

M

COMPANIES FORM No. 466(Scot)

466

Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

CHFP025

Please do not write in this margin

A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge.

Pursuant to section 410 and 466 of the Companies Act 1985

To the Registrar of Companies
(Address overleaf - Note 6)

For official use

Company number

1113

SC462876

Please complete legibly, preferably in black type, or bold block lettering

Name of company

* Hub North Scotland (Alford) Limited (the "Company")

* insert full name of Company

Date of creation of the charge (note 1)

02 June 2014

Description of the instrument creating or evidencing the charge or of any ancillary document which has been altered (note 1)

Bond and Floating Charge

Names of the persons entitled to charge

Aviva Public Private Finance Limited

Short particulars of all the property charged

the whole of the property, assets and undertaking (including uncalled capital) from time to time of the Company

Presenter's name address and reference (if any):

MacLay Murray & Spens LLP
Quartermile One, 15
Lauriston Place, Edinburgh,
EH3 9EP, United Kingdom

ED137

For official use (06/2005)
Charges Section

Post room

THURSDAY



SCT

S39WT9PM

12/06/2014

#254

COMPANIES HOUSE

Names, and addresses of the persons who have executed the instrument of alteration (note 2)

Please see Part 1 of the paper apart accompanying this form M466.

*Please do not
write in
this margin*

*Please complete
legibly, preferably
in black type, or
bold block lettering*

Date(s) of execution of the instrument of alteration

02 June 2014

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

Please see Part 2 of the paper apart accompanying this form M466.

Short particulars of any property released from the floating charge

Not applicable.

The amount, if any, by which the amount secured by the floating charge has been increased

Not applicable.

*Please do not
write in
this margin*

A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

*Please complete
legibly, preferably
in black type or
bold block lettering*

Please see part 2 of the paper apart accompanying this form M466.

Continuation of the statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

Please do not
write in
this margin

Please complete
legibly, preferably
in black type, or
bold block lettering

Signed  For Maclay Murray & Spens LLP Date 12/06/14

On behalf of ~~XXXXXX~~ [chargee] †

A fee is payable to
Companies House
in respect of each
register entry for a
mortgage or
charge.
(See Note 5)

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc, as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act.
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.
6. The address of the Registrar of Companies is: Companies House, 139 Fountainbridge, Edinburgh, EH3 9FF DX 235 Edinburgh or LP - 4 Edinburgh 2

† delete as
appropriate

Paper Apart to Form M466

Part 1

The instrument of alteration has been executed by the following persons:

1. Hub North Scotland (Alford) Limited having its registered office at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE;
2. Hub North Scotland Limited having its registered office at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE ("HoldCo");
3. Scottish Futures Trust Investments Limited, having its registered office at 1st Floor, 11-15 Thistle Street, Edinburgh EH2 1DF ("SFIT");
4. Miller (North Hub) Investments Limited having its registered office at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH ("Miller");
5. Swett Equitix Limited having its registered office at Welken House, 10-11 Charterhouse Square, London, EC1M 6EH ("Sel") (SFIT, Miller and Sel being known together as the "Sponsors");
6. Aviva Public Private Finance Limited (in various capacities) having its registered office at 2 Rougier Street, York, YO90 1UU ("Original Lender"); and
7. Aviva Public Private Finance Limited (in various capacities) having its registered office at 2 Rougier Street, York, YO90 1UU ("Security Trustee").

Part 2

[Clause 5 of the instrument of alteration]

Prior to the Senior Debt Discharge Date, except to the extent permitted by Clause 8.1 (*Permitted Payments*) or Clause 10.3 (*Filing of Claims*) or if the Lender has consented in writing, the Company will not:

create or permit to subsist any Security over any of its assets for the Subordinated Debt

Part 3

[Clauses 3, 6, 10 & 11 of the instrument of alteration]

1. PURPOSE

The principal purpose of the instrument of alteration is to ensure that the Senior Debt and the Subordinated Debt shall rank in right and priority of payment in the following order:

First the Senior Debt; and

Second the Subordinated Debt.

2. Until the Senior Debt Discharge Date and except as permitted by Clause 8.1 (*Permitted Payments*) or Clause 10.3 (*Filing of Claims*), or as otherwise provided for in the Facilities Agreement, or as the Lender has previously consented in writing, the Subordinated Creditors undertake to the Senior Creditors that they will not:

permit to subsist or receive any Security or any guarantee, financial support or assurance against financial loss for, or in respect of, any of the Subordinated Debt or the Borrower Shares.

3. Whilst any of the circumstances mentioned in Clause 10.1 (*Subordination Events*) subsist, the Subordinated Debt will be subordinated in right of payment to the Senior Debt until the Senior Debt Discharge Date.
4. All existing and future security conferred by the Security Documents will:
- 4.1 secure all Senior Debt in all respects prior to existing and future security conferred by any other security document regardless of order of registration, recording, notice, execution or otherwise; and
- 4.2 secure the Senior Debt regardless of the date upon which the Senior Debt arises, regardless of whether a Senior Creditor is obliged to advance moneys included in Senior Debt and regardless of any fluctuations in the amount of Senior Debt outstanding or any intermediate discharge of the Senior Debt in whole or in part.

Part 4 - Definitions

The following definitions apply for purposes of this paper apart and form M466. Capitalised terms not herein defined have the meaning ascribed to them in the Facilities Agreement.

“Additional Debt”

means in relation to any obligation or liability:

- (a) any refinancing, novation, deferral or extension of any of those liabilities plus all related interest, fees and costs;
- (b) any further advance made under any agreement supplemental to the documents relating to the relevant obligation or liability plus all related interest, fees and costs;
- (c) any amount payable or owing in respect of damages or restitution in the event of rescission of any of those liabilities or otherwise in connection with the documents relating to the relevant obligation or liability plus all related interest, fees and costs;
- (d) any amount payable or owing by the Company flowing from any recovery by the Company of a payment or

discharge in respect of those liabilities on grounds of preference or otherwise; and

- (e) any amounts (such as post-insolvency interest) which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

| | |
|-------------------------------------|--|
| "Borrower Shares" | means, at any time, all the shares in the capital of the Company in issue at such time. |
| "Facilities Agreement" | means the Facilities Agreement dated on or about the date of the instrument of alteration among the Company, HoldCo, the Original Lender and the Security Trustee. |
| "Party" | means a party to the instrument of alteration. |
| "Senior Creditors" | means the Finance Parties, as defined in the Facilities Agreement and "Senior Creditor" means any of them. |
| "Senior Debt" | means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally, as principal or surety or in any other capacity whatsoever) of the Company and/or HoldCo to the Finance Parties (or any of them) under each of the Finance Documents (and whether originally owing to that Finance Party or purchased or acquired by that Finance Party) together with any Additional Debt in relation thereto. |
| "Senior Debt Discharge Date" | means the date on which all of the Senior Debt has been fully and irrevocably paid and discharged to the satisfaction of the Lender and all Commitments of the Lender have been cancelled. |
| "Subordinated Creditors" | means the Sponsors and HoldCo. |

“Subordinated Debt”

means all present and future obligations and liabilities (and including any liabilities owed, or which may become owed by the operation of subrogation), whether actual or contingent, whether owed jointly or severally, as principal or surety or in any other capacity whatsoever, of the Company to the Subordinated Creditors (or any of them) under each of the Subordinated Finance Documents (and whether originally owing to that Subordinated Creditor or purchased or acquired by that Subordinated Creditor), together with any Additional Debt in relation thereto.

