

**HM TREASURY
CREDIT GUARANTEE FACILITY PROGRAMME**

STANDARD PUBLIC SECTOR PFI/PPP LOAN FACILITY TERM SHEET

Important Notice: The contents of this term sheet are indicative only and represent no commitment whatsoever on behalf of the Public Sector Finance Provider to provide any financial support in respect of the Project. Nothing in this term sheet shall be construed as a representation or a warranty (whether express or implied) on the part of the Public Sector Finance Provider.

[Name of PFI/PPP Project]

1	Parties	
1.1	Parties to the Public Sector Loan Facilities Agreement	The Borrower, [the Holding Company,] the Public Sector Facility Agent, the Public Sector Finance Provider[, the Security Trustee and the Account Bank]
1.2	Borrower	[name of special purpose company][, a special purpose company which is 100 per cent owned by the Holding Company] and is the Obligor for the purposes of the Guarantee Facilities Agreement
1.3	Holding Company	[name of special purpose holding company], a special purpose holding company owned by the Shareholders in the proportions set out below
1.4	Shareholders	<p>1 [name of shareholder] [percentage of shareholding],</p> <p>2 [name of shareholder] [percentage of shareholding], and</p> <p>3 [name of third party equity investor] [percentage of shareholding]</p>
1.5	Public Sector Finance Provider	[HM Treasury] or [the sponsoring department/Authority] ¹
1.6	Public Sector Facility Agent	[A suitable agent to be appointed who will act as administrative agent for the purposes of, inter alia, (a) assessment of the status of conditions precedent to utilisation and (b) the ongoing monitoring of (i) the project, (ii) the loan facility and (iii) the credit rating of the Finance Guarantor(s)]
1.7	Finance Guarantor²	[name of bank/financial institution/monoline insurance/ assurance company] who will provide Finance Guarantees in respect of outstandings under the Public Sector Loan Facilities in favour of the Public Sector Finance Provider.
1.8	Account Bank	[name of bank] who will hold the accounts of the Borrower

¹ HMT will determine the identity of the Public Sector Finance Provider for CGF-funded PFI/PPP Projects.

² There may also be senior facilities arrangers, a requirement for a guarantee facilities agent and, if a fronting bank issues the Finance Guarantee(s), counter-indemnifying banks (on this latter point please refer to paragraph 11.3 of HMT's CGF Technical Note 1.

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1.9	[Working Bank[s] Capital	The [Finance Guarantor/Account Bank] in its capacity as provider[s] of the Working Capital Facility] ³
1.10	[Senior Facilities Providers	The Finance Guarantor [and the Working Capital Bank[s]]
1.11	Finance Parties	The Senior Facilities Providers, the Account Bank, the Security Trustee, the Public Sector Facility Agent and the Public Sector Finance Provider
1.12	Security Trustee	[name of bank or institution] who will hold the security for and on behalf of the Finance Parties
1.13	Authority	[specify awarder of the Concession]
2	Project	The [design, construction, commissioning, operation, maintenance and financing of [] at [the Site] by the Borrower [pursuant to the terms of the Concession Agreement granted by the Authority]
3	Defined Terms	Certain key terms are defined in Schedule 1
4	Public Sector Loan Facilit[y/ies]	<p>1 A Sterling term loan facility of up to £[] million [(the “Term Loan Facility”)]</p> <p>2 [A Sterling standby loan facility of up to £[] million (the “Standby Loan Facility”)]</p>
5	Purpose[s]	<p>1 Term Loan Facility: to finance items [1, 2 and 3] of Project Costs during the Availability Period and item 5⁴ of Project Costs on [Completion]</p> <p>2 [Standby Loan Facility: to finance item 4 of Project Costs]⁵</p>
6	Availability Period	<p>1 Term Loan Facility: from the date of signature of the Public Sector Loan Facilities Agreement until the earlier of:</p> <p>(a) the [Completion Date], and</p> <p>(b) [] months after the date of the Public Sector Loan Facilities Agreement</p> <p>2 [Standby Loan Facility]⁶: from the date of signature of the Public Sector Loan Facilities Agreement until the earlier of:</p> <p>(a) [] months after the Completion Date, and</p> <p>(b) [] months after the date of the Public Sector Loan Facilities Agreement]</p>

³ Where a finance guarantee is issued by a bank, the Finance Guarantor is the likeliest provider of the Working Capital Facility; where a monoline insurance/assurance company issues a finance guarantee, the Account Bank may be the likeliest provider of the Working Capital Facility.

