 5.9 **Permitted Enforcement: Hedge Counterparties**

To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:

- (a) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;
- (b) if the Bonds have been redeemed or cancelled in full or in part in accordance with Conditions 6.2, 6.3, 6.5 or 6.6 (excluding any partial redemption pursuant to Condition 6.2 (*Mandatory Redemptions for a PBCE Rebalancing Event and in respect of Insurance Proceeds, Acquisition Proceeds, any Equity Cure Amount and acceleration of the Guarantee*)) **provided that** if the Bonds have been redeemed or cancelled in part, a Hedge Counterparty may only terminate or close-out a proportion of the transactions under the relevant Hedging Agreement to which it is a party, where such proportion expressed as a percentage of all the transactions under all Hedging Agreements with all Hedge Counterparties is equal to the proportion expressed as a percentage which the principal amount of the Bonds being redeemed bears to the outstanding principal amount of the Bonds immediately prior to such redemption;
- (c) if an Obligor fails to make any scheduled payment which is due and payable under the relevant Hedging Agreement;
- (d) if an event under paragraph 7 (*Insolvency*), 8 (*Insolvency Proceedings*) or 9 (*Creditors' process*) of schedule 3 (*Events of Default*) of the Common Terms Agreement has occurred and is continuing in relation to the OFTO;
- (e) if an Obligor is or is deemed to be in breach of the maximum inflation rate risk hedging requirements set out in paragraph 28(a)(i)(A) (*Treasury Transactions*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement and is required under the terms of the Common Terms Agreement to take such action in accordance with paragraphs 28(c)(i), (e) and (f) (*Treasury Transactions*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) to the Common Terms Agreement, *provided that*, in this case, a Hedge Counterparty may only terminate or close-out a proportion of the transactions under the relevant Hedging Agreement to which it is a

party, and where such proportion is equal to the proportion of the transactions under all Hedging Agreements with all Hedge Counterparties that may be terminated or closed-out in order to comply with such requirements; or

(f) following delivery to it of any Enforcement Notice from the Security Trustee,

and may, where permitted under part 1(i) of the schedule to the relevant Hedging Agreement, accelerate and declare immediately due and payable the relevant Early Termination Amount (as defined in the relevant Hedging Agreement) to the extent the same has not already been fully paid by way of Deferred Payment(s). For the avoidance of doubt, a Hedge Counterparty will be entitled to apply Close-Out Netting in accordance with the terms of the relevant Hedging Agreement in respect of any hedging transaction closed out in accordance with this Clause 5.9.

#### 5.10 **Required Enforcement: Hedge Counterparties**

A Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to its stated maturity, following delivery to it of an Enforcement Notice from the Security Trustee (acting in accordance with the provisions of Clause 13 (*Enforcement Action*)) instructing it to do so.

#### 5.11 **Treatment of Payments due to the Obligors on termination of hedging transactions**

(a) If, on termination of any hedging transaction under any Hedging Agreement occurring after the delivery of an Enforcement Notice by the Security Trustee, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to an Obligor then that amount shall be paid by that Hedge Counterparty to the Security Trustee, treated as the proceeds of enforcement of the Security and applied in accordance with Clause 14 (*Application of Proceeds*).

(b) The payment of that amount by the Hedge Counterparty to the Security Trustee in accordance with paragraph (a) above shall discharge the Hedge Counterparty's obligation to pay that amount to the relevant Obligor.

#### 5.12 **Termination of hedging transactions due to Hedge Counterparty default**

Upon a Qualifying Default (as defined in the Hedging Agreement) by a Hedge Counterparty (a "**Defaulted Hedge Counterparty**") under any Hedging Agreement:

(a) the Obligor that is party to that Hedging Agreement and the Defaulted Hedge Counterparty shall follow the process set out in part 1(j) of the schedule to the Hedging Agreement (the "**Hedge Termination and Novation Mechanism**") in order to use commercially reasonable endeavours to novate the rights, liabilities, duties and obligations of the Defaulted Hedge Counterparty under the Hedging Agreement to a new Hedge Counterparty. Upon such novation, such new Hedge Counterparty must accede to this Deed as a Hedge Counterparty in accordance with Clauses 16.2 (*Change of Secured Creditor*)

and 16.4 (*Creditor Accession Undertaking*) and the Obligor and the Defaulted Hedge Counterparty shall be released from further obligations towards one another under the relevant Hedging Agreement and their respective rights against one another under the relevant Hedging Agreement and other Finance Documents shall be cancelled (being the "Discharged Rights and Obligations");

- (b) the Obligor that is party to that Hedging Agreement and the new Hedge Counterparty shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the new Hedge Counterparty have assumed and/or acquired the same in place of that Obligor and the Defaulted Hedge Counterparty;
- (c) the Creditors and the new Hedge Counterparty shall acquire the same rights and assume the same obligations between themselves and in respect of the Finance Documents as they would have acquired and assumed had the new Hedge Counterparty been an original Hedge Counterparty with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Creditors and the Defaulted Hedge Counterparty shall each be released from further obligations to each other under the Finance Documents;
- (d) the new Hedge Counterparty shall become a party as a "Hedge Counterparty" and the relevant Qualifying Default shall be deemed to have been remedied insofar as it affects the new Hedge Counterparty;
- (e) the Defaulted Hedge Counterparty shall be entitled to an amount as agreed between the Defaulted Hedge Counterparty, the relevant Obligor and the new Hedge Counterparty in accordance with the Hedge Termination and Novation Mechanism and payable by the new Hedge Counterparty in connection with the novation and no Early Termination Amount or other amounts shall be due or payable by the Obligor to the Defaulted Hedge Counterparty;
- (f) if no new Hedge Counterparty can be appointed within the period of 40 Business Days following the Qualifying Default by the Defaulted Hedge Counterparty (the "Tender Period") by following the Hedge Termination and Novation Mechanism, the relevant Obligor shall be entitled to terminate the relevant Hedging Agreement and any Early Termination Amount or other amount (following the application of any Close-Out Netting or Payment Netting in respect of that Hedging Agreement) that falls due from the Obligor to the Defaulted Hedge Counterparty shall be paid in accordance with paragraph (xv) of the Pre-enforcement Priority of Payment or paragraph (h) of the Post-enforcement Priority of Payment, as the case may be; and
- (g) no amount will be payable to the Defaulted Hedge Counterparty under the relevant Hedging Agreement on and from the occurrence of the Qualifying Default until the end of the Tender Period, and any amounts that become payable (or would have become payable but for section 2(a)(iii) of the relevant Hedging Agreement or part 1(j)(ix) of the schedule to the relevant Hedging Agreement) on or prior to the date of a novation to a new Hedge Counterparty or, if there is no such novation, the Early Termination Date (as defined in the

relevant Hedging Agreement) designated pursuant to part 1(j)(viii) of the schedule to the relevant Hedging Agreement, and which remains unpaid as at such date, shall be included either as part of the amount agreed to be payable pursuant to paragraph (e) above or as an Unpaid Amount (as defined in the relevant Hedging Agreement) in the calculation of that Early Termination Amount (as defined in the relevant Hedging Agreement) payable to the Defaulted Hedge Counterparty pursuant to paragraph (f) above.

### 5.13 Terms of Hedging Agreements

The Obligors shall ensure that, at all times:

- (a) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of "**Hedging Agreement**" and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
- (b) each Hedging Agreement is based on an ISDA Master Agreement and includes the Hedge Termination and Novation Mechanism and provisions relating to Deferred Payments and the acceleration thereof in accordance with parts 1(h) and 1(i) of the schedule to each Hedging Agreement as at the date of this Deed;
- (c) in the event of a termination of any hedging transaction entered into under a Hedging Agreement, whether as a result of a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement, that Hedging Agreement will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement other than the inclusion of the Hedge Termination and Novation Mechanism and provisions relating to Deferred Payments and the acceleration thereof in accordance with parts 1(h) and 1(i) of the schedule to each Hedging Agreement as at the date of this Deed;
- (d) no Hedging Agreement will permit Automatic Early Termination;
- (e) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement only to the extent permitted pursuant to Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) or if so required pursuant to Clause 5.10 (*Required Enforcement: Hedge Counterparties*);
- (f) each Hedging Agreement will permit the relevant Hedge Counterparty and the OFTO to take such action as may be necessary to ensure that the Obligors are able to comply with the hedging limit set out in paragraph 28(a) (*Treasury Transactions*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement; and
- (g) the relevant Hedge Counterparty obtains consent from the Obligors (which shall not be arbitrarily withheld or delayed) prior to transferring its interests in the relevant Hedging Agreement, unless an Event of Default has occurred and is continuing or such transfer is:

- (i) to an Affiliate of such Hedge Counterparty (the "**Original Transferee**") that has a long-term senior unsecured rating or long-term issuer rating which is not less than that of such Hedge Counterparty (the "**Original Transferor**") at the date of transfer (the "**Original Transfer Date**") *provided that*:
- (A) on the Original Transfer Date such Affiliate can comply with the representation set out in part 2(b) to the schedule to the relevant Hedging Agreement; and
  - (B) if, at any time following the Original Transfer Date, the Original Transferee ceases to be an Affiliate of both the Original Transferor and the ultimate Holding Company of both the Original Transferor and the Original Transferee immediately prior to the Original Transfer Date (the "**Mutual Holding Company**") (such date being the "**Affiliate Disposal Date**") the Original Transferee shall, as soon as reasonably practicable following the Affiliate Disposal Date:
    - (1) demonstrate to the reasonable satisfaction of the Obligor that is a party to that Hedging Agreement that it would satisfy the ratings criteria set out in paragraph 28(d) (*Treasury Transactions*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement (notwithstanding the proviso set out in sub-paragraph (i) of that paragraph 28(d) (*Treasury Transactions*)) were it to be entering into a new Hedging Agreement on the Affiliate Disposal Date; or
    - (2) procure a guarantee of each of its obligations under that Hedging Agreement from the Mutual Holding Company or a Subsidiary of the Mutual Holding Company; or
    - (3) retransfer its interests in the relevant Hedging Agreement to the Original Transferor or a Subsidiary of the Mutual Holding Company which, in each case, must be able to comply with the representation set out in part 2(a) to the schedule to the relevant Hedging Agreement on the date of that retransfer; or
    - (4) transfer its interests in the relevant Hedging Agreement in accordance with paragraph (g)(ii) below or otherwise to any other party with the prior consent of the Obligor that is a party to that Hedging Agreement (which shall not be arbitrarily withheld or delayed),

*provided that*, in respect of sub-paragraphs (2) and (3) above, the Mutual Holding Company or the Subsidiary of that Mutual Holding Company has a long-term senior unsecured rating or long-term issuer

rating which is not less than that of the Original Transferor as at the Original Transfer Date; or

- (ii) in all other circumstances:
  - (A) to an existing Hedge Counterparty or an Affiliate of an existing Hedge Counterparty that would satisfy the ratings criteria set out in paragraph 28(d) (*Treasury Transactions*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement; or
  - (B) to any entity that would satisfy the ratings criteria set out in paragraph 28(d) (*Treasury Transactions*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement were it to be entering into a new Hedging Agreement on the date of the proposed transfer and provided that such entity is not:
    - (1) a bank or financial institution or a trust, fund or other entity, in each case the principal part of whose business is investing in the equity of, owning or operating offshore generation or transmission assets; or
    - (2) an infrastructure fund or private equity fund, in each case the principal part of whose business is making equity investments in, owning or operating infrastructure assets,(each, a "Competitor") or, in each case, an Affiliate of such Competitor,

*provided that* in each case, no Event of Default or Termination Event under that Hedging Agreement would result from the transfer.

In respect of any transfer contemplated by the provisions of Clause 5.13(g) above, (i) the Affiliate of an existing Hedge Counterparty or the new Hedge Counterparty, as the case may be, shall confirm to the relevant Obligor and the existing Hedge Counterparty in its Creditor Accession Undertaking that it satisfies the relevant ratings criteria and in the case of the new Hedge Counterparty, is not an entity referred to in paragraphs (g)(ii)(B)(1) or (g)(ii)(B)(2) above and (ii) any costs associated with such transfer shall not be for the account of the Obligors.

## 6. THE PBCE PROVIDER AND PBCE LIABILITIES

### 6.1 Payment of PBCE Liabilities

The Obligors may only make Payments of the PBCE Liabilities in accordance with the relevant Priority of Payments.



## 6.2 Amendments and Waivers: the PBCE Provider

- (a) Prior to the Senior Discharge Date, the Obligors and the PBCE Provider may not amend or waive the terms of the PBCE Documents except in accordance with Clause 22 (*Consents, Amendments and Override*).
- (b) After the Senior Discharge Date, the PBCE Provider may amend or waive the terms of the PBCE Documents in accordance with their terms (and subject to any consent required under them) at any time.

## 6.3 Designation of PBCE Documents

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a PBCE Document, which is not permitted under Clause 6.2 (*Amendments and Waivers: the PBCE Provider*), that document shall not constitute a PBCE Document for the purposes of this Deed without the prior consent of the Senior Creditors.

## 6.4 Security: the PBCE Provider

At any time prior to the Senior Discharge Date, the PBCE Provider may not take, accept or receive the benefit of any Security Interest, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) the OFTO in respect of the PBCE Liabilities other than:

- (a) the Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
  - (i) the original form of PBCE Documents;
  - (ii) this Deed; or
  - (iii) any Common Assurance; and
- (c) as otherwise contemplated by Clause 4.4 (*Security: Bond Creditors*),

unless the prior consent of the Bond Trustee and the Hedge Counterparties is obtained.

## 6.5 PBCE Provider: Nomination of Account Bank

If:

- (a) the OFTO becomes entitled to terminate the appointment of the Account Bank in accordance with Clause 10.3 (*Automatic Termination*) of the Account Bank Agreement and such entitlement to terminate is continuing for a period of 30 days; and
- (b) within that period, a substitute Account Bank has not been appointed in accordance with clause 10.4 (*Substitute Account Bank*) or clause 10.5 (*Account Bank may appoint substitutes*) of the Account Bank Agreement,

then the PBCE Provider shall be entitled to instruct the OFTO to exercise all rights of the Obligors to replace the Account Bank with a replacement account bank with a short term credit rating issued by at least two Rating Agencies which is equal to or better than the credit rating assigned to the Account Bank immediately prior to such replacement. The OFTO shall be obliged to act solely on the instructions of the PBCE Provider in connection therewith.

#### **6.6 Payment obligations continue**

No Obligor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Finance Document by the operation of Clause 6.1 (*Payment of PBCE Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of such Clause.

### **7. SUBORDINATED INTRAGROUP LIABILITIES**

#### **7.1 Restriction on Payment: Subordinated Intragroup Liabilities**

Prior to the Final Discharge Date, no Obligor shall make any Payment of the Subordinated Intragroup Liabilities at any time unless that Payment is permitted under Clause 7.2 (*Permitted Payments: Subordinated Intragroup Liabilities*) and is in accordance with the relevant Priority of Payments.

#### **7.2 Permitted Payments: Subordinated Intragroup Liabilities**

An Obligor may make Payments in respect of the Subordinated Intragroup Liabilities then due if:

- (a) the Payment is expressly permitted by the Senior Finance Documents; or
- (b) the Security Trustee (acting in accordance with the STID Decision Making Protocol) and the PBCE Provider or, after the Senior Discharge Date, the PBCE Provider only, consent to that Payment being made.

#### **7.3 Payment obligations continue**

No Obligor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Finance Document by the operation of Clauses 7.1 (*Restriction on Payment: Subordinated Intragroup Liabilities*) and 7.2 (*Permitted Payments: Subordinated Intragroup Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of either of those Clauses.

#### **7.4 No acquisition of Subordinated Intragroup Liabilities**

Prior to the Final Discharge Date, no Obligor shall directly or indirectly enter into any Liabilities Acquisition in respect of any of the Subordinated Intragroup Liabilities.

#### **7.5 Amendments and Waivers: Subordinated Intragroup Creditors**

Prior to the Final Discharge Date, the Obligors may not amend, waive or agree the maturity date of any Investor Funding Loan or any Subordinated Intragroup Liabilities unless:

- (a) prior to the Senior Discharge Date, the prior consent of the Security Trustee acting in accordance with the STID Decision Making Protocol and the PBCE Provider is obtained (provided that, for the purposes of the STID Decision Making Protocol, the proposed amendment, waiver or agreement shall be deemed to constitute a STID Proposal); or
- (b) on or after the Senior Discharge Date, the prior consent of the PBCE Provider only is obtained.

