

# The legal agreement

## Debenture deed by Orbital Marine Power (Orkney) plc

This deed is made on 20 May 2022

Between

1 Orbital Marine Power (Orkney) plc, a company incorporated in Scotland under the Companies Acts with registered number SC609187 and having its registered office at Innovation Centre – Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, Orkney, United Kingdom, KW15 1ZL (the “**Issuer**”); and

2 Abundance Investment Ltd, a company incorporated in England and Wales with registered number 07049166 and having its registered office at Hamilton House, Mabledon Place, London, WC1H 9BB (as “**Agent**” and “**Arranger**”)

### Background

(A) The Issuer has resolved, pursuant to resolutions of its board of directors dated the date of this Deed, to create and issue the Debentures on the terms of this Deed.

(B) The Issuer has determined to constitute the Debentures in the manner set out in this Deed.

Now this deed witnesses as follows:

### 1 Definitions and Interpretation

1.1 In this Deed (including the foregoing recitals), unless the subject or context requires otherwise, the following expressions shall have the meanings set out opposite them below:

“**Abundance**” means Abundance Investment Ltd a company incorporated and registered in England and Wales with company number 07049166 and having its registered address at Hamilton House, Mabledon Place, London, WC1H 9BB and which is authorised and regulated by the Financial Conduct Authority (“**FCA**”) with FCA registration number 525432;

“**Abundance Service**” means the website, services and the “Bulletin Board” operated by Abundance at [www.abundanceinvestment.com](http://www.abundanceinvestment.com);

“**Abundance Terms and Conditions**” means the terms and conditions governing the operation of the Abundance Service, from time to time, the latest copy of which can be found at [www.abundanceinvestment.com/legal/terms-and-conditions](http://www.abundanceinvestment.com/legal/terms-and-conditions) but at all times only to the extent that such terms and conditions do not impose any obligations or restrictions on the Issuer;

“**Acceleration Notice**” has the meaning given to it in clause 17.3.1;

“**Account Assignment**” means the assignment in security (governed by Scots law) in relation to the Issuer’s right, title and interest in and to the Debt Service Reserve Account and the Reserve dated on or around the Effective Date by the Issuer in favour of the Security Trustee (for the benefit of the Parties);

“**Accounting Principles**” means the generally accepted accounting principles in the United Kingdom, including FRS 102;

“**Accrual Date**” means 1 July 2022;

“**Adverse Tax or Regulatory Requirement**” means a Tax or Regulatory Requirement which Abundance or the Issuer, in its discretion (acting reasonably and in good faith and after consulting with the other) determines makes the issuance, holding or trading of the Debentures (or any obligation of the Agent or Security Trustee thereto) unlawful or prohibitively expensive;

“**Affected Person**” means any person which Abundance or the Issuer, in its discretion (acting reasonably and in good faith and after consulting with the other), determines is ineligible to acquire or hold Debentures due to the additional costs or restrictions or a Tax or Regulatory Requirement;

“**Affiliate**” means in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

“**Agent**” means Abundance Investment Ltd, a company incorporated and registered in England and Wales with company number 07049166 and having its registered office at Hamilton House, Mabledon Place, London, WC1H 9BB, in its capacity as agent (which expression shall include any successor agent appointed in accordance with the Abundance Terms and Conditions);

“**Assignment in Security**” means each and any assignment in security in relation to the Project Documents (but excluding the Collateral Warranty) from time to time executed or to be executed by the Issuer for the benefit of the Security Trustee to supplement or replace or in order to give (or evidence) security (or any other form of support) for the performance of the obligations of the Issuer under the Finance Documents;

“**Authorisation**” means any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with any governmental, semi-governmental or judicial entity or authority (including any self-regulatory organisation established under statute or by a governmental or semi-governmental body);

“**Beneficiaries**” means each of the Agent, the Holders and each Delegate and the term “Beneficiary” means any one of them;

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**“Berth Agreement”** means the berth agreement dated 1 July 2014 entered into between OMPL and the Landlord in respect of the Lease Facilities, as amended on 1 July 2015, 17 June 2016, 23 January 2017, 15 August 2017 and 21 September 2018 and as novated by OMPL to the Issuer in terms of a novation agreement dated 8 January 2019;

**“Bond and Floating Charge”** means the bond and floating charge (governed by Scots law) dated on or around the Effective Date by the Issuer in favour of the Security Trustee (for the benefit of the Secured Parties);

**“Business Day”** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**“Business Plan”** means the agreed base case financial model and business plan, in a form approved by the Agent.

