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Browne Jacobson LLP

MEMORANDUM

To	The Mayor and Burgesses of the London Borough of Croydon and the Mayor and Burgesses of the London Borough of Lewisham (each an **Authority** and together, the **Authorities**)
From	Browne Jacobson LLP
Date	3 February, 2023 (updated 28 February, 2023)
Subject	**Croydon and Lewisham Streetlighting PFI: Refinancing Documents**

1. INTRODUCTION / SCOPE

1.1 We have been asked by the Authorities to provide a memorandum summarising, on a high level basis, the new finance documents listed in Appendix 1 of this Memorandum (the **Finance Documents**) to be entered into by Croydon and Lewisham Lighting Services Limited (the **Borrower**) in connection with the operation, maintenance and financing by the Borrower of the Croydon and Lewisham street lighting and illuminated traffic signage PFI project pursuant to the terms of the Project Agreement (as defined below) as part of a refinancing of the existing senior debt.

1.2 In providing this memorandum we have focused on the salient contractual provisions in the Reviewed Documentation which are relevant to the Authorities, focusing on the economics and general stringency of the obligations placed on the Borrower (in each case) as compared to the existing finance documents (and as such it should not be taken as a substitute for reviewing those documents in full).

1.3 We note that at the date of this memorandum the Reviewed Documentation are in draft form. Accordingly, this memorandum speaks to the provisions of the Reviewed Documentation as they stood in the drafts we reviewed. This memorandum cannot be taken to speak to the final versions of such documents though we do not expect these to materially vary ahead of execution.

1.4 Unless otherwise stated, capitalised terms used in this memorandum are as defined in:

(a) the project agreement between the Borrower and the Authorities dated 19 April 2011 (as amended from time to time) (the **Project Agreement**); and

(b) the draft facilities agreement between, amongst others, the Borrower and Aviva Public Private Finance Limited (the **Lender** or **Aviva**), dated on or about the date of this memorandum (the **New Facilities Agreement**).

To the extent there is any conflict between the capitalised terms in the Project Agreement and the New Facilities Agreement, the Project Agreement will prevail.

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1.5 The Project Agreement is being amended in connection with the refinancing pursuant to a deed of variation (the **PA DoV**). The amendments made to the Project Agreement pursuant to the PA DoV are, aside from dealing with subsequent typographical errors, made to ensure that the Project Agreement aligns with the new financing and shareholding structure summarised in this memorandum. The variations do not have any impact on the streetlighting operations under the Project Agreement.[1]

2. EXECUTIVE SUMMARY

2.1 The Project has reached operational stage and as such the Borrower has sought and secured a refinancing of the PFI facilities agreement entered into with, *inter alia*, Lloyds Bank plc (**Lloyds**) dated 19 April 2011 (the **Existing Facilities Agreement**) with the intention of seeking more favourable economic terms.

2.2 We understand that Equitix and Aviva have in recent years contracted on a number of streetlighting PFI refinancings and that the Finance Documents are reflective of the terms agreed on precedent transactions. Consequently, and consistent with typical sponsor practice in such transactions, the Finance Documents were presented to us as a '*fait accompli*' representing well established and previously agreed positions.

2.3 Broadly speaking, and as expected given the operational phase nature of the Project, the terms of the new Finance Documents are on terms consistent with that already in place or otherwise with analogous transactions and as such they do not create any material concerns for the Authorities.

2.4 The Finance Documents contemplate the payment of the Refinancing Gain share to the Authorities, such payment to be made out of drawdown proceeds under the New Facilities Agreement. Pursuant to the deed of variation relating to the Project Agreement being entered into in connection with the refinancing (the **PA DoV**), the Authorities will receive their share of the Refinancing Gain upfront with no impact on the subsequent Unitary Charge payments.

2.5 As a fundamental credit requirement of Aviva (and an entirely typical feature of UK project financings), the Authority will be required to enter into a direct agreement with Aviva in connection with the Project Agreement. Consequently the entry into this document is likely required to enable the refinancing to occur. The terms of the Senior Lender's Direct Agreement are on substantially the same terms as the Existing Direct Agreement (as defined below) and as such the Authority is left in no materially different position as a result.

2.6 The refinancing has been structured such that a new holding company shall be inserted into the group structure of the Borrower (a special purpose vehicle defined as MidCo in the New Facilities Agreement). MidCo shall acquire the entire issued share capital of the Borrower from Holdco (the **Acquisition**). This structure is:

(a) predominantly a tool allowing the Borrower to take their share of the Refinancing Gain upfront whilst enabling the distribution of that gain to be implemented over a timeframe best suiting the economic requirements of the Equitix fund which is the ultimate shareholder of the Borrower; and

(b) one which we understand has been implemented previously by Equitix and Local Partnerships have noted that it is aligned to HMRC tax structuring guidance.