#### **7.6 Security: Obligors**

Neither TopCo nor any Obligor may take, accept or receive the benefit of any Security Interest, guarantee, indemnity or other assurance against loss in respect of any of the Subordinated Intragroup Liabilities prior to the Final Discharge Date.

#### **7.7 Restriction on Enforcement: Obligors**

Neither TopCo nor any Obligor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Intragroup Liabilities at any time prior to the Final Discharge Date.

#### **7.8 Write Down of Subordinated Intragroup Liabilities**

Upon the enforcement of any Security over all or part of the Investor Funding Loans, the Subordinated Intragroup Liabilities represented thereby may, at the option of the Security Trustee acting in accordance with the terms of the relevant Enforcement Instruction, be written down to the greater of: (a) zero, and (b) the amount by which the proceeds of such enforcement would exceed the value of the Secured Debt which remain due and payable as at the date of such write-down, and the Subordinated Intragroup Liabilities shall be deemed discharged *pro tanto*.

#### **7.9 Representations: TopCo**

TopCo represents and warrants to the Senior Creditors and the PBCE Provider that:

- (a) it is a corporation, duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) the obligations expressed to be assumed by it in this Deed are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Deed does not and will not:

- (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
- (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets.

## 8. SUBROGATION RIGHTS

The Parties acknowledge that, subject to Clause 12.3 (*Deferral of subrogation*) to the extent of any payment made by the PBCE Provider pursuant to the PBCE Letter of Credit and not otherwise reimbursed in full, the PBCE Provider is to be fully subrogated to the extent of such unreimbursed payment and any additional interest due on any later payment. The Parties shall use all reasonable endeavours to execute such instruments and to take such actions as the PBCE Provider may reasonably require to evidence such subrogation and to perfect the PBCE Provider's rights to receive any amount in respect of such subrogation. If the rights of subrogation set out in this Clause 8 are, for any reason whatsoever, not effective, each of the Parties agrees that, to the extent of any payment by the PBCE Provider referred to above, the Bond Trust Deed or the relevant Hedging Agreement, as the case may be, shall operate as an instrument of assignment in respect of the Bond Trustee's right or the relevant Hedge Counterparty's right, as the case may be, to receive payments from the Obligors in respect of the Bonds or the relevant Hedging Agreement, as the case may be.

## 9. POST-ENFORCEMENT PRIORITY OF PAYMENT

Notwithstanding the provisions of paragraph 32 (*Cash Management*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement and schedule 5 (*Cash Management*) of the Common Terms Agreement, at any time after an Enforcement Notice has been delivered by the Security Trustee, the Obligors shall be obliged to make all payments pursuant to the Finance Documents to, or to the order of, the Security Trustee for application in accordance with Clause 14 (*Application of Proceeds*).

**SECTION 3  
INSOLVENCY, TURNOVER AND ENFORCEMENT**

**10. EFFECT OF INSOLVENCY EVENT**

**10.1 Distributions**

- (a) After the occurrence of an Insolvency Event in relation to an Obligor, any Party entitled to receive a distribution out of the assets of that Obligor in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that Obligor to make that distribution to the Security Trustee (or to such other person as the Security Trustee shall direct) until the Secured Liabilities owing to the Secured Creditors have been paid in full.
- (b) The Security Trustee shall apply distributions made to it under paragraph (a) above in accordance with Clause 14 (*Application of Proceeds*).

**10.2 Set-Off**

- (a) Subject to paragraph (b) below, to the extent that any Obligor's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that Obligor, any Creditor which benefited from that set-off shall (except, in the case of the Bond Trustee, to the extent that any such payment or receipt has been made to, or received by, the Bondholders) pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Trustee for application in accordance with Clause 14 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
  - (i) any Close-Out Netting by a Hedge Counterparty;
  - (ii) any Payment Netting by a Hedge Counterparty; and
  - (iii) any Inter-Hedging Agreement Netting by a Hedge Counterparty.

**10.3 Non-cash distributions**

If the Security Trustee or any other Creditor receives a distribution in the form of Non-Cash Consideration in respect of any of the Liabilities (other than any distribution of Non-Cash Recoveries), the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

**10.4 Filing of claims**

After the occurrence of an Insolvency Event in relation to an Obligor, each Creditor irrevocably authorises the Security Trustee, on its behalf, to:

- (a) take any Enforcement Action (in accordance with the terms of this Deed) against such Obligor;

- (b) demand, sue, prove and give receipt for any or all of that Obligor's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of that Obligor's Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Trustee considers necessary to recover that Obligor's Liabilities.

#### 10.5 Further assurance – Insolvency Event

Each Creditor will:

- (a) do all things that the Security Trustee requests in order to give effect to this Clause 10; and
- (b) if the Security Trustee is not entitled to take any of the actions contemplated by this Clause 10 or if the Security Trustee requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Trustee or grant a power of attorney to the Security Trustee (on such terms as the Security Trustee may require) to enable the Security Trustee to take such action.

#### 10.6 Security Trustee instructions

For the purposes of Clause 10.1 (*Distributions*), Clause 10.4 (*Filing of claims*) and Clause 10.5 (*Further assurance – Insolvency Event*) the Security Trustee shall act:

- (a) on the instructions of the group of Creditors entitled, at that time, to give instructions for the delivery of an Enforcement Notice under Clause 13.1 (*Enforcement Instruction Notices*) or Clause 13.2 (*Quorum and voting requirements in respect of an Enforcement Instruction Notice and a Further Enforcement Instruction Notice*); or
- (b) in the absence of any such instructions, as the Security Trustee may, but is not obliged to take, such action as the Security Trustee sees fit.

### 11. TURNOVER OF RECEIPTS

#### 11.1 Turnover by the Creditors

Subject to Clauses 11.2 (*Exclusions*) and 11.3 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date, any Creditor (other than the Security Trustee in its capacity as such) receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either a STID Permitted Payment or made in accordance with Clause 14 (*Application of Proceeds*);
- (b) other than where paragraph (a) of Clause 10.2 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a STID Permitted Payment;

- (c) notwithstanding paragraphs (a) and (b) above, and other than where paragraph (a) of Clause 10.2 (*Set-Off*) applies, any amount:
  - (i) on account of, or in relation to, any of the Liabilities:
    - (A) after the issuance of an Enforcement Notice; or
    - (B) as a result of any other litigation or proceedings against any Obligor; or
  - (ii) by way of set-off in respect of any of the Liabilities owed to it after the issuance of an Enforcement Notice,

other than, in each case, any amount received or recovered in accordance with Clause 14 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Security Interest except in accordance with Clause 14 (*Application of Proceeds*);
- (e) the proceeds of any claim made by or on behalf of the relevant Creditor in respect of any Adviser Report (excluding, for the avoidance of doubt, any proceeds which are received by the OFTO which shall be applied in accordance with the provisions of the Common Terms Agreement); or
- (f) other than where Clause 10.2 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by an Obligor which is not in accordance with Clause 14 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of such Obligor,

that Creditor will:

- (i) in relation to receipts and recoveries not received or recovered by way of set-off:
  - (A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Trustee (apart from HSBC Bank plc in its capacity as Account Bank or Principal Paying Agent, who will hold such amounts for the Security Trustee but not on trust) and promptly pay or distribute that amount to the Security Trustee for application in accordance with the terms of this Deed; and
  - (B) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Trustee for application in accordance with the terms of this Deed; and
- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Trustee for application in accordance with the terms of this Deed,

except, in the case of the Bond Trustee, to the extent that any such payment or receipt has been made to, or received by, the Bondholders.

## 11.2 Exclusions

Clause 11.1 (*Turnover by the Creditors*) shall not apply to any receipt or recovery by way of:

- (a) Close-Out Netting by a Hedge Counterparty;
- (b) Payment Netting by a Hedge Counterparty; or
- (c) Inter-Hedging Agreement Netting by a Hedge Counterparty.

## 11.3 Permitted assurance and receipts

Nothing in this Deed shall restrict the ability of any Secured Creditor to:

- (a) arrange with any person which is not TopCo or an Obligor (or an Affiliate of TopCo or an Obligor) any assurance against loss in respect of, or reduction of its credit exposure to, any Obligor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 16 (*Changes to the Parties*),

which:

- (i) is permitted by the Finance Documents; and
- (ii) is not in breach of:
  - (A) Clause 5.5 (*No acquisition of Hedging Liabilities*); or
  - (B) Clause 7.4 (*No acquisition of Subordinated Intragroup Liabilities*),

and that Secured Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

## 11.4 Amounts received by the Obligors

If an Obligor receives or recovers any amount which, under the terms of any of the Finance Documents, should have been paid to the Security Trustee, such Obligor will:

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Trustee and promptly pay that amount to the Security Trustee for application in accordance with the terms of this Deed; and
- (b) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Trustee for application in accordance with the terms of this Deed.



## 11.5 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 11 should fail or be unenforceable, the affected Creditor or Obligor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Trustee to be held on trust by the Security Trustee for application in accordance with the terms of this Deed, except, in the case of the Bond Trustee, to the extent that any such payment or receipt has been made to, or received by, Bondholders.

## 12. REDISTRIBUTION

### 12.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Trustee under Clause 10 (*Effect of Insolvency Event*) or Clause 11 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Obligor and distributed to the Security Trustee and each other Secured Creditor (each a "**Sharing Creditor**") in accordance with the terms of this Deed.
- (b) On a distribution by the Security Trustee under paragraph (a) above of a Payment or distribution received by a Recovering Creditor from an Obligor, as between such Obligor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Trustee (the "**Shared Amount**") will be treated as not having been paid or distributed by such Obligor.

### 12.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to an Obligor and is repaid or returned by that Recovering Creditor to such Obligor, then:
  - (i) each Sharing Creditor shall, upon request of the Security Trustee, pay or distribute to the Security Trustee for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and
  - (ii) as between such Obligor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by such Obligor.
- (b) The Security Trustee shall not be obliged to distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

### 12.3 Deferral of subrogation

- (a) No Creditor or Obligor will exercise any rights which it may have by reason of the performance by it of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Finance Documents of any other Creditor which ranks ahead of it in accordance with the priorities set out in Clause 3 (*Ranking and Priority*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Obligor, owing to each Creditor) have been irrevocably discharged in full.
- (b) Neither TopCo nor any Obligor will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Finance Documents of any Creditor until such time as all of the Secured Liabilities have been irrevocably discharged in full.

## 13. ENFORCEMENT ACTION

### 13.1 Enforcement Instruction Notices

- (a) Subject to the restrictions set out in clause 6.3 (*Third Party Event Remediation Plan*) of the Common Terms Agreement, at any time after the Security Trustee has been notified of the occurrence of an Event of Default (pursuant to Clause 19.2 (*Notification of Prescribed Events*)) which is continuing the Security Trustee may, or if so requested by the PBCE Provider, the Bond Trustee or any Hedge Counterparty (whichever shall be the first to so request) it shall, by notice, promptly request an instruction (an "**Enforcement Instruction Notice**") from the Qualifying Secured Creditors (an "**Enforcement Instruction**") as to whether the Security Trustee should deliver an Enforcement Notice to enforce all or any part of the Security or to take any other kind of Enforcement Action.
- (b) At any time following the delivery of an Enforcement Instruction Notice, the Security Trustee may, or if so requested by the PBCE Provider, the Bond Trustee or any Hedge Counterparty it shall, promptly request by notice (a "**Further Enforcement Instruction Notice**") an Enforcement Instruction as to whether the Security Trustee should take any further Enforcement Action.
- (c) The Security Trustee, the PBCE Provider, the Bond Trustee or the Hedge Counterparty who initiates the request for an Enforcement Instruction pursuant to Clause 13.1(a) above, may also propose the type of Enforcement Action to be taken and what part or parts of the Security should be enforced (if any), and the Security Trustee shall include any such proposed course of action in the Enforcement Instruction Notice.

### 13.2 Quorum and voting requirements in respect of an Enforcement Instruction Notice and a Further Enforcement Instruction Notice

With respect to an Enforcement Instruction Notice pursuant to Clause 13.1(a) or any Further Enforcement Instruction Notice pursuant to Clause 13.1(b), the provisions of

paragraph 1 (*Method and Quantum of Voting*), paragraph 2.7(a)(i) (*STID Voting Request*), paragraph 2.8 (*Miscellaneous Provisions*) and paragraph 6.4 (*Notification of Extraordinary Resolution*) of the STID Decision Making Protocol shall apply *mutatis mutandis* except that:

- (a) references to a STID Voting Request, a STID Proposal, an Extraordinary Resolution or an Extraordinary Voting Matter will be construed as references to an Enforcement Instruction Notice or a Further Enforcement Instruction Notice or the subject matter thereof, as the case may be, and related references will be construed accordingly;
- (b) references to 25 per cent. in paragraphs 1(a)(iii)(A) and 1(a)(iii)(B) of the STID Decision Making Protocol shall be deemed to references to 40 per cent.;
- (c) the Decision Period shall not apply, but no instruction of Qualifying Secured Creditors shall be effective unless the relevant Quorum Requirement and Majority Requirement specified in Clauses 13.2(d) and 13.2(e) below (as applicable) have been satisfied within 90 days of the delivery by the Security Trustee of an Enforcement Instruction Notice or Further Enforcement Instruction Notice. For the avoidance of doubt, the Security Trustee may deliver more than one Enforcement Instruction Notice or Further Enforcement Instruction Notice in respect of the same Event of Default;
- (d) the Quorum Requirement means that voting instructions have been given (and not subsequently revoked) by:
  - one or more Qualifying Secured Creditors:
    - (i) representing, in aggregate, at least 75 per cent. of the Qualifying Secured Debt in the case of any Enforcement Instruction Notice or Further Enforcement Instruction Notice delivered prior to the date falling 9 months from the date of the occurrence of the Event of Default, which Event of Default has continued unremedied for that period; and
    - (ii) representing, in aggregate, at least 40 per cent. of the Qualifying Secured Debt in the case of any Enforcement Instruction Notice or Further Enforcement Instruction Notice delivered on or after the date falling 9 months from the date of the occurrence of the Event of Default, which Event of Default has continued unremedied for that period, and
  - (e) the Majority Requirement means that voting instructions in favour of the resolution have been given (and not subsequently revoked) by Qualifying Secured Creditors representing, in aggregate, at least a simple majority of the Qualifying Secured Debt represented at such vote.

For the purposes of determining the relevant percentage of Qualifying Secured Debt that has voted for or against any Enforcement Action, the Security Trustee shall take instructions from:

- (a) the Bond Trustee, as to the outstanding principal amount of Bonds;
- (b) the Hedge Counterparties, as to the amount of their Senior Voting Debt under the Hedging Agreements; and
- (c) the PBCE Provider, as to the principal amounts drawn under the PBCE Letter of Credit which have not been reimbursed under the PBCE Letter of Credit and Reimbursement Deed.

### 13.3 Enforcement Notice

The Security Trustee shall be obliged to deliver an Enforcement Notice to the OFTO (on behalf of all Obligors) and to the Bond Trustee, each Hedge Counterparty and the PBCE Provider or to take any Enforcement Action only if:

- (a) it is notified that an Event of Default has occurred and is continuing; and
- (b) the Security Trustee is instructed to do so by the Qualifying Secured Creditors pursuant to Clause 13.2 (*Quorum and voting requirements in respect of an Enforcement Instruction Notice and a Further Enforcement Instruction Notice*),

and unless and until it has been so instructed and notified (and subject to the provisions of Clause 15 (*The Security Trustee*)), the Security Trustee shall be under no obligation to deliver an Enforcement Notice and/or to take any Enforcement Action.

The Security Trustee shall not be required to take any action which would expose it to any liability in respect of Environmental Claims unless instructed to do so in accordance with this Deed and it is indemnified and/or secured and/or prefunded to its satisfaction.