**“Cash Return Date”** has the meaning given to it in clause 10 (*Repayment of Principal*);

**“Cash Return Schedule”** means the schedule at Schedule 6;

**“Change of Control”** means OPHL ceases directly or indirectly to (a) have the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(i) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the Issuer;

(ii) appoint or remove all, or the majority, of the directors or other equivalent officers of the Issuer; or

(iii) give directions with respect to the operating and financial policies of the Issuer with which the directors or other equivalent officers of the Issuer are obliged to comply; or

(b) hold beneficially more than 50% of the issued share capital of the Issuer (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**“Conditions Precedent”** means the conditions precedent set out in Schedule 1;

**“Debenture”** means each debenture constituted by this Deed;

**“Debt Liabilities”** means all monies and obligations due, owing or incurred to the Secured Parties or any of them by the Issuer and/or OPHL (whether present or future, actual or contingent and whether incurred as principal or surety) pursuant to any Finance Document;

**“Debt Service Reserve Account”** means the account designated as such by the Issuer and the Agent in accordance with paragraph 5 of Schedule 4 (*Positive Undertakings*) of this Deed;

**“Deed”** means this deed and the Schedules to this deed;

**“Default Interest”** has the meaning given to it in clause 12 (*Default Interest*) of this Deed;

**“Delegate”** means any delegate, agent, attorney or co-agent appointed by the Agent in accordance with the Abundance Terms and Conditions;

**“Direct Agreements”** means each of the direct agreements entered into by the Issuer, the Security Trustee and each of the respective counterparties in respect of each of the following Project Documents unless otherwise agreed by the Agent:

(c) the EPC Agreement;

(d) the O&M Agreement;

(e) the Berth Agreement;

(f) the Management Services Agreement; and

(g) any other agreement entered into by the Issuer, the Security Trustee and a counterparty to a Project Document designated as a Direct Agreement by the Security Trustee and the Issuer;

**“Disruption Event”** means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Debentures (or otherwise in order for the transactions contemplated by any Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the parties to the relevant Finance Documents; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a party preventing that, or any other party to the relevant Finance Documents:

(i) from performing its payment obligations under the Finance Documents; or

(ii) from communicating with other parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the party whose operations are disrupted;

**“Drawdown Notice”** means any notice issued by the Issuer to the Agent instructing for the payment of the proceeds of the issuance of the Debentures

**“Early Redemption Date”** has the meaning given to it in clause 14.1;

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**“Early Redemption Fee”** means:

(a) in respect of an early redemption of all Debentures made in accordance with clause 14.1 or clause 14.2 (*Early Redemption*):

- (i) an amount necessary to ensure that Holders’ rate of return on the Debentures is as projected in the Offer Document; plus
- (ii) an amount equal to six months of Interest calculated at the Interest Rate on the amount of Principal repaid.

(b) in the case of a redemption of Debentures held by an Affected Person or Affected Persons only, in accordance with clause 14.3 (*Early Redemption*) an amount such that the rate of return on the Affected Person’s or the Affected Persons’ (as applicable) Debentures is as projected in the Offer Document.

**“Early Redemption Option Date”** means 30 June 2027;

**“Effective Date”** means the date of issuance of the debentures in accordance with clause 3.4;

**“Eligible EEA Country”** has the meaning given to it in the Abundance Terms and Conditions;

**“Enforcement Action”** means any formal legal action or formal legal step taken by any or on behalf of any Secured Party whatsoever to enforce its rights against the Issuer and/or OPHL under a Finance Document including:

- (a) to petition for (or take any other formal legal steps or action which are likely to lead to) the liquidation, winding up, administration, judicial management or dissolution of the Issuer and/or OPHL (as appropriate); or
- (b) to commence legal proceedings against the Issuer and/or OPHL (as appropriate); or

(c) to demand, accelerate or require payment, repayment or prepayment of all or any part of the Debt Liabilities; or

(d) to enforce or make a demand under any guarantee or similar support given in connection with the Debt Liabilities; or

(e) to cancel any obligation to provide any financial accommodation under a Finance Document;

**“Environment”** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

(c) land (including, without limitation, land under water);

**“Environmental Claim”** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law;

**“Environmental Law”** means any applicable law or regulation which relates to:

(a) the pollution or protection of the Environment;

(b) the conditions of the workplace; or

(c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste;

**“Environmental Permits”** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group;

**“EPC Agreement”** means the engineering, procurement and construction agreement dated 9 July 2019 entered into between OMPL and the Issuer in relation to the delivery of the Project;

**“Event of Default”** means any event or circumstances specified as such in clause 17 (*Events of Default*) of this Deed;

**“Existing Debentures”** means each debenture constituted by the debenture deed dated 16 October 2018 as amended on 22 January 2019 and 24 May 2021 (and as such debenture deed may be further amended from time to time);

**“Finance Documents”** means:

(a) this Deed;

(b) each Security Document;

(c) the Intercreditor Agreement;

(d) any Drawdown Notice; and

(e) and each document designated as such by the Agent and the Issuer.