⁴ Funding of the DSRA to be agreed between the Borrower and the Senior Facilities Providers.

⁵ HMT to consider funding of variations. HMT may rely on the Senior Facilities Providers monitoring and approval of variations provided that any funding requirement is within the available standby facility.

⁶ The Availability Period for the Standby Loan Facility will match the underlying purpose requirements (e.g. change of law exposure period); the Standby Loan will be offered at the then prevailing market rates – see also footnote to paragraph 11.3.

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7	Utilisation	The Public Sector Loan Facilities shall be available for utilisation (not more than [one] utilisation per Public Sector Loan Facility per month) from Financial Close and after satisfaction of Conditions Precedent to Each Utilisation in accordance with the agreed utilisation schedule
8	Conditions Precedent	
8.1	Conditions Precedent to First Utilisation	<p>Satisfaction of:</p> <ul style="list-style-type: none"> (a) execution of the Guarantee Facilities Agreement in form and substance satisfactory to the Public Sector Finance Provider (b) Finance Close has been achieved under the Guarantee Facilities Agreement subject to any interconditionality with the Public Sector Loan Facilities Agreement (c) approval by the Public Sector Finance Provider of purposes for which the Public Sector Loan Facilities will be applied (d) signature by the Public Sector Finance Provider of the Letter of Awareness (e) []⁷
8.2	Conditions Precedent to Each Utilisation	<p>Each utilisation (a “Public Sector Utilisation”) shall be subject to the fulfilment of the following conditions precedent:</p> <ul style="list-style-type: none"> 1 Receipt of a satisfactory utilisation notice (a “Public Sector Utilisation Notice”) not less than [] Business Days in advance of the proposed date of utilisation 2 The Public Sector Utilisation has been drawn to finance: <ul style="list-style-type: none"> (a) in the case of a Term Loan Advance: items [1, 2, 3, 5 and/or 6] of Project Costs during the Availability Period (b) in the case of a Standby Advance: item 4 of Project Costs <p>and the Guarantee Facilities Agent has confirmed (i) that it is satisfied that the Public Sector Utilisation has been drawn for the purposes set out above and (ii) where relevant, that it has received satisfactory evidence that any amounts drawn to meet any payments under the Construction Contract are due within the next 30 days</p> 3 No Event of Default or potential Event of Default having occurred under the Public Sector Loan Facilities Agreement which is subsisting 4 All representations and warranties of the Borrower and the Holding Company under the Public Sector Loan Facilities Agreement that are being repeated, remaining true in all material respects, and 5 the Finance Guarantee or a corresponding Confirm has been issued pursuant to the Guarantee Facilities Agreement
9	Repayment and Prepayment	

⁷ Other conditions to be developed.

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9.1	Repayment	<p>1 Term Loan Facility: Six-monthly on an [annuity/amortisation] basis commencing on the earlier of:</p> <p>(a) [] months after the Completion Date, and</p> <p>(b) [] months after the date of the Public Sector Loan Facilities Agreement</p> <p>2 [Standby Loan Facility⁸: Six-monthly on an [annuity/amortisation] basis commencing on the earlier of:</p> <p>(a) [] months after the Completion Date, and</p> <p>(b) [] months after the date of the Public Sector Loan Facilities Agreement]</p>
9.2	Voluntary Prepayment	<p>1 Subject to paragraph 2, the Borrower may, after the Completion Date, prepay, without penalty, on 30 days' notice to fall on the last day of an Interest Period relating to the amount prepaid any part of the Term Loan Facility [or any part of the Standby Loan Facility] in minimum amounts of £[] and multiples of £[] to be applied [in inverse order of maturity]</p> <p>2 No refinancings (as contemplated in SoPC) are permitted without the Public Sector Finance Provider's prior written consent</p>
9.3	Mandatory Prepayment	<p>The Borrower shall prepay the Public Sector Loan Facilities if:</p> <p>1 Compensation is payable under the terms of any of the Project Documents, or</p> <p>2 The Borrower receives any insurance proceeds under any business interruption or, to the extent that any economic reinstatement test has been satisfied, physical damage insurance policy under a relevant Project Document</p> <p>provided that the proposed payment is to be applied in inverse order of maturity to each scheduled repayment</p>
9.4	Final Maturity Date	[] years from the date of the Public Sector Loan Facilities Agreement
10	Cancellation⁹	<p>The Borrower may cancel all or any of the unutilised Public Sector Loan Facilities at any time, [without penalty,] on 30 days' notice in minimum amounts of £[] and multiples of £[] (or, in the case of cancellation under the Standby Loan Facility, in minimum amounts of £[] and multiples of £[]).</p> <p>The Borrower may only cancel all or any of the unutilised Facilities under the Guarantee Facilities Agreement to the extent that such Facilities are no longer required in order for the Borrower to draw any unutilised amounts under the Public Sector Loan Facilities.</p>