### 13.4 Manner of enforcement

If the Security is being enforced pursuant to Clause 13.2 (*Quorum and voting requirements in respect of an Enforcement Instruction Notice and a Further Enforcement Instruction Notice*), the Security Trustee shall enforce the Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of the Obligors to be appointed by the Security Trustee) as the Qualifying Secured Creditors shall instruct in any Enforcement Instruction or, in the absence of any such instructions, as the Security Trustee considers in its discretion to be appropriate.

### 13.5 Notification of enforcement

If the Security is being enforced pursuant to Clause 13.2 (*Quorum and voting requirements in respect of an Enforcement Instruction Notice and a Further Enforcement Instruction Notice*), the Security Trustee shall promptly confirm to the Senior Creditors and the PBCE Provider when any Receiver appointed and/or any professional advisors and or any other Representative of the Security Trustee determines that the enforcement and realisation process has been completed, including receipt of sale proceeds for the assets subject to Security (if any).

### **13.6 Waiver of rights**

To the extent permitted under applicable law and subject to Clause 13.4 (*Manner of enforcement*) and Clause 14 (*Application of Proceeds*), each of the Secured Creditors and the Obligors waives all rights it may otherwise have to require that the Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Liabilities is so applied.

### **13.7 Duties owed**

Each of the Secured Creditors acknowledges that, in the event that the Security Trustee enforces or is instructed to enforce the Security prior to the Senior Discharge Date, the duties of the Security Trustee and of any Receiver or Delegate owed to the PBCE Provider in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Security shall be no different to or greater than the duty that is owed by the Security Trustee, Receiver or Delegate to the relevant Obligor under general law.

### **13.8 Enforcement through Security Trustee only**

The Secured Creditors shall not have any independent power to enforce, or have recourse to, any of the Security or to exercise any right, power, authority or discretion arising under the Common Documents except through the Security Trustee.

### **13.9 PBCE Restrictions on Enforcement**

No Enforcement Action in relation to a Default under paragraphs 2(a)(i) and 2(a)(ii) (*Breach of Financial Covenant and other obligations*) of schedule 3 (*Events of Default*) of the Common Terms Agreement shall be permitted without the prior written consent of the PBCE Provider at any time while the PBCE Available Amount is greater than zero.

### **13.10 Enforcement under paragraph 20 of schedule 3 of the Common Terms Agreement**

Where as a result of the operation of paragraph 21 (*Protected rights of the OFTO as holder of the OFTO Licence*) of schedule 3 (*Events of Default*) of the Common Terms Agreement the Secured Creditors have not been able to accelerate the Secured Liabilities in full then (a) notwithstanding such circumstances the provisions of Clause 14.1 (*Post Enforcement Priority of Payments*) shall apply to all amounts received or recovered by the Security Trustee pursuant to any partial enforcement of the Security Documents as if a full acceleration of the Secured Liabilities had been effected and the Finance Documents enforced accordingly and (b) as soon as paragraph 21(a) (*Protected rights of the OFTO as holder of the OFTO Licence*) of schedule 3 (*Events of Default*) of the Common Terms Agreement no longer applies (including as a result of the transfer of the shares of OFTO to another person) Enforcement Action (including acceleration) may be effected by the Secured Creditors in accordance with the Finance Documents.

### 13.11 Indemnity required

The Security Trustee shall not be obliged to take any Enforcement Action or to enforce any Security constituted by or pursuant to the Security Documents (or take any action or step or proceeding that is ancillary to the taking of any such Enforcement Action, including without limitation the giving of notice in relation to any such enforcement) or take any other action, step or proceeding under this Deed or any of the other Transaction Documents unless and until it has been indemnified and/or secured and/or pre-funded to its satisfaction against all General Liabilities to which it may become liable or which it may incur by so doing.

### 13.12 No obligation to act

Notwithstanding any other provision of this Deed or any Transaction Document to the contrary, the parties hereto and each Secured Creditor hereby agree that the Security Trustee shall not be required or obliged to take any action or step or proceeding or exercise any right, power, authority, duty or discretion vested in it under this Agreement or any other Transaction Document or any other document relating to the Project to which the Security Trustee is a party whether pursuant to an instruction or direction given to the Security Trustee or otherwise unless and until:

- (a) where the taking of any such action or step or exercise would or might (in the opinion of the Security Trustee) result in the Security Trustee assuming or incurring liabilities, obligations or duties to any third party (including, without limitation, under any Direct Agreement, any Project Document and/or any other agreement, document, deed, warranty or undertaking which the Security Trustee enters into in connection with the taking, holding or enforcing of any Security, or the exercise of rights in relation to such Security) (the "**Obligations**"), arrangements have been put in place to the satisfaction of the Security Trustee, without it being responsible for any cost or expense associated therewith (i) pursuant to which such Obligations shall be transferred in whole or in part to any person selected by the Security Trustee (including, without limitation, a Receiver and/or any other person, as determined by the Security Trustee in its absolute discretion) ("**Relevant Transferee**") and (ii) which release and discharge the Security Trustee from such Obligations that are transferred to and assumed by the Relevant Transferee(s); and/or
- (b) it has been indemnified and/or secured and/or pre-funded to its satisfaction against any and all General Liabilities (including legal and other professional fees in bringing or defending the same) which might be brought, made or confirmed against or suffered, incurred or sustained by it (x) as a result of the taking of any action or step or proceeding or exercising any right, power, duty, authority or discretion vested in it under this Deed or any other Transaction Document (including, without limitation, any Direct Agreement) or any Project Document whether pursuant to an instruction or direction given to the Security Trustee or otherwise and/or (y) in connection with any of the matters referred to in paragraph (a) of this Clause 13.12 above.

The Security Trustee shall not be liable to any person for any loss occasioned by any delay in taking or failure to take any such action or step or proceeding.

Unless the Security Trustee is satisfied that it will not incur any liability (whether civil, corporate, personal, environmental, criminal or otherwise) arising from it enforcing or realising the Security or exercising its rights under any Transaction Document or, is appropriately indemnified and/or secured and/or prefunded to its satisfaction in respect of any such liability, it will not enforce or realise the Security or exercise its rights under any Transaction Document (including any Direct Agreement or other Project Document) or take any enforcement action and shall not be liable to any person for any loss occasioned thereby.

## SECTION 4 PROCEEDS

### 14. APPLICATION OF PROCEEDS

#### 14.1 Post Enforcement Priority of Payments

Subject to Clause 14.2 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Trustee pursuant to the terms of any Finance Document in connection with the realisation or enforcement of all or any part of the Security (for the purposes of this Clause 14, the "Recoveries") shall be held by the Security Trustee on trust to apply them at any time as the Security Trustee (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 14), in the following order of priority:

- (a) *firstly*, in discharging any sums (including indemnities, if any) owing to the Security Trustee, any Receiver or any Delegate;
- (b) *secondly*, in discharging any sums (including indemnities, if any) owing to the Bond Trustee or any Appointee;
- (c) *thirdly*, in discharging any costs and expenses incurred by any Senior Creditor or the PBCE Provider in connection with any realisation or enforcement of the Security taken in accordance with the terms of this Deed or any action taken at the request of the Security Trustee under Clause 10.5 (*Further assurance – Insolvency Event*);
- (d) *fourthly*, payments of, on a *pro rata* and *pari passu* basis, the fees, costs and expenses and indemnities (if any) of the Account Bank and each Agent;
- (e) *fifthly*, payments of, on a *pro rata* and *pari passu* basis, any interest on the Bonds (both on a scheduled and accelerated basis) and scheduled payments under the Hedging Agreements (for the avoidance of doubt, including interest on any Deferred Payment payable in accordance with part 1(h) of the schedule to the relevant Hedging Agreement but excluding any Deferred Payment itself), and the fees, costs and expenses of the PBCE Provider pursuant to clauses 4.2 (*Charges, fees, costs and expenses*) and 4.3 (*Fees*) of the PBCE Letter of Credit and Reimbursement Deed;
- (f) *sixthly*, payments, on a *pro rata* and *pari passu* basis, of principal amounts outstanding and any make-whole amounts due, if any, on the Bonds (both on a scheduled and an accelerated basis) and all amounts due and payable under the Hedging Agreements (including any Deferred Payment but not including any payment resulting from the termination of a Hedging Agreement following the occurrence of a Qualifying Default (as defined therein) or any payment referred to in paragraph (e) above) and any other amounts due and payable under the Hedging Agreements;
- (g) *seventhly*, payment of all amounts due or overdue to the PBCE Provider pursuant to the PBCE Letter of Credit and Reimbursement Deed, other than those amounts referred to in paragraph (d) above (for the avoidance of doubt,



by way of applying 100% of cash available after paying all amounts payable under paragraphs (a) to (e) above until all amounts due or overdue to the PBCE Provider pursuant to the PBCE Letter of Credit and Reimbursement Deed have been paid) to be applied in the following order:

- (i) first, in or towards payment of any unpaid fees, costs and expenses due under the PBCE Letter of Credit and Reimbursement Deed (excluding any amounts paid under (d) above);
  - (ii) secondly, in or towards payment of any indemnity and accrued interest due but unpaid under the PBCE Letter of Credit and Reimbursement Deed;
  - (iii) thirdly, in or towards the payment of any Capitalised Interest due but unpaid under the PBCE Letter of Credit and Reimbursement Deed;
  - (iv) fourthly, in or towards payment of any principal due but unpaid under the PBCE Letter of Credit and Reimbursement Deed (and where the PBCE Letter of Credit has been drawn on more than one occasion, towards repayment of such drawing(s) as the PBCE Provider may determine in its sole discretion); and
  - (v) fifthly, in or towards payment of any other sum due but unpaid under the PBCE Letter of Credit and Reimbursement Deed;
- (h) *eighthly*, if the Obligors have any actual or contingent liability under any PBCE Document or any Senior Finance Document (other than any payment referred to in paragraph (h) below), the balance shall be retained by the Security Trustee and applied in reduction of such liabilities as and when they fall due in the order set out in paragraphs (a) to (f) above;
- (i) *ninthly*, if the Obligors do not have any actual or contingent liability under any PBCE Document or any Senior Finance Document (other than to a Defaulted Hedge Counterparty), payments, on a *pro rata* and *pari passu* basis, of termination amounts payable resulting from the termination of a Hedging Agreement following the occurrence of a Qualifying Default (as defined therein);
- (j) *tenthly*, if the Obligors are not under any further actual or contingent liability under any Senior Finance Document or PBCE Document, in payment or distribution to any person to whom the Security Trustee is obliged to pay or distribute in priority to such Obligor; and
- (k) *eleventhly*, the balance, if any, in payment or distribution to the relevant Obligors.

All amounts from time to time received or recovered by the Security Trustee other than in connection with the realisation or enforcement of all or any part of the Security, shall be held by the Security Trustee on trust to apply them at any time as the Security Trustee (in its discretion) sees fit, to the extent permitted by applicable

law (and subject to the provisions of this Clause 14), in accordance with the Pre-enforcement Priority of Payment.

#### **14.2 Prospective liabilities**

Following the delivery of an Enforcement Notice the Security Trustee may, in its discretion:

- (a) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal accounts in the name of the Security Trustee with such financial institution (including itself) as the Security Trustee shall think fit (the interest being credited to the relevant account); and
- (b) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration,

in each case for so long as the Security Trustee shall think fit for later application under this Clause 14 in respect of:

- (i) any sum to any Security Trustee, any Receiver or any Delegate; and
- (ii) any part of the Secured Liabilities,

that the Security Trustee considers, in each case, might become due or owing at any time in the future and the Security Trustee may at any time vary or transfer any such investments for or into other such investments or convert any moneys so deposited into any other currency.

#### **14.3 Investment of Cash Proceeds**

Prior to the application of the proceeds of realisation or enforcement of the Security in accordance with this Clause 14 the Security Trustee may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Trustee with such financial institution (including itself) and for so long as the Security Trustee shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Trustee's discretion in accordance with the provisions of this Clause 14. Any financial institution selected by the Security Trustee pursuant to this Clause 14 must be an Acceptable Bank.

#### **14.4 Currency conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities the Security Trustee may:
  - (i) convert any moneys received or recovered by the Security Trustee (including, without limitation, any Cash Proceeds) from one currency to another, at the Security Trustee's Spot Rate of Exchange; and

- (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another, at the Security Trustee's Spot Rate of Exchange.
- (b) The obligations of the Obligors to pay in the due currency shall only be satisfied:
  - (i) in the case of paragraph (a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
  - (ii) in the case of paragraph (a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

#### **14.5 Permitted Deductions**

The Security Trustee shall be entitled, in its discretion, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any law or regulation to make from any distribution or payment made by it under this Deed, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Trustee under any of the Finance Documents or otherwise (other than any such Taxes which arise in connection with its remuneration for performing its duties under this Deed or otherwise repayment Tax on net income, profit or gains of the Security Trustee).

#### **14.6 Good Discharge**

- (a) Any distribution or payment to be made in respect of the Secured Liabilities by the Security Trustee may be made to the relevant Senior Creditor(s) or the PBCE Provider, as applicable.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Trustee.
- (c) The Security Trustee is under no obligation to make the payments to the Senior Creditors or the PBCE Provider under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated pursuant to the relevant Transaction Document.

#### **14.7 Calculation of Amounts**

For the purpose of calculating any person's share of any amount payable to or by it, the Security Trustee shall be entitled to:

- (a) notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Security Trustee), that notional conversion to be made at the spot rate at which the Security Trustee is able to

purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made; and

- (b) assume that all amounts received or recovered as a result of the enforcement or realisation of the Charged Property are applied in discharge of the Secured Liabilities in accordance with the terms of the Finance Documents under which those Secured Liabilities have arisen.

**SECTION 5  
THE PARTIES**

**15. THE SECURITY TRUSTEE**

**15.1 Security Trustee**

**(a) Security Trustee as trustee**

- (i) The Security Trustee declares that it holds the Charged Property on trust for the Secured Creditors on the terms contained in this Deed.
- (ii) Each of the Senior Creditors and the PBCE Provider authorises the Security Trustee to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Trustee under or in connection with the Transaction Documents together with any other incidental rights, powers, trusts, duties, authorities and discretions.

**(b) Engagement Letters**

The Security Trustee is hereby authorised by each of the Secured Creditors to enter into any engagement letters and any reliance letters in respect of the appointment of each of the Insurance Adviser and the Technical Adviser (each appointed in accordance with the terms of the Common Terms Agreement) on such terms as may be agreed between the Issuer, the Secured Creditors (other than the Bondholders and the Security Trustee who is executing such letters in accordance with the terms of this Deed) that are at the time of entry into the letters party to the Finance Documents and the relevant Insurance Adviser or Technical Adviser, as the case may be. The Issuer, the relevant Secured Creditors and the Insurance Adviser or Technical Adviser (as applicable) shall confirm their agreement to the terms of the relevant engagement letter or reliance letter by providing the Security Trustee with a version of the relevant letter fully signed by each such party and the Security Trustee is permitted to rely on the provision of a signed version of such letter as confirmation that such version is the agreed form that it is hereby instructed to sign.

**15.2 Instructions**

- (a) The Security Trustee shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with Clause 22 (*Consents, Amendments and Override*) or, where applicable, in accordance with the STID Decision Making Protocol or any other instruction given in accordance with the Finance Documents.
- (b) The Security Trustee shall be entitled to request instructions, or clarification of any instruction in accordance with this Deed or any other Finance Document as to whether, and in what manner, it should exercise or refrain from exercising any right, power, trust, duty, authority or discretion and the Security Trustee may refrain from acting unless and until it receives those

instructions or that clarification (and shall have no General Liability for the consequences thereof).

- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Deed and unless a contrary intention appears in this Deed, any instructions given to the Security Trustee in accordance with the STID Decision Making Protocol shall override any conflicting instructions given by any other Parties and will be binding on all Secured Creditors.
- (d) In exercising any discretion to exercise a right, power, trust, duty or authority under the Transaction Documents where it has not received any instructions as to the exercise of that discretion the Security Trustee shall do so having regard to the interests of all the Secured Creditors.
- (e) Notwithstanding any provision of any Transaction Document to the contrary, the Security Trustee shall not be obliged to deliver an Enforcement Notice or to take any Enforcement Action or to take any other action or exercise any right, power, trust, duty, authority or discretion pursuant to this Deed or any other Transaction Document unless and until it has been indemnified and/or secured and/or prefunded to its satisfaction against all General Liabilities to which it may become liable or which it may incur by giving any Enforcement Notice, or taking any Enforcement Action or any other action (or omitting to take any action) pursuant to this Deed or any other Transaction Document.
- (f) Without prejudice to any of the Entrenched Rights, if the Security Trustee determines in its sole discretion that in order to carry out its rights, duties and obligations under the Transaction Documents it requires an instruction from:
  - (i) the Creditors in relation to any matter that is not subject to a STID Proposal initiated by the OFTO, or otherwise subject to a prescribed manner of voting in accordance with the foregoing provisions of this Deed, it shall be permitted to (x) request the OFTO to initiate a STID Proposal or (y) initiate a STID Proposal in place of the OFTO and request an Ordinary Resolution or Extraordinary Resolution, and the applicable terms of the STID Decision Making Protocol shall apply to any such request for instructions *mutatis mutandis*; or
  - (ii) the OFTO, it shall be permitted to request such instruction in such manner as the Security Trustee deems appropriate.
- (g) Without prejudice to the provisions of Clause 13 (*Enforcement Action*) and the remainder of this Clause 15.2, in the absence of instructions, the Security Trustee may act (or refrain from acting) as it considers in its discretion to be appropriate.
- (h) The Security Trustee may carry out what it, in its discretion, considers to be administrative acts, or acts which are incidental to any instruction given to it pursuant to this Deed, without any instructions (though not contrary to any such instruction). If any instruction is subsequently received which conflicts with any such prior administrative or incidental act, such instruction shall have no effect in relation to such administrative or incidental act.

### 15.3 Duties of the Security Trustee

- (a) The Security Trustee shall promptly:
- (i) forward to each Senior Creditor and the PBCE Provider a copy of any document received by the Security Trustee from the Obligor under any Finance Document; and
  - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Trustee for that Party by any other Party,

*provided that*, in each case, the Obligor or such other Party instruct the Security Trustee to forward such documents to the relevant person or persons or the obligation of the Security Trustee to do so is expressly set out in this Deed or another Finance Document to which the Security Trustee is a party and such instruction shall state the provision under which the document or information is being provided and the parties to whom such document or information should be provided.

- (b) The Security Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party, nor is it obliged to monitor the requirement to deliver any such document by any other Party.
- (c) Without prejudice to Clause 19.2 (*Notification of prescribed events*), if the Security Trustee receives notice from a Party referring to any Finance Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Senior Creditors and the PBCE Provider.
- (d) The Security Trustee shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied). For the avoidance of doubt, the duties of the Security Trustee include the duty to make demands under the PBCE Letter of Credit, in accordance with the PBCE Letter of Credit and Reimbursement Deed, the PBCE Letter of Credit and the Common Terms Agreement.

### 15.4 No fiduciary duties to Obligor

Nothing in this Deed constitutes the Security Trustee as an agent, trustee or fiduciary of TopCo or any Obligor.

### 15.5 No duty to account

The Security Trustee shall not be bound to account to any other Secured Creditor for any sum or the profit element of any sum received by it for its own account.

### 15.6 Business with the Security Group

The Security Trustee may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Security Group, as may be permitted under the Common Terms Agreement and this Deed.

## 15.7 Rights and discretions

- (a) The Security Trustee may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine;
  - (ii) assume that:
    - (A) unless it has received notice of revocation of instructions, that those instructions have not been revoked; and
    - (B) if it receives any instructions to act in relation to the Security or take any Enforcement Action in accordance with this Deed, that all applicable conditions under the Finance Documents for so acting have been satisfied unless it has received express notice to the contrary;
  - (iii) the Security Trustee shall have no responsibility for investigating whether any request or instruction given to it by any party breaches any rights or restriction set out in this Deed or any other Finance Document. If any Secured Creditor, in issuing any request or instruction under this Deed, breaches any rights or restrictions set out in this Deed or any Finance Document, this shall not invalidate that request or instruction unless such Secured Creditor informs the Security Trustee in relation to a request or instruction made or given by it before the Security Trustee commences to act on such request or instruction that such request or instruction was invalid and should not be acted on. If the Security Trustee is so informed after it has commenced acting on a request or instruction, the validity of any action taken shall not be affected but the Security Trustee shall take no further action in accordance with such request or instruction, except to the extent that it has become legally obliged to do so;
  - (iv) rely on a certificate or instruction from any person:
    - (A) as to any matter of fact or circumstance which might be expected to be within the knowledge of that person; or
    - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate and shall not be bound to call for any further evidence or be liable for acting thereon.
- (b) The Security Trustee may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Creditors) that:
- (i) no Default has occurred and no Obligor is in breach or default of any of its obligations under any of the Finance Documents;



- (ii) any right, power, authority or discretion vested in any Party, any Creditor or any group of Creditors has not been exercised; and
  - (iii) any notice made by the OFTO is made on behalf of and with the consent and knowledge of each other Obligor.
- (c) The Security Trustee may engage and pay (and OFTO hereby agrees to reimburse and/or if required by the Security Trustee, prefund any such amounts) for and act on the opinion or advice or services or any information obtained from any valuer, lawyers, broker, auctioneer, accountants, tax advisers, surveyors or other professional advisers or experts and rely on such advice and shall not be responsible for any General Liability occasioned by so acting. The Security Trustee may rely without General Liability to any person on any certificate, opinion or report prepared by any such expert pursuant to this Deed or the other Finance Documents, whether or not addressed to the Security Trustee and whether or not obtained by the Security Trustee or any other Party.
- (d) Without prejudice to the generality of paragraph (c) above, the Security Trustee may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Trustee (and so separate from any lawyers instructed by any Senior Creditor or the PBCE Provider) if the Security Trustee in its opinion deems this to be desirable.
- (e) The Security Trustee, any Receiver and any Delegate may act in relation to the Finance Documents and the Charged Property through its officers, employees and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by such party's gross negligence or wilful misconduct.
- (f) Unless this Deed expressly specifies otherwise, the Security Trustee may disclose to any other Party any information it believes it has received as security trustee under this Deed.
- (g) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee is not obliged to do or omit to do anything if it would, or might, in the opinion of reputable counsel to the Security Trustee, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality and may do anything which is, in the opinion of reputable counsel to the Security Trustee, necessary to comply with any such law, directive or regulation.
- (h) Notwithstanding any provision of any Finance Document to the contrary, the Security Trustee is not obliged to expend or risk its own funds or otherwise

incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not assured to it.

- (i) Any opinion, advice, information, certificate or report obtained pursuant to the foregoing Clause 15.7(c) may be sent or obtained by letter, facsimile transmission, telephone or other means and the Security Trustee shall not be liable for acting on any opinion, advice, information, certificate or report purporting to be so conveyed or any other document purporting to be conveyed from any Secured Creditor, any Obligor (or the OFTO on behalf of an Obligor), or any other party hereto although, in any such case, the same may contain some error or may not be authentic. The Security Trustee may rely without liability to any person on any report, confirmation or certificate or any advice of any accountants, financial advisers, lawyers, surveyors financial institution or any other professional adviser or expert, whether or not addressed to the Security Trustee and whether or not liability in relation thereto is limited by reference to a monetary cap, methodology or otherwise.

#### **15.8 Responsibility for documentation**

None of the Security Trustee, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Trustee, any Obligor or any other person in or in connection with any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Charged Property, any report or opinion provided by any adviser, or the terms of appointment of any adviser, howsoever appointed or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Charged Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Creditor is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

#### **15.9 No duty to monitor**

The Security Trustee shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Transaction Document (including the performance by any Party of

its obligation to deliver documents, reports or certificates under any Finance Document); or

- (c) whether any other event specified in any Transaction Document has occurred.

The Security Trustee shall not be responsible for:

- (i) exercising the rights of any of the parties under the Transaction Documents except as specifically provided for thereunder;
- (ii) monitoring compliance by any of the parties with their respective obligations under the Transaction Documents; or
- (iii) considering the basis upon which approvals or consents are granted by any of the parties under the Transaction Documents.

#### 15.10 FSMA

- (a) Notwithstanding anything in any Transaction Document to the contrary, the Security Trustee shall not do, or be authorised or required to do, anything which might constitute a regulated activity for the purpose of the FSMA, unless it is authorised under FSMA to do so.
- (b) The Security Trustee shall have the discretion at any time:
  - (i) to delegate any of the functions which fall to be performed by an authorised person under FSMA to any other agent or person which also has the necessary authorisations and licences; and
  - (ii) to apply for authorisation under FSMA and perform any or all such functions itself if, in its absolute discretion, it considers it necessary, desirable or appropriate to do so.

#### 15.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Transaction Document excluding or limiting the General Liability of the Security Trustee, any Receiver or Delegate), none of the Security Trustee, any Receiver nor any Delegate will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, any environmental claim or liability or any General Liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Charged Property unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising or not exercising any right, power, trust, duty, authority or discretion given to it by or in connection with any Finance Document, the Charged Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Charged Property;

- (iii) any decline in value or any shortfall which arises on the enforcement or realisation of the Charged Property; or
- (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any General Liability whatsoever arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or General Liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Security Trustee, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Trustee, a Receiver or a Delegate in respect of any claim it might have against the Security Trustee, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Charged Property.
- (c) Nothing in this Deed shall oblige the Security Trustee to carry out:
  - (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Deed might be unlawful for any Secured Creditor,

on behalf of any Secured Creditor and each Secured Creditor confirms to the Security Trustee that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Trustee.

- (d) Without prejudice to any provision of any Transaction Document excluding or limiting the General Liability of the Security Trustee, any Receiver or Delegate, any General Liability of the Security Trustee, any Receiver or Delegate arising under or in connection with any Transaction Document or the Charged Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Trustee, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the

Security Trustee, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Trustee, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Trustee, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

- (e) The Security Trustee shall have no responsibility for the maintenance of any ratings of any Bonds by any Rating Agency.
- (f) The Security Trustee shall not be responsible for, or for investigating any matter which is the subject of, any recital, statement, warranty, representation or covenant of any party contained in this Deed or any other Transaction Document or in any other document entered into in connection therewith (and shall assume the accuracy and correctness thereof) and the Security Trustee may accept without enquiry, requisition or objection such title as the Obligors may have to the Charged Property or any part thereof or any item comprised therein from time to time and shall not be bound to investigate or make any enquiry into the title of any Obligor to the Charged Property or any part thereof or any such item from time to time whether or not any default or failure is or was known to the Security Trustee or might be, or might have been, discovered upon examination, inquiry or investigation and whether or not capable of remedy.
- (g) Subject to the provisions of this Deed and the Common Terms Agreement, any consent or approval given by the Security Trustee may be given on such terms and subject to such conditions (if any) as the Security Trustee thinks fit and, notwithstanding anything to the contrary contained in this Deed or the other Finance Documents, may be given retrospectively.

#### **15.12 Resignation of the Security Trustee**

- (a) The Security Trustee may resign by giving 30 days' notice to the Secured Creditors and the OFTO (without giving reasons therefor and without being responsible for any costs incurred as a result of such resignation), in which case the Instructing Party may appoint a successor Security Trustee. One or more persons may hold office as security trustee or security trustees pursuant to this Deed but such security trustee or security trustees shall be or include a Trust Corporation. Whenever there shall be more than two trustees of this Deed the majority of such trustees shall be competent to execute and exercise all the duties, powers, trusts, authorities and discretions vested in the Security Trustee by these presents provided that a Trust Corporation shall be included in such majority.
- (b) If the Instructing Party has not appointed a successor Security Trustee in accordance with paragraph (a) above within 20 days after notice of resignation was given, the retiring Security Trustee (after such consultation with the Instructing Party as is practicable, but in any event failing to consult or failing to reach an agreement shall not prohibit the retiring Security Trustee from

appointing a replacement Security Trustee on or after the 20<sup>th</sup> day after such notice) may appoint a successor Security Trustee.

- (c) The retiring Security Trustee shall make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may request for the purposes of performing its functions as Security Trustee under the Finance Documents.
- (d) The Security Trustee's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all the Charged Property to that successor.
- (e) Upon the appointment of a successor, the retiring Security Trustee shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) of Clause 15.24 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 15 and Clause 18.1 (*Indemnity to the Security Trustee*) (and any Security Trustee fees for the account of the retiring Security Trustee shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (f) The Instructing Party may, by notice to the Security Trustee, require it to resign in accordance with paragraph (a) above. In this event, the Security Trustee shall resign in accordance with paragraph (a) above.

#### **15.13 Confidentiality**

- (a) In acting as trustee for the Secured Creditor, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Trustee, it may be treated as confidential to that division or department and the Security Trustee shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Finance Document to the contrary, the Security Trustee is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty.

#### **15.14 Information from the Creditors**

Each Creditor shall supply the Security Trustee with any information that is necessary or desirable to enable the Security Trustee to perform its functions as Security Trustee.

### 15.15 Credit appraisal by the Secured Creditors

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Secured Creditor (other than the Security Trustee) confirms to the Security Trustee that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of such Obligor;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Charged Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Charged Property;
- (c) whether that Secured Creditor has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Transaction Document, the Charged Property, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Charged Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Trustee, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Security or the existence of any Security Interest affecting the Charged Property.

### 15.16 Security Trustee's management time and additional remuneration

- (a) Any amount payable to the Security Trustee under Clause 17 (*Costs and Expenses*) or Clause 18.1 (*Indemnity to the Security Trustee*) shall include the cost of utilising the Security Trustee's management time or other resources and will be calculated on the basis of such daily or hourly rates as the Security Trustee may notify to the OFTO, and is in addition to any other fee paid or payable to the Security Trustee.
- (b) Without prejudice to paragraph (a) above, in the event of:
  - (i) a Default; or
  - (ii) the Security Trustee being requested by the OFTO or any Secured Creditor to undertake duties which the Security Trustee believes to be

of an exceptional nature or outside the scope of the normal duties of the Security Trustee under the Finance Documents; or

- (iii) the Security Trustee believes that it is otherwise appropriate in the circumstances,

the OFTO shall pay to the Security Trustee additional remuneration (together with any applicable VAT), (x) in the case of (i) above at such hourly rate as shall be in force at such time, or (y) in the case of (ii) or (iii) above, as may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Trustee and the OFTO fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b)(ii) and (iii) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Trustee and approved by the OFTO or, failing approval, nominated (on the application of the Security Trustee) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the OFTO) and the determination of any investment bank shall be final and binding upon the Parties.
- (d) Any trustee of this Deed being a lawyer, accountant, broker or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional and other charges for business transacted and acts done by him or his firm in connection with the trusts of this Deed and the other Finance Documents and also his charges in addition to disbursements for all other work and business done and all time spent by him or his firm in connection with matters arising in connection with this Deed and the other Finance Documents.
- (e) The OFTO shall pay the Security Trustee remuneration for its services as trustee as from the date of this Deed, such remuneration to be at such rate and to be paid on such dates as may from time to time be agreed between the OFTO and the Security Trustee.

#### **15.17 Reliance and engagement letters**

The Security Trustee may obtain and rely on any certificate or report from the OFTO's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

#### **15.18 No responsibility to perfect Security**

The Security Trustee shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of the Obligors to any of the Charged Property;



- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Finance Document or the Security;
- (c) register, file or record or otherwise protect any of the Security (or the priority of any of the Security) under any law or regulation or to give notice to any person of the execution of any Finance Document or of the Security;
- (d) take, or to require the Obligors to take, any step to perfect its title to any of the Charged Property or to render the Security effective or to secure the creation of any ancillary Security Interest under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

#### **15.19 Insurance by Security Trustee**

- (a) The Security Trustee shall not be obliged:
  - (i) to insure any of the Charged Property;
  - (ii) to require any other person to maintain any insurance; or
  - (iii) to verify any obligation to arrange or maintain insurance contained in any Finance Document,

and the Security Trustee shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Trustee is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind unless instructed to do so in accordance with this Deed (such instruction to contain details of the material fact or the information which is required to be provided to the insurer, as well as confirmation that no further information is required to be provided to the insurer) and such liability is caused by its gross negligence, wilful default or fraud, nor shall the Security Trustee be under any obligation in respect of such insurance policy including, for the avoidance of doubt, any obligation to ascertain whether any notice which is required to be given to or acknowledgement to be obtained from any underwriters, insurers, re insurers or brokers has been given to or, as the case may be, obtained from such underwriters, insurers, reinsurers or brokers.