**“Finance Party”** means the Agent, the Arranger, the Security Trustee and each Holder;

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**“Financial Indebtedness”** means any obligation (whether incurred as principal or surety and whether present, future, actual or contingent) for the payment or repayment of any indebtedness in respect of money borrowed or debt balances at any financial institution or under any bond, note, loan, debenture, loan stock or similar instrument, finance or capital lease, acceptance credit or bill discounting facility or guarantee and/or counter-indemnity obligation in respect of any of the above;

**“Group”** means OPHL, the Issuer and the Issuer’s Subsidiaries for the time being;

**“Holder”** means the person entered in the Register as the holder of each Debenture from time to time;

**“Holding Company”** means in relation to a person, any other person in respect of which it is a Subsidiary;

**“Holder Representative”** means the Holders appointed as a committee to represent the interests of Holders in accordance with the Abundance Terms and Conditions;

**“Instructing Party”** means:

(c) if relating to directions or instructions in respect of a Reserved Matter, directions or instructions of the Holders made by way of Special Resolution; or

(d) if relating to directions or instructions in respect of a Non-Reserved Matter, directions or instructions of the Holders made by way of Ordinary Resolution.

**“Insurances”** means all insurance policies in relation to the Project;

**“Interest”** means any amount of interest payable to a Holder in accordance with clause 11 (Interest) of this Deed;

**“Intercreditor Agreement”** means the intercreditor agreement to be entered into on or around the Effective Date among, inter alios, the Security Trustee, the Junior Creditor, the Issuer and OPHL regulating, inter alia, the ranking and enforcement of the Security Documents and the Junior Security Documents;

**“Interest Period”** means each period starting on the last day of its preceding interest period and ending on 30 June and 31 December in each year and on the Maturity Date, except that the first of such periods shall commence on 1 July 2022;

**“Interest Rate”** means six per cent per annum;

**“Issuance Amount”** means £4,000,000 or such lower amount as the Agent (in its absolute discretion) and the Issuer may agree in writing;

**“Issue Amount”** means the total aggregate principal amount of all of the Debentures issued under this Deed, before the Issuer has redeemed any Debentures early in accordance with clause 14 (*Early Redemption*) of this Deed;

**“Issuer Share Pledge”** means the Scots law share pledge, dated on or around the Effective Date, granted by OPHL in favour of the Security Trustee over all of the issued share capital of the Issuer;

**“Junior Creditor”** means a lender to OPHL approved by the Agent and Security Trustee, in their sole discretion;

**“Junior Creditor Issuer Floating Charge”** the bond and floating charge (governed by Scots law) dated on or around the Effective Date by the Issuer in favour of the Junior Creditor (or its nominee or trustee approved by the Agent and Security Trustee, in their sole discretion);

**“Junior Creditor Parent Floating Charge”** the bond and floating charge (governed by Scots law) dated on or around the Effective Date by OPHL in favour of the Junior Creditor (or its nominee or trustee approved by the Agent and Security Trustee, in their sole discretion);

**“Junior Creditor Security Documents”** means the Junior Creditor Issuer Floating Charge and the Junior Creditor Parent Floating Charge;

**“Landlord”** means The European Marine Energy Centre Limited a company incorporated and registered in Scotland with company number SC249331 and whose registered office is at Old Academy Business Centre, Back Road, Stromness, Orkney, KW16 3AW;

**“Launch”** means the Arranger making available the Offer Document through the Abundance website to Members;

**“Leased Facilities”** means the berth forming part of the marine test facilities at the European Marine Energy Centre as more particularly described in the Berth Agreement;

**“Legal Reservations”** means:

(a) the principle that equitable remedies may be granted at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

(b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of United Kingdom stamp duty may be void and defences of set-off or counterclaim; and

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(c) similar principles, rights and remedies under the laws of any relevant jurisdiction;

**"Limitation Acts"** means the Limitation Act 1980, the Foreign Limitation Periods Act 1984 and the Prescription and Limitation (Scotland) Act 1973;

**"Longstop Date"** means 30 September 2022;

**"Management Services Agreement"** means a management services agreement entered into between OMPL and the Issuer dated 9 July 2019 in respect of various services to be supplied by or on behalf of OMPL to the Issuer as part of the Project;

**"Marine Licence"** means the marine licence dated 7 June 2019 granted to the Issuer by Marine Scotland as part of the Project;

**"Marketplace"** has the meaning given to the term in the Abundance Terms and Conditions;

**"Material Adverse Effect"** means a material adverse effect on:

(a) the ability of the Issuer to perform its payment obligations under the Finance Documents; or

(b) the validity or enforceability of the Finance Documents against the Issuer and/or OPHL (as appropriate) or the rights or remedies of any of the Holders or the Arranger or the Agent against the Issuer and/or OPHL (as appropriate) under any of the Finance Documents;

**"Maturity Date"** means 30 June 2034;

**"Members"** has the meaning given in the Abundance Terms and Conditions;

**"Non-Reserved Matters"** means any matter that is not a Reserved Matter or a matter deemed by the Agent to be of a formal, minor or technical nature that is exercisable by the Issuer and/or Agent without Holder consent in accordance with clause 20.1 (*Modifications, Waivers or Consents*);

**"Offer"** means the offer of debentures to Members in accordance with this Deed, the Abundance Terms and Conditions and the Offer Document;

**"Offer Document"** means the document produced by the Issuer, dated on or about the date of this Deed, relating to the Debentures as amended or updated from time to time;