⁸ Where there are subsequent utilisations under the Standby Loan Facility, repayment to commence, in respect of that utilisation, on the next succeeding repayment date unless otherwise agreed by the Public Sector Finance Provider at the time of utilisation.

⁹ The right to cancel will not apply to the extent that the Public Sector Finance Provider has provided an up-front sum (see paragraph 7.6 of HMT's CGF Technical Note 1).

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11	Interest, Margins and Fees	
11.1	Interest Periods	Each Interest Period shall be of 1, 3, 6 or (with the prior approval of the Public Sector Facility Agent) 12 months' duration (or other periods with the prior approval of the Public Sector Facility Agent), as selected by the Borrower. Interest shall be payable at the end of each Interest Period and 6-monthly for Interest Periods in excess of 6 months. From the first repayment date, Interest Periods and interest payment dates shall coincide with repayment dates
11.2	Interest Rate	[To be agreed by the Public Sector Finance Provider, the Borrower [and the Authority] on a project by project basis ¹⁰
11.3	Margin¹¹	<p>1 Term Loan Facility:</p> <p>(a) pre-Completion Date: [] per cent p.a.</p> <p>(b) post-Completion Date: [] per cent p.a.</p> <p>2 [Standby Loan Facility:</p> <p>(a) pre-Completion Date: [] per cent p.a.</p> <p>(b) post-Completion Date: [] per cent p.a.]</p>
11.4	Commitment Fee	<p>1 [Term Loan Facility:] [] per cent p.a.</p> <p>2 [Standby Loan Facility: [] per cent p.a.]</p> <p>payable quarterly in arrears on all amounts during the relevant period committed but undrawn until cancellation or termination of commitments</p>
11.5	Front End Fees	[]
12	Representations and Warranties	The representations and warranties to be given by the Borrower and the Holding Company are set out in Schedule 4
13	Undertakings	The undertakings to be given by the Borrower and the Holding Company are set out in Schedule 5
14	Defaults and Remedies	
14.1	Events of Default	The Events of Default are set out in Schedule 6

¹⁰ The interest rate will be calculated using a market economy based pricing. See also paragraphs 7.4, 7.5 and 12.1 of HMT's CGF Technical Note 1.

¹¹ The CGF Margin will be charged on a fixed basis - if fixed rate phased funding is used then the Unitary Charge will only be fully determined at Completion – see also paragraph 6 (Availability) above. The Standby Loan will be priced at the then prevailing [market rate] at the time of utilisation.