“Subordinated Finance Documents”

means:

- (a) the Borrower Loan Note Instrument;
- (b) the Subscription Agreement; and
- (c) any other present or future documents or agreements designated a Subordinated Finance Document by the Lender and the Company from time to time.



FILE COPY

**CERTIFICATE OF THE REGISTRATION
OF AN ALTERATION TO A FLOATING CHARGE**

COMPANY NO. 462876
CHARGE CODE SC46 2876 0003

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 2 JUNE 2014 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985
ON 12 JUNE 2014

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 2
JUNE 2014

BY HUB NORTH SCOTLAND (ALFORD) LIMITED

IN FAVOUR OF
AVIVA PUBLIC PRIVATE FINANCE LIMITED AS SECURITY
TRUSTEE FOR EACH OF THE FINANCE PARTIES (AS DEFINED
IN THE INSTRUMENT EVIDENCING THE CHARGE
ACCOMPANYING THIS FORM MR01)

GIVEN AT COMPANIES HOUSE, EDINBURGH 17 JUNE 2014



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

Certified a true copy


MacLay Murray & Spens LLP

INTERCREDITOR DEED

Dated **02 JUNE** 2014

among

HUB NORTH SCOTLAND (ALFORD) LIMITED
as the Borrower

HUB NORTH SCOTLAND LIMITED
as HoldCo and as a Subordinated Creditor

SCOTTISH FUTURES TRUST INVESTMENTS LIMITED,
MILLER (NORTH HUB) INVESTMENTS LIMITED and
SWEETT EQUITIX LIMITED
as Subordinated Creditors

AVIVA PUBLIC PRIVATE FINANCE LIMITED
as a Lender and Security Trustee

re: Alford Community Campus DBFM Project

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THIS DEED is made on

2014

among

- (1) **HUB NORTH SCOTLAND (ALFORD) LIMITED** a company incorporated under the laws of Scotland (registered number SC462876) and having its registered office at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE (the "**Borrower**");
- (2) **HUB NORTH SCOTLAND LIMITED** a company incorporated under the laws of Scotland (registered number SC390666) and having its registered office at Summerfield House, 2 Eday Road, Aberdeen, AB15 6RE ("**HoldCo**");
- (3) **SCOTTISH FUTURES TRUST INVESTMENTS LIMITED** a company incorporated under the laws of Scotland (registered number SC381388) and having its registered office at 1st Floor, 11-15 Thistle Street, Edinburgh EH2 1DF ("**SFIT**"), **MILLER (NORTH HUB) INVESTMENTS LIMITED** a company incorporated under the laws of Scotland (registered number SC390849) and having its registered office at Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH ("**Miller**") and **SWEETT EQUITIX LIMITED** a company incorporated under the laws of England and Wales (registered number 08804127) and having its registered office at Welken House, 10-11 Charterhouse Square, London, EC1M 6EH ("**SEL**") (together the "**Sponsors**");
- (5) **AVIVA PUBLIC PRIVATE FINANCE LIMITED** as Original Lender; and
- (6) **AVIVA PUBLIC PRIVATE FINANCE LIMITED** as security trustee for each of the Finance Parties (the "**Security Trustee**").

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Deed:

"Accelerated Injection Event" means the occurrence of any of the following events:

- (a) an Event of Default; or
- (b) in relation to any Sponsor it fails to observe or perform

any of its obligations when due under Clause 7
(*Subscription*).

“Additional Debt”

means in relation to any obligation or liability:

- (a) any refinancing, novation, deferral or extension of any of those liabilities plus all related interest, fees and costs;
- (b) any further advance made under any agreement supplemental to the documents relating to the relevant obligation or liability plus all related interest, fees and costs;
- (c) any amount payable or owing in respect of damages or restitution in the event of rescission of any of those liabilities or otherwise in connection with the documents relating to the relevant obligation or liability plus all related interest, fees and costs;
- (d) any amount payable or owing by the Borrower flowing from any recovery by the Borrower of a payment or discharge in respect of those liabilities on grounds of preference or otherwise; and
- (e) any amounts (such as post-insolvency interest) which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings.

“Borrower Shares”

means, at any time, all the shares in the capital of the Borrower in issue at such time.

“Deed of Accession”

means a deed of accession substantially in the form of Schedule 1
(*Form of Accession Agreement*).

“Enforcement Action”

means:

- (a) the acceleration of any Subordinated Debt or any declaration that any Subordinated Debt is prematurely due and payable or payable on demand;
- (b) the making of any demand against the Borrower in relation to any guarantee, indemnity or other assurance against loss in respect of any of the Subordinated Debt or exercising any right to require the Borrower to acquire any of the Subordinated Debt (including exercising any put or call option against the Borrower for the redemption or purchase of any of the Subordinated Debt);
- (c) the suing for, commencing or joining of any legal or arbitration proceedings against the Borrower to recover any of the Subordinated Debt;
- (d) the entering into of any composition, assignment or arrangement with the Borrower in respect of the Subordinated Debt; or
- (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any Insolvency Representative) in relation to, the winding up, dissolution, administration or reorganisation of the Borrower or any suspension of payments or moratorium of any indebtedness of the Borrower, or any analogous procedure or step in any jurisdiction.

“Enforcement Event” means:

- (a) an Event of Default has occurred; and
- (b) the Lender has given notice in accordance with clause 23.3 (*Remedies*) of the Facilities Agreement.