[1] Note: We understand amendments are being made to the Sub-Contract with Milestone in connection with the refinancing and that these amendments are intended to purely reflect the pass down of the Project Agreement amendments and as such have no impact on the commercial operational terms of the Project. As at the date of this memorandum we have not been provided with the Sub-Contract amendment documentation.

3. SUMMARY OF STRUCTURE

3.1 General – Shareholding and Loan Notes

(a) The refinancing has been structured such that a new holding company shall be inserted into the group structure of the Borrower (a special purpose vehicle defined as Midco in the New Facilities Agreement). Midco shall acquire the entire issued share capital of the Borrower from Holdco on the day of financial close (the **Acquisition**).

(b) On completion of the Acquisition, the group structure of the Borrower will be as follows:

(i) the shares of the Borrower will be owned 100% by MidCo;

(ii) the shares of MidCo will be owned 100% by HoldCo; and

(iii) the entire shareholding of HoldCo will continue to be owned 100% by [Equitix Bright Holdco Limited and Jlif Holdings].[2]

(c) Notwithstanding the change in shareholding structure, the existing structure of the Loan Notes remains unchanged such that the Borrower Loan Notes continue to be issued to HoldCo. A deed of variation is being entered into in respect of the Borrower Loan Note Instrument [and HoldCo Loan Note Instrument] (see below).

3.2 MidCo and MidCo Intercompany Loan

(a) As detailed in the note issued to the Authorities from Local Partnerships, the primary purpose of including MidCo into the structure was creating a mechanism enabling the Borrower to take its share of the Refinancing Gain upfront whilst also allowing for that gain to be distributed to the Equitix ultimate shareholder over the life of the Project in a way which best meets the economic requirements of the relevant Equitix fund.

(b) The Borrower is envisioned to advance an intercompany loan to MidCo at or around Financial Close to:

(i) distribute a proportion of the Borrower's share of the Refinancing Gain to MidCo in furtherance of the mechanism described above; and

(ii) provide MidCo with the funds required to pay the purchase price in respect of the Acquisition.

4. NEW FACILITIES AGREEMENT

4.1 Facilities

(a) Under the New Facilities Agreement, three facilities will be made available to the Borrower:[3]

(i) a committed £[ ],000,000 term loan facility (the **Term Loan Facility**) for the purpose of:

(A) refinancing existing indebtedness under the Existing Finance Arrangements;

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[2] We understand these to be the current Equitix shareholding funds but are awaiting confirmation from Borrower legal counsel as at the date of this memorandum.

[3] Note: The size of each of the facilities referred to in this paragraph is taken from the draft of the New Facilities Agreement reviewed for the purposes of this memorandum.

(B) payment of Financing Fees;

(C) payment of Refinancing Transaction Costs;

(D) payment to the Authorities of any Refinancing Gain; and

(E) payment of the Initial Distribution,

each term as defined in the New Facilities Agreement;

(ii) an uncommitted £[1,483,000] Change in Law Facility (the **Change in Law Facility**) for the purpose of to finance its obligations under the Project Agreement to cover costs and expenses in relation to a Change in Law or a Potential Change in Law; and

(iii) a committed £[ ],000,000 Debt Service Reserve Facility (the **Debt Reserve Facility**) to finance payment of Financing Costs (interest) and Financing Principle (capital) due under the New Facilities Agreement to the extent such amounts cannot be financed from other resources as permitted under the terms of the Finance Documents. This is structured as a revolving credit facility.

(b) When comparing the facilities to the Existing Facilities Agreement we note:

(i) the Debt Reserve Facility is a new addition. Under the Existing Facilities Agreement the Borrower instead was obliged to maintain a cash balance in a stipulated bank account. The provision of the Debt Reserve facility enables the removal of the need to have cash tied up in a bank account (which is considered to be economically inefficient); and

(ii) the uncommitted nature of the Change in Law Facility meaning access to this facility is subject to consent of the Lender at the relevant time. Under the Existing Facilities Agreement this was a committed facility and as such the Borrower had committed access to funds to mitigate risks associated with change in law. We understand from the Borrower's counsel that obtaining this facility on a committed basis under the New Facilities Agreement was uneconomical and is something they are viewing as an 'equity risk'.