#### **15.20 Custodians and nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Trustee may determine, including for the purpose of depositing with a custodian this Deed or any document relating to the trust created under this Deed and the Security Trustee shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of such appointment or be bound to supervise the proceedings or acts of any person.

### **15.21 Delegation by the Security Trustee**

- (a) Each of the Security Trustee, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Trustee, that Receiver or that Delegate (as the case may be) considers, in its discretion, to be appropriate.
- (c) No Security Trustee, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any delegation or sub-delegation provided that the Security Trustee, Receiver or Delegate has exercised reasonable care and skill in appointing the relevant Delegate or sub-delegate (as applicable).
- (d) In the event that a Delegate appointed pursuant to Clause 15.21(c) is not a member of the HSBC Group, the Security Trustee shall within a reasonable time after any such delegation give notice of the delegation to the Obligors.

### **15.22 Additional Security Trustees**

- (a) The Security Trustee may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be appropriate;
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Trustee deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Trustee shall give prior notice to the OFTO and the Secured Creditors of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Trustee under or in connection with the Finance Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Trustee may pay to that person, and any costs and expenses (together with any applicable irrecoverable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Deed, be treated as costs and expenses incurred by the Security Trustee.

### **15.23 Acceptance of title**

The Security Trustee shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that the Obligors may have to any of the

Charged Property and shall not be liable for, or bound to require the Obligors to remedy, any defect in its right or title.

#### **15.24 Winding up of trust**

If the Security Trustee, with the approval of each Secured Creditor, determines that:

- (a) all of the Secured Liabilities and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Creditor is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to the Obligors pursuant to the Finance Documents,

then:

- (i) the trusts set out in this Deed shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Security and the rights of the Security Trustee under each of the Security Documents; and
- (ii) any Security Trustee which has resigned pursuant to Clause 15.12 (*Resignation of the Security Trustee*) shall release, without recourse or warranty, all of its rights under each Security Document.

#### **15.25 Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Trustee under or in connection with the Finance Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Trustee by law or regulation or otherwise.

#### **15.26 Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Deed. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Deed, the provisions of this Deed shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Deed shall constitute a restriction or exclusion for the purposes of that Act.

#### **15.27 Power of Attorney**

TopCo and each Obligor by way of security for its obligations under this Deed irrevocably appoints the Security Trustee to be its attorney to do anything which it has authorised the Security Trustee or any other Party to do under this Deed or is itself required to do under this Deed but has failed to do (and the Security Trustee may delegate that power on such terms as it sees fit).

## 15.28 O&M Direct Agreement

- (a) If, pursuant to the O&M Direct Agreement, a Participant (as defined in the O&M Agreement) transfers all (or part) of its rights and obligations under and in accordance with the O&M Agreement to a transferee, then the Security Trustee is irrevocably authorised by the Secured Creditors and is hereby instructed by the Secured Creditors to execute and deliver the relevant Participant Transfer Agreement (as defined in the O&M Direct Agreement) in accordance with the terms of the O&M Direct Agreement.
- (b) If, pursuant to the O&M Direct Agreement, an O&M Guarantee is replaced or substituted pursuant to and in accordance with the O&M Agreement and the O&M Direct Agreement, then the Security Trustee is irrevocably authorised by the Secured Creditors and is hereby instructed by the Secured Creditors to execute and deliver the relevant O&M Guarantor Transfer Agreement (as defined in the O&M Direct Agreement) in accordance with the terms of the O&M Direct Agreement.

## 16. CHANGES TO THE PARTIES

### 16.1 Assignments and transfers

No Party may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of any Finance Documents or the Liabilities except as permitted by this Clause 16.

### 16.2 Change of Secured Creditor

A Secured Creditor may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

in respect of any Finance Documents or the Secured Liabilities if:

- (i) that assignment or transfer is in accordance with the terms of the Finance Documents to which it is a party including, in the case of a Hedge Counterparty, a novation entered into in accordance with the Hedge Termination and Novation Mechanism set out in the Hedging Agreements; and
- (ii) any assignee or transferee has (if not already a Party and, in the case of a Hedging Counterparty, if not already a Party as a Hedging Counterparty) acceded to this Deed, pursuant to Clause 16.4 (*Creditor Accession Undertaking*).

### **16.3 Change of Security Trustee**

No person shall become a Security Trustee unless at the same time, it accedes to this Deed, pursuant to Clause 16.4 (*Creditor Accession Undertaking*).

### **16.4 Creditor Accession Undertaking**

With effect from the date of acceptance by the Security Trustee of a Creditor Accession Undertaking duly executed and delivered to the Security Trustee by the relevant acceding party or, if later, the date specified in that Creditor Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor shall be discharged from further obligations towards the Security Trustee and other Parties under this Deed and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date);
- (b) as from that date, the replacement or new Creditor shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor Accession Undertaking; and
- (c) any party acceding to this Deed as a Hedge Counterparty shall also become party to the Common Terms Agreement as a Hedge Counterparty and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the Common Terms Agreement as a Hedge Counterparty.

### **16.5 Additional parties**

Each of the Parties appoints the Security Trustee to receive on its behalf each Creditor Accession Undertaking delivered to the Security Trustee and the Security Trustee shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Deed.

### **16.6 Deductions by the Security Trustee**

If any Party owes an amount to the Security Trustee under any of the Finance Documents, the Security Trustee may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Security Trustee would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents, that Party shall be regarded as having received any amount so deducted.

### **16.7 Merger and transfer**

If the Security Trustee:

- (a) merges or consolidates with any person; or

- (b) transfers to any person all or substantially all of its assets or all or substantially all of its corporate trust and loan agency business, that person (or, in the case of any merger or consolidation, any person which results from the merger or consolidation) shall be a Party and shall be the Security Trustee without that person or any Party doing anything (including executing or registering any document).

**SECTION 6  
ADDITIONAL PAYMENT OBLIGATIONS**

**17. COSTS AND EXPENSES**

**17.1 Transaction expenses**

The Obligors shall jointly and severally, promptly on demand, pay the Security Trustee the amount of all General Liabilities (including, without limitation, legal fees) (together with any applicable irrecoverable VAT) properly incurred by the Security Trustee and by any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Deed and any other documents referred to in this Deed and the Security; and
- (b) any other Transaction Documents (including any Transaction Documents executed after the date of this Deed).

**17.2 Amendment costs**

If an amendment, waiver or consent is requested, the Obligors shall, within three Business Days of demand, reimburse the Security Trustee for the amount of all General Liabilities including legal fees) (together with any applicable irrecoverable VAT) properly incurred by the Security Trustee (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

**17.3 Enforcement and preservation costs**

The Obligors shall, within three Business Days of demand, pay to the Security Trustee the amount of all costs and expenses (including legal fees and together with any applicable irrecoverable VAT) incurred by it in connection with the investigation of an Event of Default or Potential Event of Default or any event which the Security Trustee believes is a Default, the enforcement of or the preservation of any rights under any Finance Document and the Security and any proceedings instituted by or against the Security Trustee as a consequence of taking or holding the Security or enforcing these rights.

**17.4 Stamp taxes**

The Obligors shall pay and, within three Business Days of demand, indemnify the Security Trustee against any cost, loss or General Liability the Security Trustee incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

**17.5 Interest on demand**

If any Creditor or an Obligor fails to pay any amount payable by it under this Deed on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is one per cent. per annum over the rate at which the Security Trustee

was being offered, by leading banks in the London interbank market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Trustee may from time to time select **provided that** if any such rate is below zero, that rate will be deemed to be zero.

## 18. OTHER INDEMNITIES

### 18.1 Indemnity to the Security Trustee

- (a) Without prejudice to any other indemnity contained in any of the Finance Documents, an Obligor shall promptly indemnify the Security Trustee and every Receiver and Delegate against any fee, cost, expense, loss or General Liability (together with any applicable irrecoverable VAT) incurred by any of them as a result of:
- (i) any failure by such Obligor to comply with its obligations under Clause 17 (*Costs and expenses*);
  - (ii) the taking, holding, protection or enforcement of the Security;
  - (iii) the investigation of an Event of Default or Potential Event of Default or any event which the Security Trustee believes is a Default;
  - (iv) the exercise or purported exercise of any of the rights, powers, discretions, trusts, duties, authorities and remedies vested in the Security Trustee, each Receiver and each Delegate by the Transaction Documents or by law or in respect of any other matters or things done or omitted in any way relating to the Transaction Documents;
  - (v) any default by such Obligor in the performance of any of the obligations expressed to be assumed by it in the Transaction Documents;
  - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under the Transaction Documents; or
  - (vii) acting as Security Trustee, Receiver or Delegate under the Transaction Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Trustee's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) The Security Trustee and every Receiver and Delegate may, in priority to any payment to the Secured Creditors, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 18.1 and shall have a lien on the Security and the proceeds of the enforcement of the Security for all moneys payable to it.



## **18.2 Direct Agreements**

Each Obligor agrees to indemnify the Security Trustee against all General Liabilities incurred by the Security Trustee if ever the Security Trustee takes any action, step or proceeding under any Direct Agreement, including without limitation paying monies (from any amounts available in the Accounts for such purpose) to any other party under any of the Direct Agreements to prevent a termination or otherwise of the agreements to which that Direct Agreement relates and all such amounts paid by the Security Trustee will constitute Senior Debt.

## **18.3 Survival**

Each indemnity given by a party under or in connection with a Finance Document is a continuing obligation, independent of the party's other obligations under or in connection with that or any other Finance Document and survives after that Finance Document is terminated. It is not necessary for the Security Trustee, any Receiver or Delegate or other Secured Creditor to pay any amount or incur any expense before enforcing an indemnity under or in connection with a Finance Document.

## SECTION 7 ADMINISTRATION

### 19. INFORMATION

#### 19.1 Disclosure between Secured Creditors and Security Trustee

Notwithstanding any Deed to the contrary, TopCo and each of the Obligors consents, until the Final Discharge Date, to the disclosure by any Secured Creditor and the Security Trustee to each other of such information concerning TopCo and the Obligors as any Secured Creditor or the Security Trustee shall see fit.

#### 19.2 Notification of prescribed events

- (a) If TopCo or any Obligor or any Secured Creditor (other than the Security Trustee) becomes aware of the occurrence of a Potential Event of Default or an Event of Default, or cessation of a Potential Event of Default or an Event of Default, it shall promptly notify the Security Trustee in writing, provided that in respect of TopCo or an Obligor, any of TopCo or an Obligor has not already made such notification.
- (b) The Security Trustee shall, upon receiving a notification pursuant to paragraph (a) above, notify the Bond Trustee (who shall notify the Bondholders), each Hedge Counterparty, the PBCE Provider and the OFTO (on behalf of the Obligors) that it has received notification that a Potential Event of Default or an Event of Default (as applicable) has occurred (and the date on which it occurred, if known).
- (c) If the Bond Trustee declares the Bonds due and payable under Condition 9.2 (*Consequences of the service of Enforcement Notice and taking of Enforcement Action*) following the delivery of an Enforcement Notice by the Security Trustee in accordance with Clause 13.3 (*Enforcement Notice*), it shall notify the Security Trustee and the PBCE Provider of the same and the aggregate amount of principal and interest thereby due and payable under the Bonds.
- (d) If the Security Trustee enforces, or, subject to Clause 13 (*Enforcement Action*), takes formal steps to enforce, any of the Security it shall notify each Party of that action.
- (e) Subject to Clause 13 (*Enforcement Action*), if any Secured Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Security it shall notify the Security Trustee and the Security Trustee shall, upon receiving that notification, notify each Party of that action.
- (f) If an Obligor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Trustee and the Security Trustee shall, upon receiving that notification, notify the Bond Trustee, each other Hedge Counterparty and the PBCE Provider.

- (g) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 5.9 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Trustee of the same and the aggregate close-out amounts due and payable, and the Security Trustee shall, upon receiving that notification, notify the Bond Trustee, each other Hedge Counterparty and the PBCE Provider.

## 20. NOTICES

### 20.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 20.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is:

- (a) in the case of the Obligors, the Bond Trustee, the Hedge Counterparties, the PBCE Provider, the Security Trustee, the Account Bank and the Principal Paying Agent, that identified with its name below; and
- (b) in the case of each other Party, that notified in writing to the Security Trustee on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer which that Party may notify to the Security Trustee (or the Security Trustee may notify to the other Parties, if a change is made by the Security Trustee) by not less than five Business Days' notice.

### 20.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 20.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Trustee will be effective only when actually received by the Security Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Security Trustee's signature below (or any substitute department or officer as the Security Trustee shall specify for this purpose).

- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) and (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **20.4 Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 20.2 (*Addresses*) or changing its own address or fax number, the Security Trustee shall notify the other Parties.

#### **20.5 Electronic communication**

- (a) Any communication to be made between any Parties under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that those Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Security Trustee only if it is addressed in such a manner as the Security Trustee shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **20.6 English language**

- (a) Any notice given under or in connection with this Deed must be in English.
- (b) All other documents provided under or in connection with this Deed must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Security Trustee, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **21. PRESERVATION**

### **21.1 Partial invalidity**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

### **21.2 No impairment**

If, at any time after its date, any provision of a Finance Document (including this Deed) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Finance Document, neither the binding nature nor the enforceability of that provision or any other provision of that Finance Document will be impaired as against the other party(ies) to that Finance Document.

### **21.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Secured Creditor shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

### **21.4 Waiver of defences**

The provisions of this Deed or any Security will not be affected by an act, omission, matter or thing which, but for this Clause 21.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Deed including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of an Obligor or any other person under the terms of any composition or arrangement with any creditor of such Obligor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, an Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security Interest;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or other person;

- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security;
- (g) any intermediate Payment of any of the Secured Liabilities owing to the Secured Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

#### **21.5 Priorities not affected**

Except as otherwise provided in this Deed the priorities referred to in Clause 3 (*Ranking and Priority*) will:

- (a) not be affected by any reduction or increase in the principal amount secured by the Security in respect of the Secured Liabilities owing to the Secured Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Finance Documents, or by any variation or satisfaction of, any of the Secured Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which this Deed and the other Finance Documents are executed or registered or notice of them is given to any person; and
- (c) secure the Secured Liabilities owing to the Secured Creditors in the order specified, regardless of the date upon which any of the Secured Liabilities arise or of any fluctuations in the amount of any of the Secured Liabilities outstanding.

## **22. CONSENTS, AMENDMENTS AND OVERRIDE**

### **22.1 Required consents**

This Deed may be amended or waived only with the consent of the Bond Trustee, the Hedge Counterparties, the PBCE Provider and the Security Trustee.

### **22.2 Amendments and Waivers: Common Documents, Bond Documents, Hedging Agreements and PBCE Documents**

- (a) The Obligors may amend the terms of, obtain any waiver of any of the requirements of, obtain any consent under, request any determination or request the exercise of any right or discretion under, any of the Common Documents only with the prior consent of the Security Trustee acting in accordance with the STID Decision Making Protocol. The Security Trustee shall only grant such consent in accordance with the procedures set out herein and the STID Decision Making Protocol and, except as set out in such procedures and Clause 22.2(f) below, the consent of no other Creditor shall be required to effect such amendment, waiver or consent.