“Facilities Agreement” means the Facilities Agreement dated on or about the date of this Deed among the Borrower, HoldCo, the Original Lender and the Security Trustee.

| | |
|-------------------------------------|---|
| "Insolvency Event" | means, in relation to the Borrower, the occurrence of any of the events or circumstances referred to in clauses 23.1.5 (<i>Insolvency</i>) or 23.1.6 (<i>Insolvency Proceedings</i>) of the Facilities Agreement. |
| "Insolvency Representative" | means any liquidator, administrator, receiver, receiver and manager, administrative receiver, custodian, trustee or similar official. |
| "Party" | means a party to this Deed. |
| "Recovery" | means all amounts received or recovered by a Senior Creditor in respect of any sum owed by the Borrower to it whether directly or by the enforcement of the Security Documents or by set off or by any other means but after deducting: <ul style="list-style-type: none"> (a) the reasonable costs and expenses incurred by the Senior Creditors in effecting such receipt or recovery; and (b) any sums required by law or court order to be paid to third parties on account of claims preferred by law over the claims of the Senior Creditors. |
| "Senior Creditors" | means the Finance Parties, as defined in the Facilities Agreement and "Senior Creditor" means any of them. |
| "Senior Debt" | means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally, as principal or surety or in any other capacity whatsoever) of the Borrower and/or HoldCo to the Finance Parties (or any of them) under each of the Finance Documents (and whether originally owing to that Finance Party or purchased or acquired by that Finance Party) together with any Additional Debt in relation thereto. |
| "Senior Debt Discharge Date" | means the date on which all of the Senior Debt has been fully and irrevocably paid and discharged to the satisfaction of the Lender and all Commitments of the Lender have been cancelled. |

| | |
|---|---|
| "Senior Finance Documents" | means, for the purposes of this Deed, the Finance Documents as defined in the Facilities Agreement. |
| "Subordinated Creditors" | means the Sponsors and HoldCo. |
| "Subordinated Debt" | means all present and future obligations and liabilities (and including any liabilities owed, or which may become owed by the operation of subrogation), whether actual or contingent, whether owed jointly or severally, as principal or surety or in any other capacity whatsoever, of the Borrower to the Subordinated Creditors (or any of them) under each of the Subordinated Finance Documents (and whether originally owing to that Subordinated Creditor or purchased or acquired by that Subordinated Creditor), together with any Additional Debt in relation thereto. |
| "Subordinated Finance Documents" | means: <ul style="list-style-type: none"> (a) the Borrower Loan Note Instrument; (b) the Subscription Agreement; and (c) any other present or future documents or agreements designated a Subordinated Finance Document by the Lender and the Borrower from time to time. |

1.2 Interpretation

Save as expressly defined herein, capitalised terms defined in the Facilities Agreement shall have the same meanings where used in this Deed.

1.3 Construction

1.3.1 Clause 1.4 (*Construction*) of the Facilities Agreement shall apply *mutatis mutandis* to this Deed as if it were set out in full herein with each reference to the Facilities Agreement being deemed to be a reference to this Deed.

1.3.2 References to the Borrower, HoldCo, the Senior Creditors and the Subordinated Creditors or any of them shall be construed so as to include their successors in title, permitted assigns or assignees and permitted transferees.

1.3.3 If there is any conflict between the terms of this Deed and any Relevant Document, this Deed shall prevail.

1.4 Effect as a Deed

This Deed is intended to take effect as a Deed notwithstanding the fact that any Party may only execute this Deed under hand.

2. SEVERABILITY OF OBLIGATIONS

2.1 The liability of each Senior Creditor and each Subordinated Creditor is limited as set out in this Deed and is several.

2.2 No Senior Creditor or Subordinated Creditor is liable for the obligations of any other Senior Creditor or Subordinated Creditor, except as set out in this Deed.

2.3 Failure of a Senior Creditor or a Subordinated Creditor to carry out its obligations under this Deed will not relieve any other Senior Creditor or Subordinated Creditor of its obligations under this Deed.

3. PURPOSES

3.1 The principal purpose of this Deed is to ensure that the Senior Debt and the Subordinated Debt shall rank in right and priority of payment in the following order:

First the Senior Debt; and

Second the Subordinated Debt.

3.2 A further purpose of this Deed is to regulate the exercise and enforcement of rights under the Senior Finance Documents and the Subordinated Finance Documents.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and warranties

Each of the Subordinated Creditors (other than HoldCo) makes the representations and warranties as to itself set out in this Clause 4 to each of the Senior Creditors.

4.2 Status

4.2.1 It is a limited liability company duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

4.2.2 It has the power to own its assets and carry on its business as it is being conducted.

4.3 Powers and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Deed and the Subordinated Finance Documents to which it is a party and the transactions contemplated by those documents.

4.4 Binding obligations

Subject to the Legal Reservations, this Deed and the Subordinated Finance Documents are its legal, valid, binding and enforceable obligations.

4.5 Non-conflict

The entry into and performance by it of, and the transactions contemplated by, this Deed and the Subordinated Finance Documents do not and will not conflict with:

4.5.1 any law or regulation applicable to it;

4.5.2 its constitutional documents; or

4.5.3 any agreement or instrument which is binding upon it or any of its assets.

4.6 Validity and admissibility in evidence

All Authorisations required or desirable:

4.6.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed and the Subordinated Finance Documents to which it is a party; and

4.6.2 to make this Deed and the Subordinated Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

4.7 Governing law and enforcement

4.7.1 The choice of English law or, as the case may be, Scots law as the governing law of this Deed and the Subordinated Finance Documents will be recognised and enforced in its jurisdiction of incorporation.

4.7.2 Any judgment obtained in England in relation to this Deed and any other Subordinated Finance Document governed by English law or Scotland in relation to any other Subordinated Finance Document will be recognised and enforced in its jurisdiction of incorporation.

4.8 Financial Statements

4.8.1 Its Original Financial Statements fairly represent its financial condition and operations (and, if applicable, its consolidated financial condition and operations) during the relevant year.

4.8.2 There has been no material adverse change in its business or financial condition (or, if applicable, the business and consolidated financial condition of it and its Subsidiaries) since the date to which the Original Financial Statements were made up.

4.9 Insolvency

No Insolvency Event has occurred in relation to it or any of its Subsidiaries.

4.10 No proceedings

No litigation, arbitration or administration proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have been started or (to the best of its knowledge and belief) threatened against it or any of its Subsidiaries.

4.11 Times for making Representations and Warranties

The representations and warranties set out in this Clause 4 are made on the date of this Deed.

5. **UNDERTAKINGS OF THE BORROWER**

Prior to the Senior Debt Discharge Date, except to the extent permitted by Clause 8.1 (*Permitted Payments*) or Clause 10.3 (*Filing of Claims*) or if the Lender has consented in writing, the Borrower will not:

- 5.1 pay, prepay or repay any of the Subordinated Debt in cash or in kind;
- 5.2 make any distribution in respect of the Subordinated Debt or the Borrower Shares;
- 5.3 discharge any of the Subordinated Debt by set-off or any right of combination of accounts or otherwise;
- 5.4 create or permit to subsist any Security over any of its assets for the Subordinated Debt;
- 5.5 purchase or acquire any Subordinated Debt or Borrower Shares or give any financial support to enable any persons to do any of the things referred to in this Clause 5 (*Undertakings of the Borrower*);
- 5.6 amend, vary, waive or release any term of the Subordinated Finance Documents (other than as permitted by the Facilities Agreement); or
- 5.7 take or omit any action whereby the ranking and/or subordination contemplated by this Deed may be impaired.