4.2 Economics

Interest Rate

(a) Interest in respect of the:

(i) Term Loan Facility and the Change in Law Facility is calculated on a fixed rate basis by aggregating the Margin and: (A) in the case of the Term Loan Facility, the Mid-Swap Rate which will be generated at financial close, populated into the New Facilities Agreement and utilised as part of the determination of the Refinancing Gain; and (B) in the case of the Change in Law Facility, the Change in Law Mid-Swap Rate which would be generated at or around the time of any agreed use of the Change in Law Facility; and

(ii) the Debt Reserve Facility, on a floating rate basis by aggregating the Margin with the applicable SONIA rate (i.e. analogous with the historic LIBOR practice). There is no hedging arrangements envisaged to be put in place as part of the new finance arrangements and as such the Borrower could be exposed to interest rate risk in respect

of any utilisations of the Debt Reserve Facility. However, given the envisaged size of the facility and absence of continued long term usage it does not seem an unreasonable position to take, particularly given the costs associated with a hedging product.

(b) Under the New Facilities Agreement, the margin on all of the facilities will be charged at 175 bps. Under the Existing Facilities Agreement, the margin on the equivalent term debt and change in law facility was variable (ratcheting upwards as the loan progressed through its tenor) with a range of 200 bps to 240 bps. The new margin of 175 bps on the analogous facilities is lower and as such more economically advantageous to the Project.

Interest Period

(c) Interest Periods under the New Facilities Agreement are 6 months only (whereas under the Existing Facilities Agreement, interest periods may have been 1, 3 or 6 months though we would suspect these would have been selected to operate on 6 month periods historically so likely no change to debt service periods).

Default Interest

(d) Default interest is charged at 100 bps on top of Interest which is consistent with rates we see in the market for transactions of this nature.

4.3 **Fees**

Early Repayment Fee

(a) A typical feature of financing provided on a fixed rate basis is the requirement for the borrower to make a payment – known conventionally as a "make-whole" payment but defined as an Early Repayment Fee in the Finance Documents – in the event of an early repayment of the fixed rate debt. Such payment is intended to compensate the lender for a loss of yield caused by such early repayment.

(b) The New Facilities Agreement provides for an Early Repayment Fee to be payable by the Borrower to the Lender if a Term Loan or a Change In Law Loan is voluntarily repaid, or is repaid from insurance proceeds (in each case in full or in part) prior to the envisaged Maturity Date for that loan.

(c) The amount of the fee is dependent on when it is repaid and the circumstances precipitating the debt repayment as follows:

(i) if such repayment is during the 12 months following completion of the refinancing, the greater of:

(A) an amount equal to the interest that would have been payable on the relevant loan had the loan not been repaid during a notional interest period of three months; and

(B) an amount sufficient to indemnify the Lender against a reduction in the rate of return that the Lender expects to receive on its investment in the relevant Facility as a direct or indirect result of the occurrence of the event triggering early repayment as determined in accordance with the formula set out in schedule 3 of the New Facilities Agreement (the **ERF Formula**);

(ii) if such repayment is after the first 12 months following completion, in accordance with the Early Repayment Formula.

(d) The Early Repayment Formula contains, *inter alia*, mechanisms which interlink with compensation on termination payments due from the Authorities to the Borrower following a termination of the Project Agreement. In short, the reason for such termination may have an impact on the Early Repayment Fee. In the case of termination of the Project Agreement for reason of:

(i) Authority voluntary termination[4], the margin applied for the purposes of the "reinvestment rate" element of the ERF Formula is set at 75bps; and

(ii) Authority Default, there will be no margin applied for the purposes of the "reinvestment rate" element of the ERF Formula; and

(iii) Force Majeure Event, the New Facilities Agreement specifies that no Early Repayment Fee is payable.

(e) The rationale for such distinction, noting the general position in the ERF Formula is to apply a margin of 50bps for the purposes of the "reinvestment rate" (and the higher the margin the lower the Early Repayment Fee), appears to reflect in broad terms the Authority's culpability in precipitating the early repayment. This approach is consistent:

(i) with (we understand) the approach agreed between Aviva and HMT in this respect; and

(ii) the definition of "Aviva Breakage Costs" and "Early Repayment Fee 1" and "Early Repayment Fee 2" in the deed of variation to the Project Agreement.[5]

Arrangement Fee

(f) An arrangement fee is payable at closing on the Term Loan only equal to 1.00% of the aggregate of the Term Loan and Debt Service Reserve commitments, such fee to be deducted from the first drawdown under the New Facilities Agreement at closing.