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14.2	Remedies following an Event of Default	<p>Following the occurrence of an Event of Default, the Public Sector Finance Provider shall be entitled to:</p> <ol style="list-style-type: none">1 cancel all available Commitments under the Public Sector Loan Facilities, and/or2 accelerate all amounts outstanding under the Public Sector Loan Facilities Agreement and, if not paid, claim such sums under the Finance Guarantees, and/or3 declare all unsubscribed amounts of equity and any undrawn amounts of subordinated debt to be due and payable immediately on demand <p>The Public Sector Finance Provider does not require a cross-default on the Guarantee Facilities Agreement; accordingly, the occurrence of an Event of Default under the Guarantee Facilities Agreement will not permit the Public Sector Finance Provider to accelerate unless an Event of Default under the Public Sector Loan Facilities Agreement has also occurred</p>
14.3	Lock-Up Conditions¹²	<p>The Borrower shall not be permitted to make any distribution or other payment (howsoever described) to any shareholder or related party (other than as specifically contemplated by the Project Documents) in circumstances where either (a) an Event of Default or a potential Event of Default under the Public Sector Loan Facilities Agreement is subsisting or (b) (i) if any representation is not complied with or is or proves to have been incorrect in any material respect when made or deemed repeated in accordance with the Finance Documents or (ii) the Borrower or the Holding Company does not perform or comply with any one or more of its obligations set out under the Relevant Documents</p>

¹² The Public Sector Finance Provider's principal recourse is under the Finance Guarantee(s). However, there may be breaches under the Public Sector Loan Facility Agreement for which it would be inappropriate, as a remedy, to call on the Finance Guarantee(s); in such circumstances, the Public Sector Finance Provider prefers to lock-up cash that would otherwise be distributable in order to incentivise the Borrower to comply with its obligations and/or remedy any breaches. HMT will engage with the private sector with respect to paragraphs 14.3 and 14.4 to ensure the optimal level of risk sharing

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<p>14.4</p>	<p>Replacement of Finance Guarantor</p>	<p>In circumstances where (a) the Finance Guarantor's credit rating has fallen below [] from Standard & Poor's Corporation or [] from Moody's Investors Service, Inc. (the "Minimum Credit Rating") and/or (b) the Finance Guarantor is [insolvent] (in each case, a "Guarantee Trigger Event") then the Public Sector Finance Provider shall (i) have the right, at the Finance Guarantor's cost, to procure (and shall have the option to require the Finance Guarantor to procure) a substitute finance guarantor acceptable to the Public Sector Finance Provider (a "Substitute Finance Guarantor") who will enter into a finance guarantee in favour of the Public Sector Finance Provider on the same terms as the original Finance Guarantee or otherwise on terms satisfactory to the Public Sector Finance Provider [and provided further that any replacement Finance Guarantor shall be an HMT-approved panel member] and (ii) to require the Borrower to pay the Guarantee Fee to the Public Sector Finance Provider in respect of the period from the date upon which a Guarantee Trigger Event occurs until the earlier of (1) the date upon which a Substitute Finance Guarantor is appointed and (2) the date upon which the Finance Guarantor has received the Minimum Credit Rating (such period, the "Credit Deterioration Period"). Under the terms of the Finance Guarantee, the Finance Guarantor shall agree to the payment by the Borrower to the Public Sector Finance Provider of the Guarantee Fee during the Credit Deterioration Period.¹³</p>
<p>15</p>	<p>Cashflows and Accounts</p>	
<p>15.1</p>	<p>Project Accounts</p>	<p>[To be agreed between the Borrower and the Senior Facilities Providers pursuant to the Guarantee Facilities Agreement; there will need to be a Proceeds Account to receive the proceeds of utilisations under the Public Sector Loan Facilities Agreement]</p>
<p>15.2</p>	<p>Available Cash Flow Priorities:</p>	<p>The cash flow (as defined below) of the Borrower will be applied [on each repayment date] in the following priorities:</p> <ol style="list-style-type: none"> 1 payment of Security Trustee and Account Bank fees 2 payments to the [Operating Account] in accordance with the most recent Operating Budget] 3 payment of financing costs under the Public Sector Loan Facilities Agreement and, provided there is no default under the Finance Guarantee(s) (in which case such payments shall be subordinated to all payments under the Public Sector Loan Facilities Agreement), financing costs under the Guarantee Facilities Agreement [and payment of any guarantee/insurance fees]

¹³ HMT are currently considering mechanics to address credit rating deterioration.