6. **UNDERTAKINGS OF THE SUBORDINATED CREDITORS**

6.1 **Duration**

The undertakings in this Clause 6 (*Undertakings of the Subordinated Creditors*) shall remain in force from the date of this Deed until the Senior Debt Discharge Date.

6.2 **Notice and acknowledgement**

The Subordinated Creditors confirm that they have consented to the creation of, and by execution of this Deed they have received notice of, the Security granted by the Borrower and HoldCo in favour of the Security Trustee pursuant to the Security Documents over and in respect of the present and future rights, title, benefit and interest in and to all of the Relevant Documents to which the Subordinated Creditors are a party and hereby acknowledge receipt of that notice. In respect of each

Relevant Document to which they are a party the Subordinated Creditors further agree that:

- 6.2.1 notwithstanding any Security over the Relevant Documents they will remain liable under the Relevant Document to perform all the obligations assumed by them under the Relevant Documents;
- 6.2.2 none of the Senior Creditors or the Security Trustee, their agents, any receiver or any other person will at any time be under any obligation or liability to the Subordinated Creditors under or in respect of the Relevant Documents; and
- 6.2.3 from the time it receives notice from the Security Trustee stating that the Security over the Relevant Documents has become enforceable, all the rights, powers and discretions of the Borrower under the Relevant Documents will be exercisable by, and notices must be given to, either the Security Trustee or as the Security Trustee directs.

6.3 **Negative Undertakings of the Subordinated Creditors**

Until the Senior Debt Discharge Date and except as permitted by Clause 8.1 (*Permitted Payments*) or Clause 10.3 (*Filing of Claims*), or as otherwise provided for in the Facilities Agreement, or as the Lender has previously consented in writing, the Subordinated Creditors undertake to the Senior Creditors that they will not:

- 6.3.1 take any Enforcement Action;
- 6.3.2 demand or receive payment, prepayment or repayment of, or any distribution in respect of (or on account of), any of the Subordinated Debt or the Borrower Shares in cash or in kind or apply any money or property in discharge of any of the Subordinated Debt;
- 6.3.3 discharge any of the Subordinated Debt by set-off, any right of combination of accounts or otherwise;
- 6.3.4 permit to subsist or receive any Security or any guarantee, financial support or assurance against financial loss for, or in respect of, any of the Subordinated Debt or the Borrower Shares;

- 6.3.5 exercise its rights as subordinated creditor in any manner that would cause it or the Borrower to be in breach of its obligations under the Relevant Documents;
- 6.3.6 take or omit to take any action whereby the ranking and/or subordination of the Subordinated Debt contemplated by this Deed may be impaired;
- 6.3.7 amend, vary, waive or release any term of the Subordinated Finance Documents or terminate any of the Subordinated Finance Documents; or
- 6.3.8 create or attempt to create or permit to subsist any Security over any Borrower Shares save for Permitted Security.

7. SUBSCRIPTION

7.1 Share Capital

- 7.1.1 The Borrower and the Sponsors each represents and warrants to each of the Senior Creditors that, as at the date of this Deed the issued share capital of the Borrower is one thousand pounds Sterling divided into 1000 fully paid ordinary shares of £1 each, all of which are legally and beneficially owned by HoldCo (which is the registered holder thereof) free from any Security other than Permitted Security.

8. PERMITTED PAYMENTS AND SUSPENSION OF PERMITTED PAYMENTS

8.1 Permitted Payments

Subject to clause 22.7 (*Restrictions on Distributions*) of the Facilities Agreement, Clause 8.2 (*Suspension*), Clause 9 (*Turnover*) and Clause 10 (*Subordination on Insolvency*) of this Deed the Borrower may pay to the Subordinated Creditors or to such persons as they may direct, and the Subordinated Creditors may receive and retain payment in cash of any sums so paid by the Borrower to them in cash or accept additional Loan Notes from the Borrower in settlement of any interest due:

- 8.1.1 any interest which is due and payable in respect of Subordinated Debt;
- 8.1.2 any scheduled repayment of capital which is due and payable in accordance with the "Repayment Schedule" annexed to the Borrower Loan Note Instrument as at the date of this Deed, no further payment of

capital in respect of Subordinated Debt being permitted without the prior written consent of the Lender; and

8.1.3 any dividend on the Borrower Shares.

8.2 **Suspension**

Subject to Clause 10 (*Subordination on Insolvency*), the Borrower may not make any payments permitted by Clause 8.1 (*Permitted Payments*), or, any withdrawal whatsoever from any Project Accounts (save for the Joint Insurance Account and the Insurance Proceeds Account), if an Event of Default has occurred and is continuing or if an Event of Default would result from that withdrawal, until the earlier of:

8.2.1 the date on which the Event of Default has been remedied (if capable of remedy) in accordance with the Senior Finance Documents or waived by the Lender;

8.2.2 the Senior Debt Discharge Date; or

8.2.3 the date on which the Lender otherwise agrees that payments or withdrawals can be made.

8.3 **Cancellation of Borrower Loan Notes**

If after an Enforcement Event the Security Trustee enforces the security under the Security Documents by selling or transferring any shares in the Borrower, all rights of the Borrower Loan Note Holders (or any person claiming through or under them) under the Borrower Loan Note Instruments shall (without prejudice to the provisions of Clause 12.1 (*Order of Application*)), cease and determine and the Borrower Loan Notes shall be cancelled and the holders thereof shall have no claim against the Borrower in respect thereof. The Borrower Loan Note Holders confirm their agreement to such release and agree that such release shall constitute a cancellation of the Borrower Loan Notes outstanding at such time, and a waiver by each of the Borrower Loan Note Holders of their right to repayment of any principal, or payment of any interest, under the terms of the Borrower Loan Note Instrument.

9. **TURNOVER**

9.1 If at any time prior to the Senior Debt Discharge Date:

- 9.1.1 a Subordinated Creditor receives a payment or distribution in cash or in kind in respect of, or on account of, the Subordinated Debt or the Borrower Shares from the Borrower save as permitted by Clause 8.1 (*Permitted Payments*);
- 9.1.2 a Subordinated Creditor receives or recovers proceeds pursuant to any Enforcement Action or otherwise in respect of the Subordinated Debt or the Borrower Shares which is not permitted by Clause 8.1 (*Permitted Payments*);
- 9.1.3 the Borrower makes any payment or distribution in cash or in kind not permitted by Clause 8.1 (*Permitted Payments*) on account of the purchase or other acquisition of any of the Subordinated Debt or the Borrower Shares; or
- 9.1.4 any of the Subordinated Debt or any distribution in respect of the Borrower Shares is discharged by set-off or right of combination of accounts (otherwise than if and to the extent such payment or a distribution is permitted by Clause 8.1 (*Permitted Payments*)),

each such payment or distribution being a turnover receipt ("**Turnover Receipt**") that Subordinated Creditor will hold the same in trust for and pay and distribute it promptly upon demand to the Security Trustee for application towards the Senior Debt.