**"O&M Agreement"** means the operation and maintenance agreement dated 9 July 2019 entered into between the Issuer and OMPL in relation to the delivery of the Project;

**"OMPL"** means Orbital Marine Power Limited, a company incorporated in Scotland registered with company number SC235066 and whose registered office is at Innovation Centre – Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, Orkney, KW15 1ZL;

**"OPHL"** means Orbital Projects (Holdings) Limited, a company incorporated in Scotland registered with company number SC716968 and whose registered office is at Innovation Centre – Orkney Hatston Pier Road, Crowness Business Park, Kirkwall, United Kingdom, KW15 1ZL;

**"Ordinary Resolution"** means a resolution passed at a meeting of the Holders of the Debentures duly convened and held in accordance with the Schedule to the Abundance Terms and Conditions by the relevant majority set out therein or passed by written resolution in accordance therewith;

**"Original Jurisdiction"** means, in relation to the Issuer, the jurisdiction under whose laws the Issuer is incorporated as at the date of this Deed;

**"Party"** means a party to this Deed;

**"Permitted Indebtedness"** means any Financial Indebtedness:

(a) incurred by the Issuer under the Finance Documents;

(b) which prior to being incurred has been fully subordinated to the Financial Indebtedness under the Finance Documents on terms satisfactory to the Agent;

(c) pursuant to the Existing Debentures;

**"Permitted Security"** means:

(a) prior to the date of issue of any Debentures under this Deed, any Security granted in favour of the Security Trustee prior to the date of this Deed;

(b) any Security created or expressed to be created pursuant to the Security Documents;

(c) any Security created or expressed to be created as security for any further issuance of debentures with the Agent and Arranger under a new debenture deed;

(d) (provided that the Intercreditor Agreement remains in full force and effect in all respects) any Security created or expressed to be created pursuant to the Junior Creditor Security Documents;

(e) any Security which ranks with or is subordinated and postponed to all Security held for the benefit of, and in support of all amounts owed (or capable of being owed) to the Secured Parties, under or in connection with the Finance Documents, pursuant to the Intercreditor Agreement;

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(f) any netting or set-off arrangement entered into by the Issuer in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;

(g) any lien arising by operation of law and in the ordinary course of business of the Issuer; or

(h) any Security over bank accounts or retention rights in respect of deposits granted in favour of the account bank as part of that bank's standard terms and conditions;

**"Principal"** means, unless the context requires otherwise, the aggregate principal amount of the Debentures or the principal amount of the relevant Debentures held by any Holder, in each case, for the time being outstanding;

**"Proceeds"** means all receipts and/or recoveries by the Agent pursuant to any Enforcement Action taken in respect of any Finance Document after deducting (to the extent not already deducted) all sums which the Agent is required by the terms of the Finance Documents or by applicable law to pay to any other person before distributing any such receipts or recoveries to any of the Secured Parties;

**"Project"** means the construction, commissioning, and operation, and maintenance of the 2 MW tidal stream power project at the European Marine Energy Centre, Orkney, as governed by the terms agreed in the Project Documents;

**"Project Document"** means each of:

- (a) the EPC Agreement;
- (b) the O&M Agreement;
- (c) the Berth Agreement;
- (d) the ROC PPA;

(e) the ROC and Infrastructure Transfer Agreement;

(f) the Marine Licence;

(g) the Insurances;

(h) the Management Services Agreement; and

(i) any other document designated a Project Document by the Agent and the Issuer;

**"Register"** means the register of Holders of Debentures;

**"Repeating Representations"** means the representations and warranties in paragraph 1.1 (*Status*) to paragraph 1.6 (*Governing law and enforcement*), paragraph 1.8 (*No default*), paragraph 1.9 (*Ownership*) to paragraph 1.11 (*Share Capital*), paragraph 1.14 (*Financial information*) and paragraphs 1.16 (*No breach of laws*) to 1.24 (*Project Documents*) of Schedule 3 (*Representations and Warranties*) of this Deed;

**"Reserve"** has the meaning given in paragraph 5 of Schedule 4 of this Deed;

**"Reserved Matter"** means has the meaning given in clause 20.3 (*Modifications, Waivers or Consents*);

**"Restricted Person"** means any person who does not fulfil any criteria of eligibility to invest and/or to hold Debentures set out in the Abundance Terms and Conditions from time to time including (without limitation):

- (a) any US Person;
- (b) any person who is resident in, whose permanent place of business or whose jurisdiction of incorporation or establishment is in any of the Channel Islands or the Isle of Man; or
- (c) any Affected Person;

**"ROC and Infrastructure Transfer Agreement"** means the renewable obligation certificate accreditation and infrastructure transfer agreement dated 16 October 2018 and varied by variation agreement dated 11 January 2019 entered into between the Issuer and OMPL in connection with the delivery of the Project in terms of which OMPL is under an obligation to transfer its renewable obligation certificate accreditation, and all onshore infrastructure owned by OMPL at the Leased Facilities, to the Issuer;

**"Schedule"** means a Schedule to this Deed;

**"Schedule to the Abundance Terms and Conditions"** means the schedule to the Abundance Terms and Conditions as at the date of this Deed;