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		<p>4 payment of financing principal under the Public Sector Loan Facilities Agreement and, provided there is no default under the Finance Guarantee(s) (in which case such payments shall be subordinated to all payments under the Public Sector Loan Facilities Agreement), financing principal under the Guarantee Facilities Agreement</p> <p>5 payments to reserve accounts (as required), and</p> <p>6 subordinated debt/dividend distributions/loans to shareholders</p>
16	Security Package	The Security Package is set out in Schedule 3
17	Increased Costs	The Borrower will indemnify the Public Sector Finance Provider against any increased costs resulting from any change in EU law or regulation
18	Transferability	The Public Sector Finance Provider will be able to transfer to designated bodies ¹⁴
19	Expenses	The Borrower will pay the reasonable out-of-pocket expenses of the Public Sector Finance Provider relating to the Project, including costs of the advisers. All such expenses and costs should be supported by reasonably detailed information
20	Governing Law	The Relevant Documents to be governed by the laws of England and Wales
21	Due Diligence	[It will be a condition of any offer by the Public Sector Finance Provider that it (and each of its advisers) has completed a satisfactory investigation of [the financial standing of the Finance Guarantors] and [other criteria to be confirmed by HMT]

¹⁴ To include (a) any body implementing the CGF Programme and (b) other governmental departments.

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Schedule 1 Definitions

The following terms have, in this term sheet, the meanings given below:

Completion Date	The date of issue of the [Certificate of Completion] (subject to the reasonable satisfaction of the [Senior Facility Providers'] Technical Adviser) under the Concession Agreement
Events of Default	The events listed in Schedule 6
Finance Documents	The documents set out in Part 2 of Schedule 2
Financial Close	The date on which each Condition Precedent to First Utilisation is satisfied or waived by the Public Sector Finance Provider
Indicative Guarantee Facilities Term Sheet	The Term Sheet setting out the indicative terms for the Guarantee Facilities Agreement
Project Costs	To comprise the following: <ol style="list-style-type: none">1 all costs, expenses and fees incurred or to be incurred by the Borrower or Holding Company for the [design, construction and commissioning of []];2 all development costs, tender costs [and Sponsors' fees];3 all financing costs [during the construction phase] under the Public Sector Loan Facility Agreement and the Guarantee Facilities Agreement;4 all [change in law costs required to be funded by the Borrower under the Concession Agreement];5 [funding the Debt Service Reserve Account;]or6 as otherwise agreed by the Public Sector Finance Provider; in each case as pre-approved by the Public Sector Finance Provider on or prior to Financial Close ¹⁵
Project Documents	The documents set out in Part 1 of Schedule 2
Relevant Documents	The Project Documents and the Finance Documents
Security	The security described in Schedule 3

Terms defined in the Indicative Guarantee Facilities Term Sheet have the same meaning in this Term Sheet.

¹⁵ (1) It is intended that the Finance Guarantor will undertake on-going monitoring of the Project Costs for each utilisation.
(2) It is assumed that these purposes are also to be approved by the Finance Guarantors – see paragraph 5 of the Indicative Guarantee Facilities Agreement term sheet.

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Schedule 2

Part 1

Project Documents

- 1 **Concession Agreement:** the agreement to be entered into between the Borrower and the [Authority] for the [design, construction, commissioning, operation, maintenance and financing of []].
- 2 **[Lease:** the lease of the Site granted by the [Authority] to the Borrower pursuant to and co-terminous with the Concession Agreement.]
- 3 **Construction Contract:** the agreement to be entered into between the Borrower and [name of construction contractor (the “Contractor”)] for the [design, construction and commissioning of [] by the Contractor.
- 4 **Contractor Parent Company Guarantee:** the guarantee of the obligations of the Contractor under the Construction Contract to be provided by [] in favour of the Borrower.
- 5 **O&M Agreement:** the agreement to be entered into between the Borrower and [name of operator (the “Operator”)] for the [operation and maintenance of [] by the Operator.
- 6 **[Operator Parent Company Guarantee:** the guarantee of the obligations of the Operator under the O&M Agreement to be provided by [] in favour of the Borrower.]
- 7 **[Management Contract(s):** the contract(s) to be entered into between the Borrower and [] for the management of the Borrower.]
- 8 **Shareholders Agreement:** the agreement to be entered into between the Shareholders and the Holding Company.