- 9.2 The Borrower shall indemnify the Subordinated Creditors upon demand for the amount of any Turnover Receipt paid by them to the Security Trustee and such third party costs and expenses incurred by the Security Trustee and the Subordinated Debt shall not be deemed to have been reduced or discharged in any way or to any extent by the receipt of or recovery of the relevant Turnover Receipt.

10. **SUBORDINATION ON INSOLVENCY**

10.1 **Subordination Events**

If any Insolvency Event occurs in relation to the Borrower, the provisions of Clauses 10.2 (*Subordination*), 10.3 (*Filing of Claims*) and 10.4 (*Distributions*) shall apply.

10.2 Subordination

Whilst any of the circumstances mentioned in Clause 10.1 (*Subordination Events*) subsist, the Subordinated Debt will be subordinated in right of payment to the Senior Debt until the Senior Debt Discharge Date.

10.3 Filing of Claims

10.3.1 If any of the circumstances in Clause 10.1 (*Subordination Events*) occur, until the Senior Debt Discharge Date, the Security Trustee may, and is irrevocably authorised on behalf of the Subordinated Creditors to:

- (a) demand, claim, enforce and prove for the Subordinated Debt;
- (b) take any Enforcement Action;
- (c) file claims and proofs, give receipts and take all such proceedings and do all such things as the Security Trustee considers reasonably to be necessary in order to recover any Subordinated Debt; and
- (d) receive all payments of or distributions on or on account of any Subordinated Debt for application in accordance with Clause 12 (*Proceeds of Enforcement*).

10.3.2 If the Security Trustee is not entitled to or does not wish itself to take any of the actions referred to in Clause 10.3.1, the Subordinated Creditors will do so as soon as reasonably practicable when requested by the Security Trustee.

10.4 Distributions

10.4.1 If any of the circumstances mentioned in Clause 10.1 (*Subordination Events*) occur, until the earlier of the Senior Debt Discharge Date and the date the circumstances in Clause 10.1 (*Subordination Events*) cease to exist, the Subordinated Creditors will hold on trust for and, upon demand by the Security Trustee, pay an amount equal to the amount of all payments or distributions of or in respect of any Subordinated Debt in cash or in kind received by or on behalf of it (including as a result of a set off) on or after the occurrence of any of the events or circumstances referred to in Clause 10.1 (*Subordination Events*) to the Security Trustee for application in accordance with Clause 12 (*Proceeds of Enforcement*).

Pending such application the Security Trustee will hold such payment on trust for the beneficiaries entitled thereto (according to the ranking of entitlements set out in Clause 12 (*Proceeds of Enforcement*)).

10.4.2 The Insolvency Representative of the Borrower shall be directed to pay distributions on the Subordinated Debt direct to the Security Trustee until the Senior Debt is irrevocably paid in full.

10.4.3 Prior to the Senior Debt Discharge Date, the Subordinated Creditors will give all such notices and do all such things as the Lender or the Security Trustee may reasonably request to give effect to this Clause 10.

11. PRIORITY OF SECURITY

11.1 Ranking of Security

All existing and future security conferred by the Security Documents will:

11.1.1 secure all Senior Debt in all respects prior to existing and future security conferred by any other security document regardless of order of registration, recording, notice, execution or otherwise; and

11.1.2 secure the Senior Debt regardless of the date upon which the Senior Debt arises, regardless of whether a Senior Creditor is obliged to advance moneys included in Senior Debt and regardless of any fluctuations in the amount of Senior Debt outstanding or any intermediate discharge of the Senior Debt in whole or in part.

11.2 Increases in Senior Debt

The Senior Creditors may increase the amount of the Senior Debt at any time provided that unless a Default is continuing the Borrower, the Senior Creditors and the Subordinated Creditors shall consult together in good faith prior to any such increase.

12. PROCEEDS OF ENFORCEMENT

12.1 Order of Application

12.1.1 Subject to Clause 12.1.2 below and the rights of any prior ranking or preferential creditor, the proceeds of enforcement of the security conferred

by the Security Documents shall be paid to the Security Trustee. Those proceeds and all other amounts paid to the Security Trustee under this Deed shall be applied in the following order:

- (a) first, in payment of all costs, expenses and liabilities (and all interest thereon as provided in the Facilities Agreement) reasonably incurred by or on behalf of the Security Trustee and any Insolvency Representative appointed under the Security Documents or Delegate in connection with carrying out its duties and exercising its powers and discretions under the Security Documents or this Deed and the remuneration of every Insolvency Representative and Delegate;
- (b) second, in payment of all costs and expenses incurred by or on behalf of any Senior Creditor in connection with such enforcement;
- (c) third, in payment to the Security Trustee for application towards the balance of the Senior Debt pro-rata according to the Facility outstanding owed to each Senior Creditor on a *pro rata pari passu* basis; and
- (d) fourth, the payment of the surplus (if any) to any other person entitled thereto (including the Subordinated Creditors as unsecured creditors of the Borrower) and the Borrower.

12.1.2 No such proceeds or amounts shall be applied in payment of any amounts specified in any of the sub-clauses in Clause 12.1.1 above until all amounts specified in any earlier sub-clause have been paid in full.

12.2 **Good Discharge**

An acknowledgement of receipt signed by the relevant person to whom payments are to be made under Clause 12.1 (*Order of Application*) shall be a good discharge of the Security Trustee.

13. **ENFORCEMENT OF SECURITY**

13.1 **Manner of Enforcement**

13.1.1 The Security Trustee shall enforce the security conferred by the Security Documents (if then enforceable) in such manner as the Lender shall

instruct or, in the absence of such instructions, as it sees fit and, subject as required by applicable law, having regard first to the interests of the Senior Creditors.

- 13.1.2 Neither the Security Trustee nor any Senior Creditor shall be responsible to any other person for any failure to enforce or to maximise the proceeds of any enforcement of the security, and the Security Trustee may cease any such enforcement at any time.

13.2 Sales by Security Trustee

If:

- 13.2.1 on an enforcement of, or exercise of any of its rights under the Security Documents the Security Trustee (or any Insolvency Representative) sells or otherwise disposes of any asset; or

- 13.2.2 the Borrower sells or otherwise disposes of an asset at the request of the Security Trustee (or any receiver) after an Event of Default under the Senior Finance Documents,

the Security Trustee is hereby authorised by the Senior Creditors to execute on behalf of the Senior Creditors and without the need for any further referral to or authority from the Senior Creditors:

- 13.2.3 any release of the security created by the Security Documents over that asset; and

- 13.2.4 if such asset comprises shares in the capital of the Borrower, a release of the Borrower from any or all present and future liabilities (both actual and contingent) and to release any or all Security granted pursuant to any of the Security Documents,

provided that the net cash proceeds of sale or disposal are applied in the order set out in Clause 12 (*Proceeds of Enforcement*).