**"Secured Parties"** means the Security Trustee, the Agent, the Holders, any Receiver (as such term is defined in the Security Documents) or any Delegate (as such term is defined in the Security Documents);

**"Security"** means a mortgage, standard security, charge, assignment in security, assignment, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**"Security Documents"** means each of the following documents:

- (a) each Assignment in Security;
- (b) the Account Assignment;
- (c) the Bond and Floating Charge;
- (d) the Issuer Share Pledge;
- (e) each Direct Agreement; and
- (f) the Security Trust Deed;



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“**Security Trust Deed**” means the security trust deed, dated on or around the Effective Date, entered into between, amongst others, the Issuer, OPHL and the Security Trustee;

“**Security Trustee**” means Abundance Security Trustee Ltd, a company incorporated and registered in England and Wales with company number 09864672 and whose registered office is at Hamilton House, Mabledon Place, London, WC1H 9BB;

“**Special Resolution**” means a resolution passed at a meeting of the Holders of the Debentures duly convened and held in accordance with the Schedule to the Abundance Terms and Conditions by the relevant majority set out therein or passed by written resolution in accordance therewith;

“**Sterling**” or “**£**” means the lawful currency for the time being of the United Kingdom;

“**Subsidiary**” means a subsidiary within the meaning of section 1159 of the Companies Act 2006;

“**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

“**Tax or Regulatory Requirement**” means any Tax or law, regulation, rule, order, official directive or guideline of any governmental, inter-governmental or supranational body, agency, department or regulatory authority or organisation or any decision of a court (having the force of law) in any country or territory;

“**Transaction Documents**” means:

- (a) the Finance Documents,
- (b) the Project Documents; and

(c) the Security Documents;

“**US**” means the United States of America;

“**US Person**” means any persons who are or deemed to be US Persons for the purposes of US tax laws or US securities laws (including (without limitation) the US Securities Act of 1933). The Issuer may determine (acting reasonably) whether a person acquiring or holding Debentures (or proposing to do so) is a US person in accordance with applicable law at the time it makes such determination. Further summaries of what constitutes a US Person are provided in the Abundance Terms and Conditions; and

“**Written Resolution**” means a resolution in writing passed in accordance with the Schedule to the Abundance Terms and Conditions.

1.2 In this Deed unless the contrary intention appears:

1.2.1 terms defined in the Abundance Terms and Conditions have the same meaning in this Deed;

1.2.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Deed;

1.2.3 Words denoting the singular include the plural and vice versa and a reference to one gender includes the other gender;

1.2.4 A reference to a “**person**” means any individual, company, corporation, partnership, joint venture, association, unincorporated organisation, trust or other judicial entity;

1.2.5 A reference to a party or any other person includes its successors in title, permitted assigns and permitted transferees;

1.2.6 References to clauses, paragraphs and Schedules (including, for the avoidance of doubt, the Abundance Terms and Conditions and the Schedule to the Abundance Terms and Conditions) are to the clauses, paragraphs and Schedules of this Deed which form part of this Deed and shall have the same force and effect as if set out in the body of this Deed, with terms given the meanings set out in this Deed (unless the context otherwise requires) and any reference to this Deed shall include the Schedules;

1.2.7 A reference to this Deed or to any other deed, instrument, agreement or document shall, unless the context otherwise requires or unless the contrary intention appears, be construed as reference to this Deed or such other deed, instrument, agreement or document as the same may from time to time be amended, varied, supplemented or novated, in each case, in accordance with its terms;

1.2.8 A reference to an “**encumbrance**” shall be construed as a reference to a mortgage, standard security, charge, assignation in security, assignment by way of security, pledge, lien (save as arising in the ordinary course of business), hypothecation, right of set-off (save as arising under the general law for the protection of certain classes of creditors) or trust arrangement for the purpose of and having a similar effect to the granting of security, or other security interest of any kind;

1.2.9 A reference to a statute or statutory provision or other law is a reference to it as amended, or replaced and includes all legislation and regulations made under it;

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1.2.10 A month shall be construed as a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month except that:

1.2.10.1 if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

1.2.10.2 if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

1.2.10.3 if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end;

1.2.11 The winding-up, dissolution or administration of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or of any jurisdiction in which such person carries on business;

1.2.12 All the provisions of this instrument are severable and distinct from one another and the illegality, invalidity or unenforceability of any provision of this instrument under the law of any jurisdiction shall not affect its validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision;

1.2.13 References to the Debentures include references to all and/or any of the Debentures;

1.2.14 The terms including and include or any similar expression shall be construed as illustrative and shall not limit the sense of words preceding those words;

1.2.15 Headings are inserted for convenience and do not affect the interpretation of this Deed;

1.2.16 A reference in this Deed to the exercise of any rights of a Holder Representative shall mean the exercise of such rights by a Holder Representative appointed pursuant to the Schedule to the Abundance Terms and Conditions;

1.2.17 A reference to an Event of Default continuing means that it has not been remedied or expressly waived; and

1.2.18 A reference to “**assets**” includes present and future properties, revenues and rights of every description.

1.3 Other terms will have the specific meaning given to them in the relevant provisions of this Deed or the Schedules forming part of it.