- (b) The Obligors may amend the terms of, obtain any waiver of the requirements of, obtain any consent under, request any determination or request the exercise of any right or discretion under, any of the Bond Documents only with the prior written consent of the Bond Trustee and the Security Trustee. The Security Trustee shall only grant such consent in accordance with the procedures set out herein and the STID Decision Making Protocol and, except as set out in such procedures and Clause 22.2(f) below, the consent of no other Creditor (except the Bond Trustee) shall be required to effect such amendment, waiver or consent.
- (c) The Obligors may amend the terms of, obtain any waiver of any of the requirements of, obtain any consent under, request any determination or request the exercise of any right or discretion under, any of the Hedging Agreements only with the prior written consent of the relevant Hedge Counterparty and the Security Trustee. The Security Trustee shall only grant such consent in accordance with the procedures set out herein and the STID Decision Making Protocol and, except as set out in such procedures and Clause 22.2(f) below, the consent of no other Creditor (except the relevant Hedge Counterparty) shall be required to effect such amendment, waiver or consent.
- (d) The Obligors may amend the terms of, obtain any waiver of any of the requirements of, obtain any consent under, request any determination or request the exercise of any right or discretion under, any of the PBCE Documents only with the prior written consent of the PBCE Provider and the Security Trustee. The Security Trustee shall only grant such consent in accordance with the procedures set out herein and the STID Decision Making Protocol and, except as set out in such procedures and Clause 22.2(f) below, the consent of no other Creditor (except the PBCE Provider) shall be required to effect such amendment, waiver or consent.
- (e) If an Obligor requests any amendment or waiver of, the grant of consent under, the giving or determination or the exercise of any right or discretion under, any Finance Document or any of the Charged Documents, it shall deliver a STID Proposal to the Security Trustee, the Bond Trustee, the Bondholders, the Hedge Counterparties and the PBCE Provider in accordance with the STID Decision Making Protocol.
- (f) Without prejudice to any other provisions in this Clause 22.2, any STID Proposal which has the effect of changing, or which relates to, an Entrenched Right may only be made with the consent of each Secured Creditor or, in the case of Bondholders, the Bond Trustee acting on their behalf, whose Entrenched Right is affected (each an "Affected Secured Creditor") in accordance with the following provisions of this Clause 22.2 and the STID Decision Making Protocol. For the avoidance of doubt, the failure of any Affected Secured Creditor to respond during the Decision Period relating to an Entrenched Right shall not be treated as any deemed consent to, or approval of, the STID Proposal.
- (g) The Security Trustee is authorised by each Secured Creditor to execute and deliver on its behalf all documentation required to implement any amendment,

waiver, consent or other exercise of any right exercised in accordance with the provisions of this Clause 22.2 and the STID Decision Making Protocol and such execution and delivery by the Security Trustee shall bind the Secured Creditor as if such documentation had been executed by that Secured Creditor.

- (h) If an Affected Secured Creditor determines that a STID Proposal or a STID Voting Request relates to an Entrenched Right and delivers an Entrenched Right Dissenting Notice to the Security Trustee as contemplated by paragraph 2.4(b) (*Determination of voting category*) of the STID Decision Making Protocol, then each Affected Secured Creditor will be entitled to vote on the STID Proposal and the Security Trustee shall require the consent of each Affected Secured Creditor and itself, acting in accordance with the STID Decision Making Protocol, in order to approve the STID Proposal.
- (i) If a Secured Creditor determines that the STID Proposal does not relate to its Entrenched Rights, or if such Secured Creditor fails to deliver an Entrenched Right Dissenting Notice as contemplated by paragraph 2.4(b) (*Determination of voting category*) of the STID Decision Making Protocol within the time period set out in that paragraph (unless the STID Proposal specifies that it relates to an Entrenched Right of such Secured Creditor), then the consent of that Secured Creditor shall not be required in connection with the approval of the STID Proposal, and the STID Proposal shall be approved if the Security Trustee obtains the consent of each Affected Secured Creditor (if any) individually, and the other Secured Creditors collectively in accordance with the STID Decision Making Protocol.
- (j) In the event that any Affected Secured Creditor does not approve a STID Proposal relating to an Entrenched Right (whether or not the Security Trustee, acting in accordance with the STID Decision Making Protocol, has approved the STID Proposal), then such STID Proposal may not be implemented. If such Affected Secured Creditor does approve such STID Proposal, then the STID Proposal may only be implemented if it is also approved by the Security Trustee, acting in accordance with the STID Decision Making Protocol and each other Affected Secured Creditor (if any).
- (k) If the STID Proposal relates to a matter which is not a PBCE Entrenched Right, the PBCE Provider will not have the right to approve or reject such STID Proposal except in accordance with the STID Decision Making Protocol.
- (l) Any modification agreed, waiver granted or consent given in accordance with the provisions of this Deed (a "**Change**") shall be binding on each Obligor and each Secured Creditor and each of the Obligors and the Secured Creditors shall be bound to give effect to it (including where the terms of a Common Document are stated to apply to another Finance Document such that no further modification, waiver or consent is needed under such Finance Document to effect the Change).

### 22.3 Entrenched Rights

The "**Entrenched Right**" of a Secured Creditor is a Senior Creditor Entrenched Right or a PBCE Entrenched Right as relevant.



The "**Senior Creditor Entrenched Rights**" of a Senior Creditor are as follows:

- (a) any amendment or waiver which would have the effect of adversely changing any Priority of Payments (including as a result of any amendment to the definitions referred to therein) or application thereof (including as a result of any change to a requirement set out in a Finance Document that certain payments, applications or distributions should be made in accordance with the Priority of Payments) in respect of the relevant Senior Creditor or otherwise adversely affect the ranking of the relevant Senior Creditor;
- (b) any amendment or waiver which would delay the date fixed for payment of principal, interest, Make-Whole Amount or any other amount in respect of the relevant Senior Creditor's debt or would reduce the amount of principal, the rate of interest, Make-Whole Amount or any other amount payable in respect of such debt;
- (c) any amendment or waiver which would bring forward the date fixed for payment of principal or interest in respect of the relevant Senior Creditor's debt or would increase the amount of principal, the rate of interest payable, Make-Whole Amount or any other amount on any date in respect of the relevant Senior Creditor's debt;
- (d) any amendment or waiver which would result in the exchange of the relevant Senior Creditor's debt for, or the conversion of such debt into, shares, notes or other obligations of any other person;
- (e) any amendment or waiver which would change or would relate to the currency of payment due under the relevant Senior Creditor's debt;
- (f) any amendment or waiver which would have the effect of changing or would relate to the rights of the relevant Senior Creditor to receive any sums owing to it for its own account in respect of fees, costs, charges, liabilities, taxes, damages, proceedings, claims and demands in relation to any Finance Document to which it is a party;
- (g) any amendment or waiver which would change or would relate to any existing obligation of a Obligor to gross up any payment in respect of the relevant Senior Creditor's debt in the event of the imposition of withholding taxes;
- (h) any amendment or waiver which would result in an increase in the relevant Senior Creditor's obligations or liabilities, or would adversely modify the relevant Senior Creditor's rights, under or in connection with this Deed and/or any other Finance Document;
- (i) any amendment which would change or would have the effect of changing (i) any matter which is the subject of the relevant Senior Creditor's Entrenched Right; (ii) the provisions of this Deed setting out the effect of the relevant Senior Creditor's Entrenched Rights; or (iii) how the relevant Senior Creditor casts its votes or exercise its decision-making rights under this Deed;

- (j) any amendment which would have the effect of changing the circumstances in which the relevant Senior Creditor is entitled to transfer its rights or obligations under, or its interest in, any Finance Document;
- (k) in relation to the Bond Trustee (on the instruction of the Bondholders) and the Hedge Counterparties only:
  - (i) any amendment to the provisions of Schedule 3 (*Events of Default*) of the Common Terms Agreement or the definition of Event of Default;
  - (ii) any amendment or waiver which would change or would have the effect of changing any of the following definitions:
    - (A) Discretion Matter;
    - (B) Entrenched Rights;
    - (C) Extraordinary Voting Matter;
    - (D) Ordinary Voting Matter;
    - (E) Permitted Financial Indebtedness;
    - (F) Qualifying Secured Creditors;
    - (G) Qualifying Secured Debt;
    - (H) Secured Creditor;
    - (I) Secured Liabilities;
    - (J) Senior Voting Debt; or
    - (K) STID Proposal;
  - (iii) any amendment or waiver which would change or would have the effect of changing any of the following:
    - (A) the Decision Period,
    - (B) the Quorum Requirement or Majority Requirement required in respect of any Ordinary Voting Matter,
    - (C) the Quorum Requirement or Majority Requirement required in respect of any Extraordinary Voting Matter,
    - (D) an Enforcement Instruction Notice or Further Enforcement Instruction Notice;
    - (E) Clause 22 (*Consents, Amendments and Override*), Clause 13.2 (*Quorum and voting requirement in respect of an Enforcement Instruction Notice and a Further Enforcement Instruction*)

*Notice*) or Schedule 2 (*STID Decision Making Protocol*) of this Deed; or

- (F) paragraph 28 (*Treasury Transactions*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement;
  - (iv) any amendment which would have the effect of changing the nature or the scope of, or would release any Security, unless equivalent replacement security is taken at the same time;
  - (v) any increase in Financial Indebtedness of the OFTO, including fees, charges, interest or margin, changes in the repayment profile of any Financial Indebtedness, or other material amendments of terms of such Financial Indebtedness, other than in each case in respect of Permitted Financial Indebtedness;
  - (vi) any amendments to or waiver of the required levels of, or the basis or timing of calculation of, the Historic DSCR, the Projected DSCR or the Debt Life Cover Ratio; or
  - (vii) any amendments to or waiver of the effectiveness of the PBCE Letter of Credit or any of the conditions to drawdown under the PBCE Letter of Credit to the extent, in respect of the Hedge Counterparties only, that such amendments or waiver would be prejudicial to the interests of the Hedge Counterparties;
- (I) in relation to the Bond Trustee (on the instruction of the Bondholders) only:
- (i) any amendment or waiver which would change or would have the effect of changing:
    - (A) any of the following definitions:
      - (1) Event of Default;
      - (2) Permitted Acquisition;
      - (3) Permitted Business;
      - (4) Permitted Disposal;
      - (5) Restricted Payment; or
      - (6) Restricted Payment Condition;
    - (B) any of the following:
      - (1) paragraph 5 (*Merger*), paragraph 8 (*HoldCo*), paragraph 10 (*Pari Passu ranking*), paragraph 12 (*Negative Pledge*), paragraph 16 (*No Guarantees or Indemnities*), paragraph 17 (*Restricted Payments*), paragraph 26

*(Amendments to constitutional documents and other documents)* of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement;  
or

- (2) paragraph 20 (*Equity Cure*) of schedule 3 (*Events of Default*) of the Common Terms Agreement;
- (ii) any waiver of, or amendment to, any condition precedent to the issue of any Bonds;
  - (iii) any amendment to the terms of the Bond Documents (and including, for the avoidance of doubt, any provisions relating to payments due to the Bond Creditors (including payments of interest, principal and fees), the currency of such payments, and the obligation of the Obligors to gross up any such payment in the event of imposition of withholding tax);
  - (iv) any consent by the OFTO to receive a section E (Offshore Transmission Owner of Last Resort) direction from the Authority;
  - (v) any amendment which would have the effect of reducing or delaying the requirements as regards provision of information set out in part 1 (*Information Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement;
  - (vi) any amendment to or waiver of the OFTO Licence which directly or indirectly affects any termination compensation or the payment mechanism;
- (m) in respect of a Hedge Counterparty only, any amendment or waiver which would change or have the effect of changing:
- (i) Clause 5 (*Hedge Counterparties and Hedging Liabilities*) of this Deed;  
or
  - (ii) the terms of a Hedging Agreement;
- (n) in respect of the Account Bank only, any amendment or waiver which would change or have the effect of changing any term of the Account Bank Agreement; and
- (o) in respect of the Principal Paying Agent only, any amendment or waiver which would change or have the effect of changing any term of the Agency Agreement.

## 22.4 PBCE Entrenched Rights

The "PBCE Entrenched Rights" of the PBCE Provider are as follows:

- (a) any amendment to or waiver of the terms of the PBCE Documents or any related fee letter (and including, for the avoidance of doubt, any provisions

relating to payments due to the PBCE Provider (including payments of interest, principal and fees), the currency of such payments, and the obligation of the OFTO to gross up any such payment in the event of imposition of withholding tax);

- (b) any amendment to the PBCE Provider's decision-making or voting rights, including any amendment which would change or would have the effect of changing (i) any of the definitions relating to majority thresholds and voting groups; (ii) the definition of PBCE Entrenched Rights, (iii) the decision period, quorum requirement or voting majority required in respect of any decision, waiver, determination or enforcement instruction; (iv) the provisions of this Deed setting out the effect of the PBCE Entrenched Rights; or (v) how the Secured Creditors cast their votes or exercise their decision-making rights under this Deed;
- (c) any amendment which would have the effect of adversely changing any Priority of Payments or application thereof in respect of the PBCE Provider (whether directly or indirectly);
- (d) any amendment to Schedule 8 (*PBCE Drawing Mechanism*) to the Common Terms Agreement or any related definitions;
- (e) any partial or total voluntary redemption of the Bonds by the OFTO unless there is:
  - (i) a full payment of outstanding amounts under the PBCE Letter of Credit and Reimbursement Deed (drawn amounts plus current interest and Capitalised Interest) if the Bonds are being redeemed in full and all Hedging Transactions terminated, and all Liabilities to all Hedge Counterparties are satisfied; or
  - (ii) a *pro rata* reduction of the maximum amount of the PBCE Letter of Credit (and, as the case may be, a *pro rata* repayment of the drawn amounts plus current interest under the PBCE Letter of Credit and Reimbursement Deed) if the PBCE Provider has confirmed that the proposed voluntary redemption will not have a material adverse effect on its exposure and rights under the PBCE Letter of Credit and Reimbursement Deed;
- (f) any increase in the Financial Indebtedness of the OFTO including fees, charges, interest or margin, changes in the repayment profile of any Financial Indebtedness, or any material amendments of terms of such Financial Indebtedness other than any Financial Indebtedness permitted pursuant to paragraphs (b), (c), or (d) of the definition of Permitted Financial Indebtedness;
- (g) any amendment to or waiver of the definition of Permitted Financial Indebtedness;
- (h) any amendments to or waiver of the required levels of, or the basis or timing of calculation of, the Historic DSCR, the Projected DSCR or the Debt Life Cover Ratio;

- (i) any amendment to, or waiver of which would constitute any amendment to, or waiver of the provisions of the following Events of Default under the Common Terms Agreement:
  - (i) paragraph 1 (*Non Payment*) of schedule 3 (*Events of Default*) of the Common Terms Agreement;
  - (ii) paragraph 2 (*Breach of Financial Covenants and other obligations*) of schedule 3 (*Events of Default*) of the Common Terms Agreement;
  - (iii) paragraph 3 (*Breach of Other Obligations*) of schedule 3 (*Events of Default*) of the Common Terms Agreement but only so far as it relates to:
    - (A) an increase in the Permitted Financial Indebtedness of an Obligor or any change to the repayment profile of any Financial Indebtedness or other material amendments to the terms of such Financial Indebtedness;
    - (B) a breach of the PBCE Documents by the OFTO;
    - (C) any of those events listed in paragraph 5 (*Merger*), paragraph 6 (*Change of Business*) or paragraph 13 (*Disposals*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement;
  - (iv) paragraphs 7 (*Insolvency*), 8 (*Insolvency Proceedings*), 9 (*Creditor' process*) or 10 (*Cessation of business*) of schedule 3 (*Events of Default*) of the Common Terms Agreement;
  - (v) paragraph 11 (*Unlawfulness and Invalidity*) of schedule 3 (*Events of Default*) of the Common Terms Agreement; or
  - (vi) paragraph 12(b) (*Repudiation and Rescission of Agreements or Authorisations*) of schedule 3 (*Events of Default*) of the Common Terms Agreement;
  - (vii) paragraph 13 (*OFTO Licence*) of schedule 3 (*Events of Default*) of the Common Terms Agreement; or
  - (viii) paragraph 14 (*Nationalisation*) of schedule 3 (*Events of Default*) of the Common Terms Agreement;
- (j) any amendment to or waiver of any right under a Transaction Document which has or is likely to have a material adverse effect on the cash flows of the OFTO;
- (k) any amendment to or waiver of the definitions of "Environment", "Environmental Claim" or "Environmental Law" in the Master Definitions Agreement or paragraph 3 (*Environmental Matters*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement;

- (l) any amendment to or waiver of the definitions of "**Enforcement Action**", "**PBCE Discharge Date**", "**PBCE Documents**", "**PBCE Letter of Credit**", "**PBCE Letter of Credit and Reimbursement Deed**" or "**PBCE Liabilities**" in the Master Definitions Agreement;
- (m) any amendment to the definition of "**Permitted Business**" in the Master Definitions Agreement or any proposal made by the OFTO to carry on any other business as contemplated by paragraph (b) of that definition;
- (n) any amendment to or waiver of, or any exercise by the Security Trustee of any discretion or the grant of any consent under, the definitions of "**Restricted Payment**" or "**Restricted Payment Conditions**" in the Master Definitions Agreement or paragraph 17 (*Restricted Payments*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement;
- (o) any amendment which would have the effect of changing the nature or the scope of, or would release any Security, unless equivalent replacement security is taken at the same time;
- (p) any amendment to or waiver of the OFTO Licence which directly or indirectly affects any termination compensation or the payment mechanism; and
- (q) any waiver of, or amendment to, any condition precedent to the availability of any funds under the PBCE Letter of Credit.