13.3 Waiver

The Subordinated Creditors waive, as against the Senior Creditors, any right they may have of requiring that insurance proceeds be applied in reinstatement of any asset subject to security under the Security Documents.

13.4 Claims against Report Provider**13.4.1 In this Clause:**

- (a) **"Report"** means any report provided by the Borrower to the Senior Creditors pursuant to the Facilities Agreement; and
- (b) **"Report Provider"** means any such independent expert providing a Report.

13.4.2 Except as provided below, before the Senior Debt Discharge Date the Subordinated Creditors may not make any demand or claim or bring any proceedings against a Report Provider in connection with its Report (to the extent that it is entitled to do so) or receive payment from any Report Provider in connection with any demand, claim or proceedings.

13.4.3 Each Senior Creditor will be entitled to full payment of its claim against a Report Provider in respect of its Report in priority to any claims of the Subordinated Creditors.

13.4.4 *The Subordinated Creditors must on demand pay to the Security Trustee for application under this Deed an amount equal to any amount received by it in breach of, or allowed under, this Clause.*

13.4.5 Notwithstanding Clause 13.4.2 above, the Subordinated Creditors may bring any proceedings or make any demand or claim against a Report Provider (to the extent that it is entitled to do so):

- (a) if the Lender agrees; or
- (b) to the extent required to prevent the loss of the right to bring proceedings or make a claim by reason of the expiry of any statutory limitation period.

14. LOSS SHARING**14.1 Equalisation Payments**

If any Senior Creditor makes a Recovery then:

- 14.1.1 such Senior Creditor shall notify the Security Trustee with details of such Recovery within three Business Days of receipt or recovery;

14.1.2 the Security Trustee shall determine in good faith whether such Recovery is in excess of the amount (the amount of the excess being the “**Recovery Excess**”) which such Senior Creditor would have received had such Recovery been effected by the Security Trustee pursuant to the Security Documents and applied as provided in Clause 12 (*Proceeds of Enforcement*), and shall notify such Senior Creditor accordingly;

14.1.3 such Senior Creditor shall pay an amount equal to the Recovery Excess (together with any accrued interest on such amount from the date of receipt or recovery by it) to the Security Trustee, retaining the balance in *pro tanto* satisfaction of the amount due to it;

14.1.4 the Security Trustee shall treat the Recovery Excess (plus such accrued interest) as if it were the proceeds of enforcement of the Security Documents and shall deal with it in accordance with Clause 12 (*Proceeds of Enforcement*); and

14.1.5 at the option of the Senior Creditor making the payment referred to in Clause 14.1.3:

- (a) the liability of the Borrower to such Senior Creditor shall be increased (or treated as not having been reduced) by an amount equal to the Recovery Excess; or
- (b) the Borrower (subject to the provisions of this Deed) shall fully indemnify such Senior Creditor for the amount of the Recovery Excess.

14.2 **Loss Sharing**

Without prejudice to Clause 14.1 (*Equalisation Payments*) if for any reason any of the Senior Debt remains undischarged and any resulting losses are not being borne by the Senior Creditors in the order of priority set out in Clause 12.1 (*Order of Application*), each of the Senior Creditors shall make such payments between themselves as the Security Trustee requires to ensure that after taking into account such payments such losses are borne, on a pro rata basis, in the order of priority set out in Clause 12.1 (*Order of Application*).

15. CONSENTS AND LIMITS**15.1 Waivers**

If any waiver, release or consent is granted by the Lender under the Senior Finance Documents on or prior to the Senior Debt Discharge Date, a corresponding waiver, release or consent will be deemed to have been given by the Subordinated Creditors (on the same terms and conditions, *mutatis mutandis*) under the Subordinated Finance Documents, if the transaction or circumstance to which that waiver release or consent relates would otherwise breach or be a default or event of default under any such agreement or document, provided that no such waiver, release or consent may extend the due date for or reduce the amount of or change the currency of any payment due to the Subordinated Creditors or change the terms by reference to which any payment is to be calculated or made under the Subordinated Finance Documents.

15.2 Non-Objection

The Subordinated Creditors:

15.2.1 shall not have any claim or remedy against the Security Trustee, the Senior Creditors or the Borrower by reason of any transaction entered into between the Borrower and the Security Trustee or the Senior Creditors or any requirement or condition imposed by or on behalf of the Security Trustee or the Senior Creditors on the Borrower which breaches or is or causes a Default under the Subordinated Finance Documents; and

15.2.2 may not object to any such transaction by reason of any provisions of the Subordinated Finance Documents.

16. INFORMATION

The Borrower authorises the Security Trustee and the Senior Creditors to disclose to each other all information relating to the Borrower in connection with the Senior Finance Documents.

17. SUBROGATION**17.1 Subrogation of the Subordinated Creditors**

If any Senior Debt is paid out of any proceeds received in respect of or on account of the Subordinated Debt, the Subordinated Creditors will to that extent be subrogated to the Senior Debt so paid (and all securities and guarantees for that Senior Debt) but the rights of subrogation so arising cannot (and shall not) be exercised before the Senior Debt Discharge Date save with the prior written consent of the Lender. After the Senior Debt Discharge Date, to the extent that the Subordinated Creditors are entitled to exercise rights of subrogation in accordance with the foregoing, each Senior Creditor (subject to its being indemnified to its satisfaction against any resulting costs, expenses and liabilities) will give such assistance to enable such rights so to be exercised as the Subordinated Creditors and/or Security Trustee may reasonably request.

17.2 Non-Subrogation

Prior to the Senior Debt Discharge Date, the Borrower will not under any circumstances be subrogated to or entitled to exercise any of the rights of the Senior Creditor or exercise or enforce any security arising under any of the Security Documents.

18. PROTECTION OF SUBORDINATION**18.1 Continuing Subordination**

The subordination and priority provisions in this Deed constitute a continuing subordination and priority and benefit to the ultimate balance of the Senior Debt regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

18.2 Waiver of Defences

The subordination in this Deed and the obligations of the Borrower and the Subordinated Creditors under this Deed will not be affected by any act, omission, *matter or thing which, but for this provision, would reduce, release or prejudice the subordination or any of those obligations in whole or in part, including:*

- 18.2.1 any time or waiver granted to, or composition with, the Borrower or HoldCo or other person;

- 18.2.2 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or security over assets of the Borrower or HoldCo or other person under the Senior Finance Documents or otherwise or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any security;
- 18.2.3 any unenforceability, illegality, invalidity or frustration of any obligation of the Borrower or HoldCo or security under the Senior Finance Documents or any other document or security; or
- 18.2.4 any postponement, discharge, reduction, non-provability or other similar circumstance affecting any obligation of the Borrower or HoldCo under the Senior Finance Documents resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order.