## 2 Form, Title, Register and Arranger

2.1 Debentures will be held in electronic form, represented by book entries in the Register.

2.2 Holders will be issued with an electronic confirmation of their holding of Debentures via the Abundance Service in accordance with the Abundance Terms and Conditions.

2.3 The Issuer, the Arranger and the Agent will only recognise and treat each Holder as the absolute owner of his Debentures for all purposes and shall not be bound to take notice of any trust to which any Debenture may be subject and shall not be required to obtain any proof thereof or as to the identity of such Holder.

2.4 No notice of any trust, except as required by applicable law, will be entered on the Register in respect of any Debentures.

2.5 The Debentures will be registered only in accordance with the Abundance Terms and Conditions, the terms of which the Issuer hereby acknowledges and assents to.

2.6 The Debentures shall be held and transferred subject to the conditions set out in Schedule 2 (*Holder Restrictions*) of this Deed.

2.7 The Issuer shall maintain arrangements so that any changes to the Register required under this clause shall be made by Abundance in accordance with the Abundance Terms and Conditions.

2.8 Subject to clause 2.9, the personal representatives of a deceased Holder shall be the only persons recognised by the Issuer as having any title to, or interest in, that Debenture on the death of such Holder but will only be so recognised subject to their becoming Members in accordance with the Abundance Terms and Conditions.

2.9 Any person becoming entitled to a Debenture in consequence of the death or bankruptcy of any Holder or otherwise by operation of law, may, upon producing such evidence that he is so entitled as the Issuer may reasonably require, be registered himself as the Holder, subject to his becoming a Member of Abundance in accordance with the Abundance Terms and Conditions.

2.10 The Issuer may retain any payments paid upon any such Debentures which any person referred to in clause 2.9 is entitled to, until such person is registered as the Holder of such Debentures or he has duly transferred the Debentures.



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2.11 In accordance with the Abundance Terms and Conditions and the Offer Document, the Holders appoint the Agent to act on their behalf.

### 3 Denomination, Issue and Status

3.1 The Debentures are issued in minimum amounts of five pounds Sterling (£5.00) and in multiple integral amounts of one pound Sterling (£1.00) in nominal amount in excess thereof.

3.2 The aggregate principal amount of the Debentures issued shall not exceed the Issuance Amount.

3.3 As and when issued, the Debentures shall constitute direct, unconditional and secured obligations of the Issuer and will rank *pari passu*, equally and rateably without discrimination or preference without any preference among themselves and in priority to any outstanding unsecured and unsubordinated obligations of the Issuer (except for obligations mandatorily preferred by law applying to companies generally).

3.4 The Holders will only subscribe for, and the Debentures will only be issued once, the Agent has received all of the documents and evidence specified in Schedule 1 (*Conditions precedent*), in each case, in form and substance satisfactory to it, provided that on the date of issuance all the representations and warranties in Schedule 4 (*Representations and Warranties*) are true. The Agent shall notify the Issuer promptly upon being so satisfied.

3.5 Where the Conditions Precedent have not been satisfied by the Longstop Date, the Agent and the Arranger may at their absolute discretion withdraw the Offer, whereupon their obligations pursuant to this Deed shall be immediately cancelled.

3.6 The Debentures are issued to, and can only be held by, Members in accordance with the Abundance Terms and Conditions.

### 4 Covenant to pay

4.1 The Issuer will on any date when any Principal and/or Interest or any other amount becomes due pursuant to this Deed, pay to or to the order of the Agent, in accordance with clause 13 (*Payments*), in Sterling in immediately available funds such amount(s) due on that date together with any applicable Early Redemption Fee payable in accordance with clause 14 (*Early Redemption*) and will, subject to clause 12 (*Default Interest*), from the due date for such amount until (but excluding) the date of actual payment, after as well as before judgment, unconditionally so pay to or to the order of the Agent, in accordance with clause 13 (*Payments*), Default Interest on such unpaid amounts, provided that payment of any sum due in respect of the Debentures made to or to the order of the Agent as provided in this Deed shall, to that extent, satisfy such obligation. The Agent will hold the benefit of this covenant on trust for the Holders.

4.2 Any payment to be made in respect of the Debentures by the Issuer may be made as provided in this Deed and any payment so made will, to that extent only, be a good discharge to the Issuer.

### 5 Assignment and transfer

5.1 The Debentures may only be transferred in accordance with the Abundance Terms and Conditions or, if applicable, in accordance with clauses 2.8 and 2.9 (*Form, Title, Register and Arranger*) of this Deed.

5.2 The Issuer may not assign any of its rights or transfer by novation any of its rights and obligations under this Deed or any Finance Document without the consent of the Agent.

