

Annex 2 to Appendix 13

1. PART 29:
2. REFINANCING

This Part 29 of the Schedule shall apply in respect of any Refinancing.

1. Project Co shall obtain the Board's prior written consent to any Qualifying Refinancing and both the Board and Project Co shall at all times act in good faith with respect to any Refinancing.
2. The Board shall be entitled to receive a 50% share of any Refinancing Gain arising from a Qualifying Refinancing.
3. The Board shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater than 50% share of the Refinancing Gain.
4. Project Co shall promptly provide the Board with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. The Board shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with the Refinancing whether that Refinancing is a Qualifying Refinancing or not).
5. The Board shall have the right to elect to receive its share of any Refinancing Gain as:
 - 5.1 a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing;
 - 5.2 a reduction in the Service Payments over the remaining term of this Agreement; or
 - 5.3 a combination of any of the above.
6. The Board and Project Co will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of the Board's share of the Refinancing Gain (taking into account how the Board has elected to receive its share of the Refinancing Gain under paragraph 0 above). If the parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of the Board's share, the dispute shall be determined in accordance with Part 26 of the Schedule (*Dispute Resolution Procedure*).
7. The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Board will be paid to the Board by Project Co within 28 days of any Qualifying Refinancing.

Definitions

In this Part 29:

Distribution means:

- (a) whether in cash or in kind, any:
 - (i) dividend or other distribution in respect of share capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
 - (iii) payments under the Subordinated Funding Agreements (whether of principal, interest, breakage costs or otherwise);
 - (iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms;
 - (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms, or
- (b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain.

EEA means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

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

Exempt Refinancing means:

- (a) any Refinancing that was fully taken into account in the calculation of the Service Payments;
- (b) a change in taxation or change in accounting treatment;
- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters and which are in respect of:
 - (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Funding Agreements as at Financial Close;
 - (iii) late or non-provision of information, consents or licences;

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- (iv) amendments to Sub-Contracts;
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Funding Agreements);
 - (vi) restrictions imposed by the Senior Funders on the dates at which the [Senior Debt] can be advanced to Project Co under the Senior Funding Agreements and/or amounts released from the [Escrow Account] during the [Initial Availability Period], each as defined in the Senior Funding Agreements, and which are given as a result of any failure by Project Co to ensure that the construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Funders to the Authority Board to being given;
 - (vii) changes to milestones for drawdown and/or amounts released from the [Escrow Account] during the [Initial Availability Period] set out in the Senior Funding Agreements and which are given as a result of any failure by Project Co to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by Project Co or the Senior Funders to the Board prior to being given;
 - (vii) failure by Project Co to obtain any consent by statutory bodies required by the Senior Funding Agreements; or
 - (ix) voting by the Senior Funders and the voting arrangements between the Senior Funders in respect of the levels of approval required by them under the Senior Funding Agreements;
- (d) any amendment, variation or supplement of any agreement (other than any [Subordinated Funding Agreement]) approved by the Board as part of any Qualifying Variation under this Agreement;
 - (e) any sale of shares in Project Co by the shareholders or securitisation of the existing rights and/or interests attaching to shares in Project Co;
 - (f) any sale or transfer of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements or securitisation of the Subordinated Funders' existing rights and/or interests under the Subordinated Funding Agreements; or
 - (g) any Qualifying Bank Transaction.

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

Net Present Value means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

Pre-Refinancing Equity IRR means the nominal post-tax Equity IRR calculated immediately prior to the Refinancing;

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

Qualifying Bank means a bank that is authorised by the Bank of England to accept deposits in the United Kingdom;

Qualifying Bank Transaction means:

- (a) the syndication by a Senior Funder, in the ordinary course of its business, of any of its rights or interests in the Senior Funding Agreements;
- (b) the grant by a Senior Funder of any rights of participation, or the disposition by a Senior Funder of any of its rights or interests (other than as specified in paragraph (a) above), in respect of the Senior **Funding** Agreements in favour of:
 - (i) any other Senior Funder; or
 - (ii) any institution which is recognised or permitted under the law of any member state of the EEA to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state; or
 - (iii) a local authority or public authority; or
 - (iv) a trustee of a charitable trust which has (or has had at any time during the previous two years) assets of at least £10 million (or its equivalent in any other currency at the relevant time); or
 - (v) a trustee of an occupational pension scheme or stakeholder pension scheme where the trust has (or has had at any time during the previous two years) at least 50 members and assets under management of at least £10 million (or its equivalent in any other currency at the relevant time);
 - (vi) an EEA or Swiss Insurance Undertaking; or
 - (vii) a Regulated Collective Investment Scheme; or
 - (viii) any Qualifying Institution; or
 - (ix) any other institution in respect of which the prior written consent of the Board has been given; or
- (c) the grant by a Senior Funder of any other form of benefit or interest in either the Senior Funding Agreements or the revenues or assets of Project Co, whether by way of security or otherwise in favour of:
 - (i) any other Senior Funder; or
 - (ii) any institution specified in paragraphs (b)(ii) to (vii) above; or
 - (iii) any Qualifying Institution; or

- (iv) any other institution in respect of which the prior written consent of the Authority has been given;

Qualifying Institution means [];

Qualifying Refinancing means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

Refinancing means:

- (a) any amendment, variation, novation, supplement or replacement of any Funders' Agreement (other than any Subordinated Funding Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Funders' Agreement (other than any Subordinated Funding Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Funders' Agreements (other than the Subordinated Funding Agreements) or the creation or granting of any other form of benefit or interest in either the Funders' Agreements (other than the Subordinated Funding Agreements) or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
- (d) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of (a)-(c) above or which has the effect of limiting Project Co's ability to carry out any of (a)–(c) above;

Refinancing Gain means an amount equal to the greater of zero and $[(A - B) - C]$, where:

- A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing;
- B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Financial Model as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Agreement following the Refinancing; and
- C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

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Regulated Collective Investment Scheme has the meaning given in the rules from time to time of the Financial Services Authority;

Relevant Person means a Shareholder and any of its Associated Companies;

Shareholder means any person from time to time holding share capital in Project Co or [Hold Co].

Subordinated Funder means a person providing finance under a Subordinated Funding Agreement;

Subordinated Funding Agreements means [[] as at the date of this Agreement; and

Threshold Equity IRR means []%,

and, unless otherwise indicated, terms defined in Part 23 of the Schedule shall have the same meanings in this Part 29 of the Schedule.