18.3 Appropriations

Until the Senior Debt Discharge Date, the Security Trustee and each Senior Creditor (or any trustee or agent on their behalf) may (subject to any provision of this Deed or any applicable Senior Finance Document to the contrary):

- 18.3.1 apply any cash or property received under this Deed or from the Borrower or HoldCo or any other person against the Senior Debt owed to it, in such order as it sees fit;
- 18.3.2 refrain from applying or enforcing any cash or property received from the Borrower or HoldCo or from any other person (other than monies or property received under the Senior Finance Documents or under this Deed) against the Senior Debt owed to it; and
- 18.3.3 (unless such cash or property in the aggregate is sufficient to bring about the Senior Debt Discharge Date if otherwise applied in accordance with the provisions of this Deed) hold in a suspense account (bearing interest at a market rate usual for accounts of that type) any cash or the net proceeds of any distribution received from the Borrower or HoldCo or on account of the liability of the Borrower or HoldCo under this Deed.

19. **PRESERVATION OF SUBORDINATED DEBT**

Notwithstanding any term of this Deed postponing, subordinating or preventing the payment of any of the Subordinated Debt, the Subordinated Debt shall remain owing or payable (and, if applicable, interest or default interest shall continue to accrue) in accordance with the terms of the Relevant Documents. No delay in exercising rights and remedies under any of the Relevant Documents by reason of any term of this Deed postponing, restricting or preventing such exercise shall operate as a permanent waiver of any of those rights and remedies.

20. **POWER OF ATTORNEY**

20.1 By way of security for the obligations of the Subordinated Creditors under this Deed, the Subordinated Creditors irrevocably appoint the Security Trustee as their attorney to:

20.1.1 grant any authorisation which the Subordinated Creditors have authorised a Senior Creditor or the Security Trustee to grant under this Deed; and

20.1.2 do anything which the Subordinated Creditors are required to do by this Deed but has failed to do for a period of two Business Days after receiving notice from the Security Trustee or a Senior Creditor requiring it to do so. The Security Trustee (and each Senior Creditor if delegated power by the Security Trustee) may delegate this power.

21. **TAXES**

21.1 **Gross-up**

All payments by the Subordinated Creditors under this Deed shall be made without any deduction and free and clear of and without deduction for or on account of any taxes imposed or levied by any jurisdiction from or through which any payment is made under this Deed ("**Relevant Taxes**"), except to the extent that the Subordinated Creditors are required by law to make payment subject to any Relevant Taxes. If any Relevant Tax or amounts in respect of Relevant Tax must be deducted, or any other deductions must be made (other than deductions of or in respect of taxes other than Relevant Taxes), from any amounts payable or paid by the Subordinated Creditors under this Deed, the Subordinated Creditors shall pay such additional amounts as may be necessary to ensure that the recipient of the payment receives a net amount equal to the full amount which it would have received had that payment not been made subject to tax.

21.2 Tax receipts

All taxes required by law to be deducted or withheld by the Subordinated Creditors from any amounts paid or payable under this Deed shall be paid by that party when due and the Subordinated Creditors shall, within 15 days of the payment being made, deliver to the other party evidence (including all relevant tax receipts) satisfactory to that party (acting reasonably) that the payment has been duly remitted to the appropriate authority.

21.3 Tax credits

If a party pays an additional amount under Clause 21.1 (*Gross-up*) (a "**Tax Payment**") and a Senior Creditor or the Borrower effectively obtains a refund of tax or credit against tax by reason of that Tax Payment (a "**Tax Credit**") and the relevant Senior Creditor or the Borrower in its sole opinion determines in good faith that the Tax Credit is attributable to the Tax Payment, then the Senior Creditor or the Borrower (as the case may be) (the "**Recipient**") shall reimburse to the Subordinated Creditors the amount which that Recipient reasonably determines to be the proportion of the Tax Credit which will leave it (after that reimbursement) in no better or worse position than it would have been in if the Tax Payment had not been required. Each Recipient shall have an absolute discretion as to whether to claim any Tax Credit and, if it does claim, the extent, order and manner in which it does so.

22. DEFAULT INTEREST

22.1 If the Subordinated Creditors fail to pay any amount payable by them under this Deed on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate of two per cent (2%) per annum above the Base Rate. Any interest accruing under this Clause 22.1 shall be immediately payable by the Subordinated Creditors on demand by the Senior Creditors.

22.2 Interest shall accrue from day to day (after as well as before judgment) and be calculated on the basis of a 365 day year.

23. ENFORCEMENT COSTS

The Subordinated Creditors shall within 2 Business Days of demand (on a full indemnity basis) pay to each Senior Creditor the amount of all costs and expenses

(including taxes thereon and legal fees) properly incurred by that Senior Creditor in connection with the enforcement of such Senior Creditor's rights against it under this Deed.

24. CHANGES TO THE PARTIES

24.1 Successors and assigns

This Deed is binding on the successors and assigns of the Parties.

24.2 The Borrower

The Borrower may not assign or transfer any of its rights (if any) or obligations under this Deed to another person without the prior written consent of the Senior Creditors.

24.3 Subordinated Creditors

The Subordinated Creditors may assign, novate, dispose or transfer any of its rights or obligations in respect of the Borrower Shares or the Subordinated Debt to another person in accordance with the Facilities Agreement, but not otherwise, provided that the transferee must first (i) become a party hereto by executing a Deed of Accession as a Subordinated Creditor and (ii) provide to the Security Trustee a legal opinion, in a form and substance satisfactory to the Security Trustee, in relation to each of the Deed of Accession and this Deed.

24.4 Senior Creditors

If a Senior Creditor wishes to novate or transfer any of its rights or obligations under the Senior Finance Documents to another person, it may do so at any time provided that the transferee must first become a party hereto by executing a Deed of Accession as a Senior Creditor.

24.5 Authorisations

The Security Trustee is hereby authorised by each of the other Parties to execute each Deed of Accession on its behalf.

24.6 Variation of form of accession

The Security Trustee and the Borrower may agree changes to the form of Deeds of Accession referred to above and all other Parties to this Deed shall be bound by such changes as agreed.

25. STATUS OF THE BORROWER**25.1 Priorities**

The Borrower joins in this Deed for the purpose of acknowledging the priorities, rights and obligations recorded in this Deed and undertakes with each of the other Parties hereto to observe the provisions of this Deed at all times and not in any way to prejudice or affect the enforcement of such provisions or do or suffer anything which would be inconsistent with the terms of this Deed.

25.2 No rights

The Borrower shall have no rights hereunder and none of the undertakings herein contained on the part of the Senior Creditors or the Subordinated Creditors are given (or shall be deemed to have been given) to, or for the benefit of, the Borrower.