## 22.5 Effectiveness

- (a) The Security Trustee is hereby authorised by each Secured Creditor to:
  - (i) execute and deliver on its behalf all documentation required pursuant to paragraph 4 (*Implementation of Amendments, Modifications and Waivers*) of Schedule 2 (*STID Decision Making Protocol*) to implement any modification or the terms of any waiver or consent in respect of any Finance Documents and such execution and delivery by the Security Trustee shall bind each Secured Creditor as if such documentation had been duly executed by it; and
  - (ii) give the notice referred to in paragraph 5.3 (*Notification of Ordinary Resolution*) and paragraph 6.4 (*Notification of Extraordinary Resolution*) of Schedule 2 (*STID Decision Making Protocol*).
- (b) Any amendment, waiver or consent given in accordance with this Clause 22 will be binding on all Parties and the Security Trustee shall effect, on behalf of any Creditor, any amendment, waiver or consent permitted by this Clause 22.
- (c) Without prejudice to the generality of Clause 15.7 (*Rights and discretions*) the Security Trustee may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Deed.

## **22.6 Common Documents**

Each of the Parties agrees that any rights, powers or discretions of the Creditors under any Common Document against any Obligor shall be exercised only by the Security Trustee acting in accordance with the terms of this Deed, and any litigation, arbitration, administrative or other proceedings arising from or in connection with any Common Document against any Obligor shall only be brought by the Security Trustee in accordance with this Deed.

## **23. COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

## **24. GOVERNING LAW**

### **24.1 Governing Law**

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

### **24.2 Jurisdiction**

- (a) The English courts have exclusive jurisdiction to settle and determine any dispute arising out of, relating to or having any connection with, this Deed, including any dispute relating to any non-contractual obligations arising out of or in connection with it (for the purposes of this Clause 24.2, a "Dispute") and each party submits to the exclusive jurisdiction of the English courts.
- (b) For the purposes of this Clause 24, each of the Parties 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 Secured Creditors may, in respect of any Dispute or Disputes against any Obligor, take:
  - (i) proceedings in any other court with jurisdiction; and
  - (ii) concurrent proceedings in any number of jurisdictions.

**This Deed has been entered into on the date stated at the beginning of this Deed and executed as a deed by the Parties and is intended to be and is delivered by them as a deed on the date specified above.**



**SCHEDULE 1**  
**FORM OF CREDITOR ACCESSION UNDERTAKING**

To: *[Insert name of Security Trustee]* for itself and each of the other parties to the STID referred to below.

To: *[Bond Trustee,][Hedge Counterparty,]* the PBCE Provider

From: *[Acceding Creditor]* and WODS Transmission PLC for itself and each other Obligor under the STID referred to below

THIS UNDERTAKING is made on *[date]* by *[insert name]* (the "Acceding Creditor") in relation to the security trust and intercreditor deed (the "STID") dated 20 August 2015 between, among others, WODS Transmission PLC as OFTO, HSBC Corporate Trustee Company (UK) Limited as bond trustee (the "Bond Trustee"), European Investment Bank (the "PBCE Provider"), and the other Creditors (each as defined in the STID). Terms defined in the STID shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding Creditor being accepted as a *[specify role]/[security trustee]* for the purposes of the STID, the Acceding Creditor confirms that, as from *[date]*, it intends to be party to the STID as a *[specify role]/[security trustee]* and undertakes to perform all the obligations expressed in the STID to be assumed by a *[specify role]/[security trustee]* and agrees that it shall be bound by all the provisions of the STID, as if it had been an original party to the STID.

*[The Acceding Creditor has become a provider of hedging arrangements to [specify Obligor]. In consideration of the Acceding Creditor being accepted as a Hedge Counterparty, the Acceding Creditor confirms, for the benefit of the parties to the Finance Documents, that, as from [date], it intends to be party to the Common Terms Agreement and the STID as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the Finance Documents to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the Finance Documents, as if it had been an original party to the Common Terms Agreement and the STID as a Hedge Counterparty.*

The Acceding Creditor is an entity that would satisfy the ratings criteria set out in paragraph 28(d) (*Treasury Transactions*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement were it to be entering into a new Hedging Agreement on the date of the proposed transfer and hereby confirms that it is not:

- (a) a bank or financial institution or a trust, fund or other entity, a principal part of whose business is investing in the equity of, owning or operating offshore generation or transmission assets; or
- (b) an infrastructure fund or private equity fund a principal part of whose business is making equity investments in, owning or operating infrastructure assets,

(each, a "Competitor") or, in each case, an Affiliate of such Competitor.]<sup>1</sup>

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<sup>1</sup> Only include when the Acceding Creditor is acceding as a Hedge Counterparty.

This Undertaking and any non-contractual obligations arising out of or in connection with it are governed by English law.

**THIS UNDERTAKING** has been entered into on the date stated above and is executed as a deed by the Acceding Creditor and is delivered on the date stated above.

[For and on behalf of  
*[Name of Acceding Creditor]*]

and  
WODS Transmission PLC

EXECUTED AS A DEED  
by *[Name of Acceding Creditor]*

[.....

Director

.....

Director/Secretary]

Address:

Fax:

EXECUTED AS A DEED  
by WODS Transmission PLC

[..... Director

..... Director/Secretary]

Accepted by the Security Trustee

By:.....

Date:

**SCHEDULE 2**  
**STID DECISION MAKING PROTOCOL**

**I. METHOD AND QUANTUM OF VOTING**

The votes of Secured Creditors in respect of a STID Proposal will be cast by those Secured Creditors that are entitled to vote in accordance with the provisions of this Deed (in the case of the Bondholders, through the Bond Trustee on their behalf) and will count in respect of Quorum Requirements and Majority Requirements as follows:

(a) subject to any Entrenched Rights in accordance with this Deed, in respect of the Bonds and a STID Proposal:

(i) subject to paragraph (iii) below, in an amount equal to the aggregate of the Senior Voting Debt of the Bonds which voted for the relevant STID Proposal in accordance with the STID Decision Making Protocol, for such STID Proposal;

(ii) subject to paragraph (iii) below, in an amount equal to the aggregate of the Senior Voting Debt of the Bonds which voted against the relevant STID Proposal in accordance with the STID Decision Making Protocol, against such STID Proposal;

(iii) if either (A) or (B) below applies to the Bonds the above paragraphs (i) and (ii) shall not be applied to the Bonds:

(A) if, in respect of the Bonds and a STID Proposal:

(1) 25 per cent. or more of the Senior Voting Debt of such Bonds voted in accordance with the STID Decision Making Protocol; and

(2) 75 per cent. or more of the Senior Voting Debt of the Bonds which so voted, voted the same way,

then the entire Senior Voting Debt of the Bonds will count as having voted in such way both in respect of Quorum Requirements and Majority Requirements;

(B) if, in respect of the Bonds and a STID Proposal:

(1) 25 per cent. or more of the Senior Voting Debt of the Bonds voted in accordance with the STID Decision Making Protocol; but

(2) less than 75 per cent. of the Senior Voting Debt of the Bonds which so voted, voted the same way,

then the entire Senior Voting Debt of the Bonds will count for the purposes of Quorum Requirements (but not Majority Requirements, for which they will count on a pound for pound

basis either for or against the STID Proposal according to their vote in accordance with paragraphs (i) and (ii) above);

- (b) subject to paragraphs (d) and (e) below, in respect of a Hedge Counterparty and a Hedging Agreement, in an amount equal to the Senior Voting Debt of such Hedging Agreement for or against (as the case may be) the STID Proposal;
- (c) subject to paragraph (d), in respect of the PBCE Provider and the PBCE Documents, in an amount equal to any drawn but unreimbursed amounts under the PBCE Letter of Credit for or against (as the case may be) the STID Proposal;
- (d) no Secured Creditor which is entitled to vote shall cast a vote for the purposes of this paragraph 1 unless it is authorised or permitted so to do under the Finance Documents (or, in respect of the Bond Trustee, unless it has been duly instructed in accordance with the provisions of the Bond Trust Deed). If a Secured Creditor which is entitled to vote does not vote (including, in respect of the Bond Trustee, due to a lack of due authorisation, permission and/or no instructions, or inconclusive instructions, from the relevant Bondholders and/or failure to achieve a quorum or majority threshold under the Bond Trust Deed) then:
  - (i) in respect of a Quorum Requirement, the relevant Senior Voting Debt which could have been voted (or, in respect of the PBCE Provider where it is entitled to vote, the outstanding principal amount under the PBCE Letter of Credit), will not count towards the numerator of any Quorum Requirement, but will count towards the denominator of such Quorum Requirement (being the entire outstanding principal amount of all Secured Debt entitled to vote); and
  - (ii) in respect of a Majority Requirement, the relevant Senior Voting Debt which could have been voted (or, in respect of the PBCE Provider where it is entitled to vote, the outstanding principal amount under the PBCE Letter of Credit), will not count towards either the numerator or the denominator of such Majority Requirement (such Majority Requirement being calculated on the basis of being the entire outstanding principal amount of all Secured Debt entitled to vote that actually voted).
- (e) Subject to the Entrenched Rights, no Hedge Counterparty shall be entitled to vote in respect of a STID Proposal unless and to the extent that such STID Proposal relates to:
  - (i) any waiver of an Event of Default;
  - (ii) any amendment to or waiver of paragraph 12 (*Negative pledge*), paragraph 13 (*Disposals*), paragraph 17 (*Restricted Payments*) or paragraph 22 (*Insurance*) of part 3 (*General Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement;

(iii) any amendment to the definitions of:

- (A) Permitted Business;
- (B) Permitted Disposal;
- (C) Permitted Security;
- (D) Permitted Transaction;
- (E) Restricted Payment; or
- (F) Restricted Payment Condition,

provided that nothing in this paragraph (e) shall restrict the Hedge Counterparties from voting in respect of any matter referred to in Clause 13 (*Enforcement Action*).

## **2. STID PROPOSAL**

### **2.1 Instigation of a STID Proposal**

The OFTO shall be entitled to (or, where so obliged by Clause 22.2(e) of this Deed, shall) request the Security Trustee to approve any amendment or waiver of, or the grant of consent or the giving of determination or direction as to the exercise of any right or discretion under, any Finance Document (any such request shall constitute a "STID Proposal") by delivering a STID Proposal to the Security Trustee, the PBCE Provider, the Hedge Counterparties, the Bondholders and the Bond Trustee.

### **2.2 Minimum requirements of a STID Proposal**

A STID Proposal shall:

- (a) be by way of notice in writing to the Security Trustee signed by an Authorised Signatory or a director (as the case may be) on behalf of the OFTO;
- (b) be certified by an Authorised Signatory or a director (as the case may be) on behalf of the OFTO as to whether such STID Proposal:
  - (i) is in respect of:
    - (A) a Discretion Matter;
    - (B) an Ordinary Voting Matter; or
    - (C) an Extraordinary Voting Matter; or
  - (ii) gives rise to an Entrenched Right,

and, if such STID Proposal is a Discretion Matter, such STID Proposal shall include a certificate signed by a director of the OFTO, setting out the basis on which the OFTO believes the Security Trustee would be entitled to concur in making the proposed modification, giving the proposed consent, granting the

proposed waiver or exercising the proposed discretion and shall attach all such evidence in support of such belief that the OFTO considers to be reasonably necessary and, in each case, such STID Proposal shall contain such supporting information as the OFTO considers to be reasonably necessary for the Secured Creditors (or, in respect of a STID Proposal which gives rise to an Entrenched Right, those Secured Creditors in whose favour the STID Proposal gives rise to an Entrenched Right or who are affected by that Entrenched Right) to make an informed assessment of the relevant matter addressed in such STID Proposal;

- (c) propose the form of resolution(s) (if applicable) to be put to the relevant Secured Creditors;
- (d) specify the period of time within which the approval of the Security Trustee is sought (the "**Decision Period**"), which shall be, subject to the issuance of a Determination Dissenting Notice or an Entrenched Right Dissenting Notice:
  - (i) not less than 10 Business Days from the date of the commencement of the Decision Period (as determined in accordance with paragraph 2.6 below) for any Discretion Matter;
  - (ii) not less than 15 Business Days from the date of the commencement of the Decision Period (as determined in accordance with paragraph 2.6 below) for any Ordinary Voting Matter; or
  - (iii) not less than 15 Business Days from the date of the commencement of the Decision Period (as determined in accordance with paragraph 2.6 below) for any Extraordinary Voting Matter **provided that**, the Decision Period for any Extraordinary Voting Matter may be extended for a further period of ten Business Days in accordance with paragraph 6.2 (*Quorum Requirement for an Extraordinary Voting Matter*) if the Quorum Requirement for the relevant Extraordinary Voting Matter has not been met within the initial Decision Period; and
- (e) provide any further information or external advice from advisers as in the OFTO's reasonable opinion is necessary for the recipient of the STID Proposal to make an informed assessment of the matters addressed in the STID Proposal.

### 2.3 Copies of the STID Proposal

- (a) The OFTO shall, concurrently with the delivery of the STID Proposal to the Security Trustee:
  - (i) provide a copy of the STID Proposal to the Bond Trustee, the Bondholders, the Hedge Counterparties and the PBCE Provider (together with the supporting documents and information provided by the OFTO in connection with the relevant STID Proposal); and
  - (ii) notify the Security Trustee, the Bond Trustee, the Bondholders, the Hedge Counterparties and the PBCE Provider of the proposing voting

category, the relevant Decision Period, whether or not the OFTO believes that the STID Proposal gives rise to an Entrenched Right and, subject to paragraph 2.6 (*Commencement of Decision Period*), the date on which such Decision Period shall commence.

- (b) In addition, the OFTO may also post the information described in the above paragraphs to a secured website and if it does, shall provide the Security Trustee, the PBCE Provider, the Bond Trustee (and the Bondholders) and the Hedge Counterparties with access to that website.

#### 2.4 Determination of voting category

- (a) The determination of the voting category made by the OFTO in respect of a STID Proposal pursuant to paragraph 2.2(b)(i) (*Minimum requirements of a STID Proposal*) shall be binding on the Secured Creditors unless the Bond Trustee on the instruction of Bondholders representing at least 10 per cent. of the aggregate amount of the outstanding Bond Liabilities, a Hedge Counterparty or (in relation to a matter designated as a Discretion Matter) the Security Trustee itself (a "**Determination Dissenting Creditor**") informs the Security Trustee and the OFTO in writing within 20 Business Days of receipt from the Security Trustee of the relevant STID Voting Request or (in respect of a Discretion Matter) the STID Proposal that the Determination Dissenting Creditors disagree with the determination of voting category made in such STID Proposal (the "**Determination Dissenting Notice**"). The Determination Dissenting Notice should also specify the voting category of the relevant STID Proposal which each Determination Dissenting Creditor proposes should apply for the relevant STID Proposal.
- (b) The determination made by the OFTO of whether a STID Proposal gives rise to an Entrenched Right in respect of a Secured Creditor shall be binding on the Secured Creditors unless the Bond Trustee on the instruction of Bondholders representing at least 10 per cent. of the aggregate amount of the outstanding Bond Liabilities or any other Secured Creditor (other than any Bondholder) (an "**Entrenched Right Dissenting Creditor**") informs the Security Trustee and the OFTO in writing within 20 Business Days of receipt of the STID Voting Request that an Entrenched Right Dissenting Creditor disagrees with the determination of whether such STID Proposal gives rise to an Entrenched Right of such Secured Creditor (the "**Entrenched Right Dissenting Notice**"). The Entrenched Right Dissenting Notice shall also specify the Affected Secured Creditor.
- (c) If the OFTO determines that a STID Proposal does not give rise to an Entrenched Right and an Entrenched Right Dissenting Notice has been issued, each Affected Secured Creditor and the OFTO shall discuss in good faith whether the STID Proposal does, in fact, relate to an Entrenched Right.