### 6 Back-up Service Provider

6.1 If, for any reason:

6.1.1 Abundance ceases to provide the Abundance Service and it is not provided by the Back-up Service Provider (as defined in the Abundance Terms and Conditions);

6.1.2 Abundance ceases to maintain the Register;

6.1.3 Abundance resigns as Agent in accordance with the Schedule to the Abundance Terms and Conditions without appointing a substitute; or

6.1.4 there is any other material change to the nature of the Abundance Service or the involvement of Abundance which has a material adverse effect on any of the Holders' rights under the Debentures,

then for the avoidance of doubt the obligations of the Issuer and OPHL under the Finance Documents will remain valid and binding subject to clause 6.2 (below).

6.2 In the circumstances set out in clause 6.1 (above), the Issuer may make such arrangements as they reasonably consider appropriate and may amend any Finance Document by a deed expressed to be supplemental to that Finance Document (but only so far as is reasonably necessary to incorporate the revised arrangements for the matters listed in clauses (6.2.1) - (6.2.4) (inclusive) below). The Issuer shall take reasonable steps as soon as practicable to inform the Holders of any changes to:

6.2.1 the arrangements for maintaining the Register;

6.2.2 the procedures for making any payments (but not the amount of any payment or how such amount is calculated) to Holders;

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6.2.3 the procedures for transfer (including acceptance of any instrument in common standard form) of Debentures; and/or

6.2.4 how notices or other information can be given to Holders.

## 7 Representations of the Issuer

The Issuer makes each of the representations and warranties set out in Schedule 3 (Representations and Warranties) of this Deed on the days and at the times stipulated therein.

## 8 Undertakings of the Issuer

So long as any amount under a Debenture is outstanding, the Issuer agrees to comply with each of the undertakings given by it that are set out in Schedule 4 (*Positive Undertakings*) and Schedule 5 (*Negative Undertakings*) of this Deed.

## 9 Use of Proceeds

9.1 The Issuer may only use the proceeds raised from the Debentures issued under this Deed for:

9.1.1 the refinancing Financial Indebtedness in respect of the Existing Debentures; and

9.1.2 meeting the costs and expenses (including, without limitation, any arrangement fee and legal fees) incurred by the Issuer in connection with the negotiation, preparation and execution of the Finance Documents and the Offer Document.

9.2 Neither the Arranger, the Agent nor any Holder is bound to monitor or verify the application of any net proceeds of a Debenture issued pursuant to this Deed.

## 10 Repayment of Principal

The Issuer shall repay Principal in instalments on the last Business Day of each Interest Period (each a “**Cash Return Date**”) in the amounts specified in accordance with the Cash Return Schedule and all remaining Principal will be repaid in full on the Maturity Date, together with all accrued but unpaid Interest and any and all amounts due and outstanding under the Debentures pursuant to this Deed.

## 11 Interest

11.1 The Debentures shall bear and accrue interest daily on the Principal as provided in this clause 11 on and from the Accrual Date and in respect of each Interest Period.

11.2 The Issuer shall pay Interest on each Cash Return Date as set out in the Cash Return Schedule with the last Cash Return Date falling on the Maturity Date. If any such Cash Return Date is not a Business Day, payment shall be made on the preceding Business Day.

11.3 The Interest payable on each Cash Return Date shall be paid to the Agent (for the account of the Holders) by credit transfer and in immediately available, freely transferable, cleared funds.

11.4 Interest shall be calculated and accrue on a daily and simple basis and on the basis of the actual number of days elapsed in the relevant period and a 365-day year.

## 12 Default Interest

12.1 In the event the Issuer fails to make any payment of Principal, Interest or any other amount due pursuant to this Deed on the date on which such Principal, Interest or other payment is due and payable, Default Interest shall accrue on such unpaid amount from (and including) the due date for such amount until

(but excluding) the date of actual payment (both before and after judgment) at a rate which is 3 per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of such non-payment, attracted interest at the Interest Rate.

12.2 Default Interest shall:

12.2.1 accrue on a daily basis and on the basis of a 365-day year; and

12.2.2 be immediately payable by the Issuer on demand by the Agent; and

12.2.3 be compounded with the overdue amount at the end of each Interest Period.

## 13 Payments

All payments pursuant to this Deed are to be made in accordance with clause 15 (*Application of Proceeds*) and subject to clause 14 (*Early Redemption*) including, without limitation, provisions detailing the priority of payments under this Deed.

## 14 Early Redemption

14.1 Subject to clause 14.3, the Issuer shall:

14.1.1 at its election, promptly following a Change of Control;

14.1.2 immediately following the promulgation of an Adverse Tax or Regulatory Requirement; and

14.1.3 immediately following the identification of any Affected Person,

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redeem all of the Debentures or, in the case of the Debentures held by an Affected Person (in each case an **“Early Redemption”**), redeem the Debentures held by such Affected Person, by issue of an irrevocable notice to the Agent (who shall, in turn, promptly notify the Holders via the Abundance Service), giving not less than 20 Business Days’ notice of its intention to effect such redemption (a **“Notice of Redemption”**). Each Notice of Redemption will specify the last Business Day of the Interest Period ending on or following the expiration of the 20 Business Days’ notice period as the date on which such redemption will take place (such date being the **“Early Redemption Date”**).