Agency Fee

(g) An agency for of £10,000 is payable by the Borrower to the Lender on the date of the Agreement, on 1 April 2023 and on 1 April each year until the loans made under the New Facilities Agreement have been repaid in full.

Other Fees

(h) No arrangement fee is payable on the Change in Law Facility and, given it is an uncommitted facility, there is also no commitment fee.

(i) No commitment fee is payable on the Debt Service Reserve Facility.

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[4] Note: We expect the Early Repayment Formula in the New Facilities Agreement to be revised to also include termination by the Authority on an Authority Break Point Date - with such inclusion being treated on the same basis as Authority voluntary termination - on the basis that such a termination is tantamount to an Authority voluntary termination. In such a scenario this will need to be reflected in the definition of Aviva Breakage Costs in the PA DoV.

[5] Note: The statement regarding consistency of approach in this regarding is given on the assumption that the definitions of [Base]/ [Revised] Senior Debt Termination Amount in the PA DoV is finally determined so as to make it clear that the Early Repayment Fee does not fall within those calculations in the situation of termination of the PA for uninsurability / corrupt gifts and prohibited acts.

4.4 **Repayment / Amortisation**

(a) The Term Loan Facility amortises and is repayable on each Payment Date (i.e. 31 March and 30 September) in the amounts set out in the Repayment Schedule found at Schedule 6 of the New Facilities Agreement.

(b) Consistent with a typical revolving facility, the Debt Service Reserve Facility is repayable in full on each Payment Date unless the outstanding amount at such time it is deemed to be repaid and redrawn in full, in the manner permitted under the Facility Agreement.

(c) Any Deferred Amount (i.e. repayment of a repayment instalment of the Term Loan Facility, plus interest on such instalment, which the Lender has, at the request of the Borrower and in its sole discretion, agreed may be deferred) must be repaid on the Payment Date immediately following such deferral.

(d) The Change in Law Facility shall be repaid in instalments in accordance with a schedule agreed between the Lender and the Borrower as a condition precedent to utilisation of the Change in Law Facility.

(e) The final repayment date in respect of each facility above is 31 January 2036 which, when compared to analogous dates under the Existing Facilities Agreement (being 31 July 2035) reflects a marginally longer tenor profile.

4.5 **Representation / Covenant / Events of Default / Trigger Events**

(a) The Borrower is subject to a package of 'obligations' under the New Facilities Agreement, in respect of which a failure to comply results in the ability for the Lenders to, *inter alia*, accelerate the debt.

(b) Broadly speaking the New Facilities Agreement is both: (i) consistent with what we would expect to see in a transaction of this nature; and (ii) not more materially onerous that the Existing Facilities Agreement.

(c) We would make particular note that the New Facilities Agreement includes:

(i) a new obligation on the Borrower to comply with the "Control Matrix", a new concept which creates more specific levels of lender control over the Borrower's actions under and in respect of certain Project Documents;

(ii) a new Event Of Default which occurs if the 'Apparatus' (we understand this to be project assets) is damaged or destroyed in whole or in major part, unless the Lender deems such damage to not have caused a Material Adverse Effect or the relevant operating subcontractor is obliged to reinstate the damaged Apparatus; and

(iii) a new concept of a 'Trigger Event' which broadly speaking are events which are indicative of issues within the Project but which are not at a level where an Event of Default would be appropriate. The occurrence of a Trigger Event (A) enables the Lender to: (i) appoint experts to investigate the Borrower and make recommendations as to any remedial action needed; or (ii) require the Borrower to deliver a report to the Lender setting out the proposed remedial action required to remedy the issue; and (B) prevents distributions to shareholders being made.[6]

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[6] Note: The draft of the New Facilities Agreement reviewed for the purposes of this memorandum contained a draft position with respect to Events of Default linked to service level / performance issues in the Project Agreement. This concept is consistent with that contained in the existing facility agreement and the proposed position in the current draft is not materially more onerous.

(d) We would note that that whilst each of the above constitutes new obligations when compared to the Existing Facilities Agreement, such obligations are fairly typical constructs in PFI funding agreements.

4.6 **Forecasts / Financial Model**

(a) Consistent with typical transactions of this nature, the basis on which the financial covenants to which the Borrower is subjected to is based on Project Forecasts – effectively a series of technical and economic assumptions which are inputted into the Financial Model.

(b) The requirements as to the form and content of the Project Forecasts is broadly similar and not more onerous when compared against the terms of the Existing Facility Agreement.