#### 2.5 Deemed Agreement following consultation

If the Security Trustee does not receive or, with respect to a matter designated as a Discretion Matter, does not itself serve, a Determination Dissenting Notice or an Entrenched Right Dissenting Notice within 20 Business Days of receipt by the

relevant Secured Creditor of the relevant STID Voting Request from the Security Trustee or (in respect of a Discretion Matter) the STID Proposal, the Security Trustee and the Secured Creditors shall be deemed to have consented to the voting category proposed in the relevant STID Proposal or, as applicable, agreed as to whether the STID Proposal gives rise to any Entrenched Right (a "**Deemed Agreement**").

## 2.6 Commencement of Decision Period

- (a) If a Deemed Agreement has occurred pursuant to paragraph 2.5 (*Deemed Agreement following consultation*), the Decision Period shall commence from the expiry of 20 Business Days from the date of issuance by the Security Trustee of the relevant STID Voting Request or (in respect of a Discretion Matter) the Security Trustee's receipt of the STID Proposal.
- (b) If a Deemed Agreement has not occurred, the Decision Period for approval of the resolution(s) set out in the STID Proposal shall commence from the date on which the Determination Dissenting Creditors or the Entrenched Right Dissenting Creditor(s) and the OFTO reach agreement on the applicable voting category or on whether such STID Proposal gives rise to an Entrenched Right of the relevant Secured Creditor(s) in accordance with the provisions of paragraph 2.4 (*Determination of voting category*).
- (c) Notwithstanding the provisions of paragraphs 2.4 (*Determination of voting category*) and 2.5 (*Deemed Agreement following consultation*) above, the Decision Period in respect of a STID Proposal relating to paragraphs 3.7 and 3.11 (*Forecasts*) of part 1 (*Information Covenants*) of schedule 2 (*Obligor Covenants*) of the Common Terms Agreement will commence on the Business Day following the Security Trustee's receipt of the STID Proposal.

## 2.7 STID Voting Request

- (a) The Security Trustee shall, following receipt of a STID Proposal (other than in relation to a Discretion Matter), promptly but no later than three Business Days thereafter send a request to the Secured Creditors (such request, a "**STID Voting Request**"), which shall:
  - (i) request a vote in writing on the STID Proposal from each relevant Secured Creditor in accordance with the STID no later than the expiry of the Decision Period for or against implementation of that STID Proposal;
  - (ii) if the STID Proposal gives rise to an Entrenched Right, request that each Affected Secured Creditor confirms whether or not it wishes to consent to the relevant STID Proposal that gives rise to the Entrenched Right by no later than the expiry of the Decision Period; and
  - (iii) notify each recipient of the STID Voting Request that:
    - (A) the determination of the OFTO on the voting category; and



- (B) the determination of the OFTO as to whether the relevant STID Proposal gives rise to an Entrenched Right and the identity of the Affected Secured Creditors,

shall be binding on them unless, in each case, other than any STID Proposal contemplated by paragraph 2.6(c) above, the Security Trustee:

- (C) is instructed by the Bond Trustee on the instruction of Bondholders representing at least 10 per cent. of the aggregate amount of the Senior Voting Debt of the Bonds or a Hedge Counterparty to deliver a Determination Dissenting Notice; or
- (D) receives from the Bond Trustee (on the instruction of Bondholders representing at least 10 per cent. of the aggregate amount of the Senior Voting Debt of the Bonds), or any other Secured Creditor (other than any Bondholder) an Entrenched Right Dissenting Notice,

within 20 Business Days of receipt of the relevant STID Voting Request.

## 2.8 Miscellaneous provisions

No physical meeting of the Bondholders shall be necessary to vote in respect of a STID Voting Request, disagree with the determination of the OFTO on the voting category or as to whether the relevant STID Proposal gives rise to an Entrenched Right or approve an Ordinary Resolution, Extraordinary Resolution or other resolution in accordance with the terms of this Deed.

## 3. DISCRETION MATTERS

### 3.1 General discretion to act in respect of Discretion Matters

- (a) The Security Trustee may (subject to paragraph 3.2 (*Limitations on general discretion*)), as requested by the OFTO by way of a STID Proposal, in its sole discretion, concur with the OFTO in respect of any Discretion Matter.
- (b) The Security Trustee shall be under no obligation to exercise its discretion in respect of any STID Proposal designated by the OFTO as a Discretion Matter and, if it chooses not to do so, the voting category selection procedures set out in paragraph 2.4 (*Determination of voting category*) shall apply so that for such purpose, the Security Trustee in its own right, may constitute a Determination Dissenting Creditor where that definition is used.

### 3.2 Limitations on general discretion

No person shall make or concur in making any amendment to the terms of, obtain any waiver of any of the requirements of, obtain any consent under, request any determination or request the exercise of any right or discretion under any Finance Document to which it is a party if such modification, consent or waiver:

- (a) is an Ordinary Voting Matter, unless and until the provisions of paragraph 5 (*Ordinary Voting Matters*) have been complied with;
- (b) is an Extraordinary Voting Matter, unless and until the provisions of paragraph 6 (*Extraordinary Voting Matters*) have been complied with; or
- (c) is an Entrenched Right, unless and until the consent of each Affected Secured Creditor has been obtained.

### **3.3 Notification to Secured Creditors**

In respect of any amendment agreed, waiver granted, consent given, determination made or right or discretion exercised by the Security Trustee pursuant to this paragraph 3 (*Discretion Matters*), the OFTO shall notify the Bond Trustee, the Bondholders, each Hedge Counterparty and the PBCE Provider in writing as soon as practicable of such modification, consent or waiver.

## **4. IMPLEMENTATION OF AMENDMENTS, MODIFICATION AND WAIVERS**

As soon as reasonably practicable, and (unless otherwise agreed between the Security Trustee and the OFTO) in any event not later than ten Business Days after the giving of its consent or its agreement to waive or modify any event, matter or thing in accordance with paragraph 3 (*Discretion Matters*) or the passing of a resolution under paragraph 5 (*Ordinary Voting Matters*) or paragraph 6 (*Extraordinary Voting Matters*) (and, where applicable, the obtaining of the approval of each Affected Secured Creditor), the Security Trustee shall, at the cost of the OFTO, execute and deliver any deeds, documents or notices as may be required to be executed and/or delivered and which are provided to the Security Trustee and which are satisfactory to the Security Trustee in order to give effect to the relevant consent, modification or waiver.

## **5. ORDINARY VOTING MATTERS**

### **5.1 Scope of Ordinary Voting Matters**

No proposed modification to be made, consent to be given or waiver to be granted, in respect of any Ordinary Voting Matters shall be effective unless and until the provisions of this paragraph 5 (*Ordinary Voting Matters*) are satisfied and the Security Trustee shall not concur with the OFTO in making any modification to, giving any consent under, or granting any waiver in respect of, any Finance Document which falls within the category of Ordinary Voting Matters unless and until the conditions set out in this paragraph 5 (*Ordinary Voting Matters*) have been duly satisfied.

### **5.2 Requisite majority**

- (a) Unless Senior Creditors representing in aggregate at least 25 per cent. of the Senior Voting Debt have responded to a STID Voting Request, before the end of the relevant Decision Period, to inform the Security Trustee that they object to the STID Proposal, the Ordinary Resolution will be passed.

- (b) As soon as the Security Trustee has received votes objecting to a STID Proposal in respect of an Ordinary Voting Matter from the Senior Creditors representing in aggregate at least 25 per cent. of the Senior Voting Debt, no further votes will be counted by the Security Trustee or taken into account notwithstanding the fact that the Security Trustee has yet to receive votes from all the Senior Creditors.

### 5.3 Notification of Ordinary Resolution

The Security Trustee shall notify each Secured Creditor of the result of the Ordinary Resolution promptly following the expiry of the Decision Period or (if earlier) following the date on which the Security Trustee has received votes sufficient to reject the Ordinary Resolution and the Security Trustee will notify the OFTO promptly upon the result of an Ordinary Resolution.

## 6. EXTRAORDINARY VOTING MATTERS

### 6.1 Scope of Extraordinary Voting Matters

No proposed modification to be made, consent to be given or waiver to be granted in respect of any Extraordinary Voting Matter shall be effective unless and until the provisions of this paragraph 6 (*Extraordinary Voting Matters*) are satisfied and the Security Trustee shall not concur with the OFTO in making any modification to, giving any consent under or granting any waiver in respect of any Finance Document which constitutes an Extraordinary Voting Matter unless and until the conditions set out in this paragraph 6 (*Extraordinary Voting Matters*) have been duly satisfied.

### 6.2 Quorum Requirement for an Extraordinary Voting Matter

The quorum requirement in respect of an Extraordinary Voting Matter shall initially be one or more Senior Creditors representing, in aggregate, at least 20 per cent. of the Senior Voting Debt provided that, if the quorum requirement has not been met on or before the Business Day immediately preceding the last day of the Decision Period, the quorum requirement shall be reduced to one or more Senior Creditors representing, in aggregate, ten per cent. of the Senior Voting Debt, and the Decision Period shall be extended for a period of a further ten Business Days from the expiry of the initial Decision Period.

### 6.3 Requisite majority in respect of an Extraordinary Voting Matter

- (a) If the Quorum Requirement for an Extraordinary Voting Matter is satisfied, the majority required to pass a resolution in respect of an Extraordinary Voting Matter (an "**Extraordinary Resolution**") shall be Senior Creditors representing, in aggregate, at least 66.67 per cent. of the Senior Voting Debt that votes during the Decision Period.
- (b) As soon as the Security Trustee has received votes in favour of a STID Proposal in respect of an Extraordinary Voting Matter from Senior Creditors representing, in aggregate, at least 66.67 per cent. of Senior Voting Debt no further votes will be counted by the Security Trustee or taken into account

notwithstanding the fact that the Security Trustee has yet to receive votes from all Senior Creditors.

#### **6.4 Notification of Extraordinary Resolution**

The Security Trustee shall notify each Secured Creditor of the result of the Extraordinary Resolution promptly following the expiry of the Decision Period or (if earlier) following the date on which the Security Trustee has received votes sufficient to pass or, as the case may be, defeat the Extraordinary Resolution and the Security Trustee will notify the OFTO promptly upon receipt of such sufficient votes and/or the result of the Extraordinary Resolution.

**EXECUTION PAGES**

**The Bond Trustee**

**EXECUTED** as a **DEED** by \_\_\_\_\_  
as attorney for/director of **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

Leticia Wilson  
Director

in the presence of:

Signature of witness

GEREME MACDONALD

Name of witness

Address of witness

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Attention: CTLA Trustee Services Administration  
Email: ctla.trustee.admin@hsbc.com

**The Hedge Counterparties**

**EXECUTED** as a **DEED** by

GRAINNE DONNELLY

as attorney for

**ABBEY NATIONAL TREASURY  
SERVICES PLC**

in the presence of:

)  
) *Grainne Donnelly*  
)  
)

.....  
*[Signature]*  
.....

Signature of witness

...DEVDEEP GHOSH.....

Name of witness

**ALLEN & OVERY LLP  
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www.allenoverly.com**  
.....

Address of witness

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Facsimile: +44 (0)8456 042836  
Attention: Head of Operations  
Email: ISDA-Notices@santandergbm.com

**EXECUTED as a DEED by**

\_\_\_\_\_  
as attorney for  
**LLOYDS BANK PLC**  
in the presence of:

)  
)  
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)

.....

*Lucy Williams*.....

Signature of witness

*Lucy WILLIAMS*.....

Name of witness

**ALLEN & OVERY LLP**  
**ONE BISHOPS SQUARE**  
**LONDON E1 6AD**  
**www.allenoverly.com**.....

Address of witness

Address: Lloyds Bank plc, Faryners House, 25 Monument Street, London, EC3R 8BQ.  
Facsimile: 020 7 158 3298  
Telephone: 020 7 158 6170  
Attention: Commercial Banking  
Email: [notices@lloydsbanking.com](mailto:notices@lloydsbanking.com)

With a copy to :

Address: Lloyds Bank plc, 10 Gresham Street, London, EC2V 7AE.  
Attention: Head of Legal, Commercial Banking Legal – Markets

EXECUTED as a DEED by )  
MICHAEL SHARP )  
as attorney for )  
ROYAL BANK OF CANADA )  
in the presence of:



.....

  
.....

Signature of witness

...DEVDEEP... GHOSH.....

Name of witness

ALLEN & OVERY LLP  
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Address of witness

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Email: [mike.sharp@rbccm.com](mailto:mike.sharp@rbccm.com); [davina.canterbury@rbccm.com](mailto:davina.canterbury@rbccm.com)



**The PBCE Provider**

**EXECUTED as a DEED  
by EUROPEAN INVESTMENT BANK**

By: *Maria Teresa Masrad*



By: *Levente Horath-Gillemot*



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Attention: OpsA/NPST/1-NPPD-TENsINFRA and TMR/-/PFP

**The Topco**

**EXECUTED as a DEED by  
WODS TRANSMISSION  
TOPCO LIMITED**

)  
)  
) 

..... Signature of Director

**JAVIER FALEAS**..... Name of Director

in the presence of:

  
.....

Signature of witness

**SONATHAN DOWN**.....

Name of witness

.....

Address of witness

.....**ALLEN & OVERY LLP**.....  
**ONE BISHOPS SQUARE**  
**LONDON E1 6AD**  
.....

Address: The American Barns Banbury Road Lighthorne Warwickshire CV35 0AE  
Facsimile: 01926 350061  
Attention: Iain Cameron  
Email: Iain.Cameron@frontierpower.biz

**The HoldCo**

**EXECUTED as a DEED by  
WODS TRANSMISSION  
HOLDCO LTD**

)  
)  
) 

..... Signature of Director

JAVIER FALEAS..... Name of Director

in the presence of:

  
.....

Signature of witness

Jonathan Down  
.....

Name of witness

.....

Address of witness

..... **ALLEN & OVERY LLP** .....  
**ONE BISHOPS SQUARE**  
..... **LONDON E1 6AD** .....

Address: The American Barns Banbury Road Lighthorne Warwickshire CV35 0AE  
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Attention: Iain Cameron  
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**The OFTO**

**EXECUTED as a DEED by  
WODS TRANSMISSION PLC**

)   
) ..... Signature of Director

JAVIER FALOUTS..... Name of Director

in the presence of:

  
..... Signature of witness

JONATHAN DOWN  
..... Name of witness


..... Address of witness

**ALLEN & OVERY LLP**  
... ONE BISHOPS SQUARE .....  
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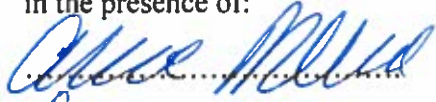
The Security Trustee

Leticia V.  
Direct



EXECUTED as a DEED by \_\_\_\_\_  
as ~~attorney~~ for/director of **HSBC CORPORATE  
TRUSTEE COMPANY (UK) LIMITED**

in the presence of:



Signature of witness

GRAEME MACDONALD

Name of witness


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Address of witness



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Attention: CTLA Trustee Services Administration  
Email: ctla.trustee.admin@hsbc.com

**The Account Bank**

**EXECUTED as a DEED by  
HSBC BANK PLC**

)  
)   
..... Signature of Authorised Signatory  
Jenny Pennell  
Authorised Signatory.. Name of Authorised Signatory

in the presence of:


  
..... Signature of witness  
  
..... Name of witness  
Address of witness

**ALLEN & OVERY LLP  
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Attention: Senior Manager, CT Client Services, Corporate Trust and Loan Agency  
Email: ctla.accountbank@hsbc.com

**The Principal Paying Agent**

**EXECUTED as a DEED by  
HSBC BANK PLC**

)  
)   
..... Signature of Authorised Signatory  
Jenny Pennell  
Authorised Signatory Name of Authorised Signatory

in the presence of:

  
..... Signature of witness  
  
..... Name of witness  
Address of witness

**ALLEN & OVERY LLP  
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