Schedule 2

Part 2 Finance Documents

- 1 Public Sector Loan Facilities Agreement:** The loan facilities agreement between, inter alia, the Borrower and the Public Sector Finance Provider pursuant to which the Public Sector Finance Provider will make available to the Borrower a Term Loan Facility and a Standby Loan Facility on the terms and subject to the conditions set out therein.
- 2 Guarantee Facilities Agreement:** The guarantee facilities agreement between, inter alia, the Obligor and the Senior Facilities Providers pursuant to which the Finance Guarantor will make available to the Obligor the Guarantee Facility and the Standby Guarantee Facility [and the Working Capital Bank will make available to the Obligor the Working Capital Facility] in each case on the terms and subject to the conditions set out therein.
- 3 Finance Guarantee:** A financial guarantee of the Guaranteed Amount issued by the Finance Guarantor in favour of the Public Sector Finance Provider under the Guarantee Facility or the Standby Guarantee Facility (as the case may be) pursuant to the terms of the Guarantee Facilities Agreement.
- 4 Intercreditor Agreement and Trust Deed:** the agreement to be entered into between the Borrower, the Holding Company, the Shareholders and the Finance Parties providing for, inter alia, the terms of the contractual subordination between the parties and turnover of any amounts received by any party in connection with the Project other than as permitted by the Finance Documents, the terms of appointment of the security trustee, enforcement rights, post enforcement cashflows and prescribing the Finance Parties voting rights and decision-making process.
- 5 Co-financiers' Agreement:** An agreement between the Finance Parties pursuant to which, inter alia, (a) the Public Sector Finance Provider will undertake (i) to notify the other Finance Parties of any defaults under the Public Sector Loan Facilities Agreement, (ii) to confirm that, upon issue of any Finance Guarantee or Confirm, the Public Sector Finance Provider will make the corresponding amount under the Term Loan Facility (or, as the case may be, the Standby Loan Facility) available to the Borrower, and (iii) not to amend the Public Sector Finance Documents in any respect material to the interests of the Senior Facilities Providers without the prior written consent of the [Senior Facilities Providers] (b) the Senior Facility Providers will undertake (i) to purchase at par the debt outstanding under the Public Sector Loan Facilities Agreement upon notice from the Public Sector Loan Facilities Agent in circumstances where the Finance Guarantor is [insolvent] or its credit rating no longer satisfies the Minimum Credit Rating and neither the Borrower nor the Indemnifying Banks have procured a satisfactory replacement Finance Guarantor (ii) to notify the other Finance Parties of any defaults under the Guarantee Facilities Agreement and (iii) []¹⁶ and (c) the Finance Guarantor will represent to the Public Sector Finance Provider that its obligations under the Finance Guarantee(s) constitute legal, valid, binding and enforceable obligations.
- 6 Letter of Awareness:** A letter from the Public Sector Finance Provider to the Borrower, its Shareholders and the Senior Facilities Providers clarifying certain matters in respect of the

¹⁶ HMT to consider any requirements; these could include further information covenants.

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Public Sector Finance Provider's rights under the Public Sector Finance Documents and the Public Sector Finance Provider's wider public sector interests.¹⁷

7 Security Documents: the documents evidencing the security to be created in favour of the Finance Parties as more particularly described in Part 3 of this Schedule.

8 Direct Agreements: each of the agreements to be entered into between the Senior Facilities Providers and:

- (a) the Authority;
- (b) the Contractor; and
- (c) the Operator,

in each case to cover acknowledgement of security and step-in rights exercisable by the Security Trustee (for and on behalf of the Finance Parties).

9 Shareholder Support Agreement: the agreement to be entered into between the Borrower, the Holding Company, the Shareholders and the Security Trustee (for and on behalf of the Finance Parties) containing the equity subscription and subordinated loan participation obligations of the Shareholders and the Holding Company.

The term "Finance Documents" will include all finance documents entered into by all or any of the Finance Parties; the term "Public Sector Finance Documents" will include all finance documents entered into by either or both of the "Public Sector Finance Provider" and the "Public Sector Facility Agent".

¹⁷ The Letter of Awareness is not strictly a "Finance Document" as it is not intended to be legally binding.