4.7 **Financial Covenants**

(a) The Financial Covenants under the New Facilities Agreement are as follows (in each case breach of which shall be an Event of Default) representing an equivalent or less onerous position than that contained in the Existing Facilities Agreement:

(i) Historic Debt Service Cover - 1.05:1;

(ii) Projected Debt Service Cover Ratio - 1.05:1; and

(iii) Loan Life Cover Ratio - 1.07:1.

(b) Under the Existing Facilities Agreement the financial ratios are as detailed below:

(i) Historic Debt Service Cover - 1.05:1;

(ii) Projected Debt Service Cover Ratio - 1.05:1; and

(iii) Loan Life Cover Ratio - 1.10:1.

(c) These covenants are also utilised to test the Borrower's ability to make distributions. The equivalent level of 'buffer' to that contained in the Existing Facilities Agreement) is retained in the New Facilities Agreement (which has the effect of imposing a less onerous distribution test on the Loan Life Cover Ratio).

4.8 **Account Structure**

The account structure differs from the exact structure set out in the Existing Facilities Agreement but remains consistent with that required for an operational project of this type and enables the Borrower to pay operating costs of the Project in the same way.

5. SECURITY AGREEMENTS

(a) Each of the Borrower, Holdco and Midco shall grant to the Lender (as security trustee) fixed and floating charges as security for the liabilities owed to the Lender under and in connection with the New Facilities Agreement and, in respect of MidCo, the guarantee it provides contained within the New Facilities Agreement (as applicable).

(b) In respect of the Borrower [and Holdco], this security structure reflects, and is no more onerous than, the existing security arrangements granted to the outgoing lender.[7]

(c) As Midco is a newly incorporated company, this will be the first security agreement granted by Midco, and the proposed security structure is consistent with what we would expect to see for a transaction of this type.[8]

6. INTERCREDITOR AGREEMENT

(a) The Intercreditor Deed is entered into between (1) the Borrower, (2) HoldCo (as 'Subordinated Creditor'), (3) MidCo (as 'Subordinated Creditor') and (4) the Lender as 'Original Lender' and 'Security Trustee') and regulates:

(i) the priority and permitted payment of the debts owed by the Borrower to the Lender (pursuant to the Facilities Agreement, secured) and the Subordinated Creditors (pursuant to the Loan Note Instruments, unsecured); and

(ii) the exercise and enforcement of rights under the Senior Finance Documents and the Subordinated Finance Documents.

(b) Under the Intercreditor Deed, HoldCo and MidCo's rights to be paid and enforce the subordinated debt are fully subordinated to the Lender's and they can take no action in respect of either without the consent of the Lender (or otherwise to the extent permitted under the Senior Finance Documents). The definition of "Subordinated Debt" includes the Loan Note Instrument and MidCo Intercompany Loan.

(c) The proposed terms of the Intercreditor Deed are consistent with what we would expect to see for a transaction of this type and do not contain any obligations that we would consider overly onerous or not within standard market practice.

7. ACCOUNT BANK AGREEMENT

(a) As Aviva is not a clearing bank and unable to provide transactional banking services, Lloyds will continue to be the operator of the Accounts notwithstanding the refinance.

(b) The Account Bank Agreement is entered into between (1) the Borrower, (2) Lloyds and (3) the Lender (as Security Trustee) and regulates the basis on which Lloyds is willing to provide the bank accounts (the **Accounts**) that the Borrower is required to open maintain under the terms of the New Facilities Agreement. The Account Bank Agreement is primarily a mechanical document in this sense with the 'operational' controls in respect of those accounts being contained in the New Facilities Agreement.

(c) The Accounts which the Borrower is required to establish and maintain are set out in the Account Bank Agreement and align with the accounts prescribed in the New Facilities Agreement.[9]

(d) The Account Bank Agreement has an expanded suite of representations, undertakings and other miscellaneous provisions (standard FATCA clauses for instance) that are not in the

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[7] Note: As at the date of this memorandum we have not been provided with a draft of the Holdco security document. We have made the statement here on the understanding, from Borrower's legal counsel, that such document will take the form of the Borrower security document and noting that typically this security will be 'all asset security' and such security is typically provided on market standard terms.

[8] Note: As at the date of this memorandum we have not been provided with the Midco security document. We have made this statement on the same basis as that made in respect of the Holdco security document noted above.