26. NOTICES

Every notice, request, demand or other communication under this Deed shall be made in accordance with the terms of the Facilities Agreement provided that the initial notice details for the Sponsors are as follows:

SFTI

1st Floor, 11-15 Thistle Street, Edinburgh EH2 1DF

Fax number: 01315100801

Attention: Peter Reekie

Miller

Miller House, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH

Fax number: 0870 336 5361

Attention: Legal Director

SEL

Welken House, 10-11 Charterhouse Square, London, EC1M 6EH

Fax number: 020 7250 7330

Attention: Hugh Crossley

27. **WAIVERS, REMEDIES CUMULATIVE**

The rights of each Party under this Deed:

- 27.1 are cumulative and not exclusive of its rights under the general law;
- 27.2 may be waived only in writing and specifically; and
- 27.3 may be exercised as often as necessary.

Delay in exercising or non-exercise of any such right is not a waiver of that right.

28. **SEVERABILITY**

If any provision of this Deed is illegal or unenforceable in any jurisdiction in relation to any Party, such illegality or unenforceability shall not invalidate the remaining provisions hereof or affect the validity or enforceability of such provision in any other jurisdiction or in relation to any other Party.

29. **THIRD PARTY RIGHTS**

Unless expressly provided to the contrary in this Deed, a person which is not a party to this Deed may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 and, notwithstanding any term of this Deed, the consent of any third party is not required for any variation (including any release or compromise of any liability) or termination of this Deed.

30. **ENTIRE AGREEMENT**

Unless otherwise stated in the Senior Finance Documents, the Senior Finance Documents constitute the entire agreement between the parties in connection with their subject matter and supersede all prior representations, communications, negotiations and understandings concerning the subject matter of the Senior Finance Documents. No party has relied on any representation except as expressly set out in the Senior Finance Documents.

31. **COUNTERPARTS**

This Deed may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute the same Agreement.

32. **GOVERNING LAW AND JURISDICTION**

32.1 **Governing law**

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

32.2 **Jurisdiction**

32.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "Dispute").

32.2.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

32.2.3 This Clause 32.2.3 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

THIS DEED has been entered into as a deed on the date stated at the beginning of this Deed.

SCHEDULE 1

Form of Accession Agreement

Form of Deed of Accession

To: [] as Security Trustee for itself and each of the Finance Parties

From: [*Acceding Party*]

THIS UNDERTAKING is made on [date] by [*insert full name of new Lender/Subordinated Creditor*] (the "**Acceding Lender/Subordinated Creditor**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [] among [] as the [Borrower, Hub North Scotland Limited as HoldCo and as a Subordinated Creditor, Scottish Futures Trust Investments Limited, Miller (North Hub) Investments Limited and Sweett Equitix Limited] as Subordinated Creditors and Aviva Public Private Finance Limited as Lender and Security Trustee.

Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

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

Our notice details [and Facility Office] are as follows:

[].

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

This Deed of Accession has been entered into on the date stated above and is executed as a deed by the Acceding [Lender/Subordinated Creditor] and is delivered on the date stated above.

Acceding [Lender/Subordinated Creditor]

EXECUTED AS A DEED by)
 [Acceding Lender/Subordinated Creditor])
 acting by a [])
 in the presence of:) []

Witness Signature: _____

Name: _____

Address: _____

Accepted by the Security Trustee

 for and on behalf of

[Insert full name of current Security Trustee]

Date:

SIGNATORIES**Borrower**

EXECUTED AS A DEED by
HUB NORTH SCOTLAND (ALFORD) LIMITED

acting by a director/attorney

)

 Director/Attorney

in the presence of:

)

Witness Signature:

Name:

Address:

HoldCo

EXECUTED AS A DEED by
HUB NORTH SCOTLAND LIMITED

)

acting by a director/attorney

)

 Director/Attorney

in the presence of:

)

Witness Signature:

Name:

Address:

Sponsor

EXECUTED AS A DEED by
SCOTTISH FUTURES TRUST
INVESTMENTS LIMITED

acting by a director
 in the presence of:

)
)
)
)
)
)

 Director

Witness Signature: _____

Name: _____

Address: _____

Sponsor

EXECUTED AS A DEED by
MILLER (NORTH HUB) INVESTMENTS
LIMITED

acting by a director
 in the presence of:

)
)
)
)
)
)

 Director

Witness Signature: _____

Name: _____

Address: _____

Sponsor**EXECUTED AS A DEED** by)**SWEETT EQUITIX**)**LIMITED**)

acting by a director)

in the presence of:)

Director

Witness Signature: _____

Name: _____

Address: _____

_____**Lender****EXECUTED AS A DEED** (but not)

delivered until the date hereof) by)

AVIVA PUBLIC PRIVATE FINANCE LIMITED)

acting by its attorney in the presence of:)

Attorney

Witness Signature: _____

Name: _____

Address: _____

PO Box 21
Sentinel House
37 Surrey Street
Norwich
NR1 3NJ
01603/14/5827

Security Trustee

EXECUTED AS A DEED but not delivered
until the date hereof by
AVIVA PUBLIC PRIVATE FINANCE LIMITED
acting by its attorney in the presence of:

)
)
)
)
)
Attorney

Witness Signature:



Name:


GARY STAFF

Address:

PO Box 21
Sentinel House
37 Surrey Street
Norwich
NR1 3NJ

SIGNATORIES

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acting by a director/attorney


in the presence of:

Witness Signature:

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Address:


JENNIFER RAE



Director/Attorney

**HARPER MACLEOD LLP
8 MELVILLE STREET
EDINBURGH
EH3 7NS**

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Witness Signature:

Name:

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JENNIFER RAE



Director/Attorney

**HARPER MACLEOD LLP
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EH3 7NS**

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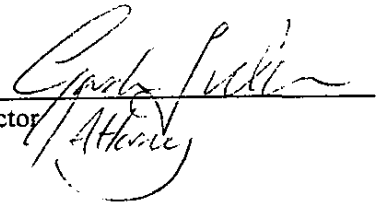
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EUAN MITCHELL

Director



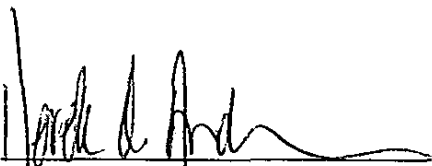
**HARPER MACLEOD LLP
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)
)
)
)


 Director

Witness Signature:

C. S. Nollen

Name:

CAROLAN SQUACCHAN

Address:

8 MELVILLE STREET

EDINBURGH.

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EXECUTED AS A DEED (but not
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AVIVA PUBLIC PRIVATE FINANCE LIMITED
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)
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 Attorney

Witness Signature:

Name:

Address:

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