Schedule 3 Security

The security package will comprise, *inter alia*:

- 1 The benefit of the Finance Guarantees which will cover the Guaranteed Amount.

The Finance Guarantor will be selected from an HMT-approved panel; panel members will be required to satisfy a minimum credit rating test¹⁸ of [] from Standard & Poor's Corporation or [] from Moody's Investors Service, Inc.

See paragraph 14.4 above concerning remedies where the Finance Guarantor is insolvent or its credit rating has fallen below the Minimum Credit Rating.

- 2 The benefit of the Security Package set out in the Indicative Guarantee Facilities Term Sheet shall be held by the Security Trustee for the benefit of the Finance Parties on the terms and conditions set out in the Intercreditor Agreement and Trust Deed.

¹⁸ In the case of a monoline insurance/assurance company this will be AAA; HMT to consider credit rating threshold for banks and financial institutions.

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Schedule 4
Representations and Warranties

The representations and warranties to be given by each of the Borrower and the Holding Company shall include, *inter alia*:

- 1** Corporate status, power and ownership.
- 2** Non-violation of any law or its Memorandum or Articles of Association or any agreement to which it is a party as a result of its entry into, exercise of rights, and/or performance of obligations under the Relevant Documents.
- 3** Relevant Documents constitute legal, valid, binding and enforceable obligations (save for any exception made in the legal opinions).

Schedule 5 Undertakings

Positive Undertakings

The Borrower and the Holding Company each undertakes, *inter alia*, that it shall:

- 1 provide the following information to the Agent:
 - (a) audited annual accounts of the Borrower and the Shareholders (to comply with representations as to GAAP etc);
 - (b) notification of any Event of Default or potential Event of Default, or any breach of any Project Document, promptly upon becoming aware of its occurrence;
 - (c) all other information requested by the Public Sector Finance Provider;
- 2 pay outgoings in good time;
- 3 generally perform obligations under the Relevant Documents;
- 4 perform duties under applicable laws and obtain and maintain all consents necessary for performance of its obligation;
- 5 pay all proceeds of any compensation, guarantee, liquidated damages or similar payment (etc.) including any consideration received in connection with nationalisation, expropriation or compulsory acquisition or any compensation under the Concession Agreement in accordance with the Finance Documents;
- 6 maintain its corporate structure¹⁹;
- 7 file all tax returns (including VAT returns) and pay all tax payable under English law (except where contesting payment in good faith);
- 8 promptly give notice to the Agent of any [material] legal, arbitral or similar dispute resolution proceedings commenced against it and diligently remedy any default and defend proceedings;
- 9 payment obligations under the Finance Documents rank in priority to all other indebtedness;

Negative Undertakings

The Borrower and the Holding Company each undertakes, *inter alia*, that it shall not (except as contemplated by the Relevant Documents or with the consent of the Public Sector Finance Provider)

- 1 amend, waive or modify, terminate, suspend or surrender the Guarantee Facilities Agreement and/or the Finance Guarantee(s) except as required by law, or as is not material to the Public Sector Finance Provider;
- 2 take or permit any action which could prejudice the Public Sector Finance Provider's security package;
- 3 negative pledge.

¹⁹ HMT requires that the Borrower and Holding Company should be incorporated under the Companies Act 1985 to 1989 and that each should maintain its registered office in the UK.

Schedule 6 Events of Default

The events of default are:

- 1 non-payment by the Finance Guarantors²⁰ when due of any sum payable under any Finance Guarantee in accordance with the terms of the Finance Guarantee;
- 2 any of the obligations under any of the Finance Guarantees are not or cease to be legal, valid, binding and enforceable obligations;
- 3 breach of any representation set out in Schedule 4 to this Term Sheet;
- 4 breach of either of the negative undertakings set out in paragraphs 1 and 2 of Schedule 5 of this term sheet [or the mandatory prepayment obligations];²¹
- 5 the Borrower is (or is or could be deemed by law or a court to be) insolvent and/or related insolvency events; and
- 6 if the Concession Agreement is terminated.

²⁰ Finance Guarantors to be given [5] Business Days to pay outstanding amounts under the Public Sector Loan Facilities Agreement.

²¹ HMT to consider breach of the purpose clause.