[9] Note: This statement is made as the current draft of the Account Bank Agreement indicates this conforming exercise is to be completed and we assume it will be done so.

existing account bank agreement. Whilst the Borrower was not subject to such obligations in the existing account bank agreement we would note that:

(i) these provisions are to a significant extent likely included to reflect that Lloyds will be, post refinancing, a 'third party' account bank and so does not institutionally benefit from certain provisions contained in the main finance documents; and

(ii) those obligations are not overly onerous or 'off market'.

(e) Acknowledging the above, the proposed terms of Account Bank Agreement are consistent with what we would expect to see for a transaction of this type and do not contain any obligations that we would not consider to be within standard market practice.

8. LOAN NOTE INSTRUMENTS

(a) In connection with the refinancing amendments are being made to the Borrower Loan Note Instrument [and the HoldCo Loan Note Instrument].[10]

(b) These amendments are based purely to reflect the new finance documentation and that the original shareholder support documentation – pursuant to which the obligations on the shareholders to inject equity into the Project – is no longer relevant given the underlying obligations have been fulfilled.

9. GAPS LIST LETTER

(a) There are a number of the economic features of the refinancing that cannot be confirmed until the financial close call (the **FC Call**) has occurred (given, on that call, the existing swaps will be broken and a new fixed rate margin set under the New Facilities Agreement) and such features are required pieces of information to fully complete the refinancing documentation.

(b) As such there is a need to bridge the need for the parties to have comfort around the new refinancing documentation prior to commencing and implementing the actions on the FC Call. This is typically done via a letter (the **Gaps List Letter**) identifying the gaps in the documentation and having all relevant parties agree that those gaps will be filled, with the relevant lawyers authorised to do so, from the output of the FC Call. The financial model will have a specific output sheet which will align with those gaps and which will be circulated shortly after the FC Call.

(c) At the date of this memorandum was updated we had received a draft of the Gaps List and can confirm that it operates in the manner described above.[11]

10. SENIOR LENDER'S DIRECT AGREEMENT

(a) In connection with the refinancing Aviva require the provision of a direct agreement from the Authority in connection with the Project Agreement on substantially the same terms as that currently provided to the Existing Lenders (the existing agreement being, the **Existing Direct Agreement**).

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[10] Note: As at the date of this memorandum we have not received any amendment documentation in connection with the HoldCo Loan Note Instrument. We understand, from Borrower's legal counsel, that it will follow the drafting and commercial principles applied to the Borrower Loan Note Instrument.

[11] We have provided comments on the draft Gaps List Letter on the basis that it did not cover all the gaps in the PA DoV. As at the date this memorandum was updated we have not received a revised draft but do not expect that they will be any issues with our comments being reflected.

(b) For context, the provision of such a direct agreement is entirely typical in the context of UK project finance and is almost certainly a fundamental credit requirement of any entity providing finance. As such the provision of a direct agreement to Aviva is likely required to enable the refinancing to occur. The predominant purpose of such a direct agreement is to enable financiers to “step into the shoes” of the project company in the event that the underlying project agreement is terminable and as such provides comfort around the ability to rescue a project which may become in distress.

(c) The draft Senior Lender’s Direct Agreement is:

(i) on substantially the same terms as those contained in the Existing Direct Agreements and as such results in the Authority being in no materially different position; and

(ii) is subject to the same time periods in respect of (A) the “Required Period”, being the period of notice which the Authority need to give the financiers before terminating the Project Agreement; and (B) the “Step-In Period”, being the period afforded to the Lenders to step into the project or appoint a suitable substitute contractor (the criteria in respect of which in the Existing Direct Agreement are retained) to take the role of the Borrower as counterparty to the Project Agreement.

11. NOTE

This memorandum has been prepared solely for the Authorities. This memorandum may not, without our prior permission, be used or relied upon for any other purpose or disclosed to or relied upon by any other person except that it may be disclosed (without reliance) to your auditors or other professional advisors.

Browne Jacobson LLP

3 February, 2023 (as updated 28 February, 2023)

Appendix 1

Reviewed Finance Documents

1. A draft Facilities Agreement
2. A draft MidCo Intercompany Loan Agreement
3. A draft Borrower Security Agreement
4. A draft Intercreditor Deed
5. A draft Account Bank Agreement
6. A draft deed of variation in connection with the Borrower Loan Note Instrument (the **Borrower LNI DoV**)
7. A draft sale and purchase agreement in respect of the shares in the Borrower between HoldCo and MidCo (the **SPA**)
8. A draft PA DoV
9. A draft Gaps List Letter
10. A draft Senior Lender's Direct Agreement,

together, the **Reviewed Documentation**.