14.2 Subject to clause 14.3, the Issuer shall be entitled to redeem all of the Debentures in full on or after the Early Redemption Option Date by the issue of a Notice of Redemption giving not less than 20 Business Days’ prior written notice of its intention effect such redemption of all of the Debentures on, and specifying, the Early Redemption Date.

14.3 On each Early Redemption Date, the Issuer shall redeem and repay all Principal outstanding under the relevant Debentures in full, together with any and all accrued Interest outstanding and payable under such Debentures to (and including) the Early Redemption Date (as applicable) and pay the Early Redemption Fee.

14.4 The Issuer shall not be entitled to redeem all or any of the Debentures, nor any Principal in respect thereof, save as expressly provided in this clause 14.

## 15 Application of Proceeds

### 15.1 Payments

15.1.1 Subject to clause 15.1.2, any payments required to be made by the Issuer under the Finance Documents shall be made not later than 10:00 a.m. (London time) on the relevant date required for payment (the **“Payment Date”**) and on such Payment Date, the Issuer shall transfer or cause to be transferred such an amount in respect of the payment to the account directed by the Agent (such account being directed in writing at least five (5) Business Days prior to the relevant Payment Date).

15.1.2 Any amounts payable under clause 15.1.1 shall be transferred by the Issuer or on behalf of the Issuer to the above-mentioned account or accounts unconditionally by credit transfer and in immediately available, freely transferable, cleared funds. All such amounts shall be made without set-off, counterclaim, deduction or withholding, unless otherwise required by law.

15.1.3 Subject to clause 15.2, any amounts payable by the Issuer to Holders under the terms of the Debentures shall be apportioned by the Agent into the relevant pro rata proportions and such apportioned payments shall be directed by the Agent to the Cash Account (as defined in the Abundance Terms and Conditions) to be held for and/or paid to the Holders in accordance with the Abundance Terms and Conditions.

15.1.4 If the Issuer is required by applicable law to make any withholding or deduction in relation to any amount payable under this clause 15.1, it shall be entitled to make such deduction or withholding and account to the relevant authority in respect of the amount withheld or deducted. The Issuer shall not be required to increase or gross-up any amount payable to the Beneficiaries under the Finance Documents as a result of any such deduction or withholding.

15.1.5 Any amounts payable under this clause 15.1 are subject in all cases to any applicable fiscal or other laws and regulations in the place of payment.

15.1.6 If, for any reason, the Agent considers in its sole discretion that amounts to be received in the relevant accounts pursuant to this clause are insufficient to satisfy all claims in respect of all payments under clause 15.1.1 then falling due:

15.1.6.1 the Agent shall, as soon as reasonably practicable, notify the Issuer in writing that the full amount has not been received; and

15.1.6.2 the Agent shall not be obliged to direct the payment in satisfaction of any such claims until the full amount in respect of such claims has been received from the Issuer or OPHL, the Issuer has provided the Agent details of the reason and/or nature of the shortfall and, if there has been an Event of Default, the Issuer has confirmed that the relevant steps, actions or pre-conditions under the Finance Documents have been met prior to any acceleration and subsequent payment of those amounts.

### 15.2 Application

If the Agent or the Security Trustee (as applicable) receives or recovers any Proceeds in accordance with the Intercreditor Agreement or receives a payment at any time that is insufficient to discharge the amounts then due and payable by the Issuer and/or OPHL (as appropriate) under the Finance Documents, the Agent or the Security Trustee (as applicable) shall apply any and all such amounts towards satisfying the obligations of the Issuer and/or OPHL (as appropriate) under those Finance Documents in the following order:

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15.2.1 firstly, in or towards payment of any unpaid fees, costs and expenses of the Agent, the Security Trustee or any Delegate under the Finance Documents;

15.2.2 secondly, for the account of the Holders, for application in or towards payment of Debt Liabilities payable to Holders, which shall be allocated in respective pro rata proportions to the Holders of the Debentures in accordance with the following order of priority:

15.2.2.1 to any due but unpaid payments of Interest; and

15.2.2.2 then to any due but unpaid repayments of Principal,

except that for any Early Redemption of an Affected Person in connection with clause 14.1.3 such Holder(s) as are Affected Persons shall have their relevant Principal and Interest repaid to them following receipt of such monies by the Agent on the relevant Early Redemption Date;

15.2.3 thirdly, for the account of the Holders, in or towards payment pro rata of any accrued income, fee or commission owing to the Holders under those Finance Documents;

15.2.4 fourthly, in or towards payment pro rata of any other sum due but unpaid under those Finance Documents; and

15.2.5 fifthly, in payment of the surplus (if any) to any person entitled to it.

## 16 Cancellation

16.1 Subject to clause 20, the Issuer or any Affiliate of the Issuer may at any time by agreement with the relevant Holder purchase any Debentures at any price by tender, private treaty or otherwise.

16.2 Any Debentures which are repaid, redeemed or purchased by the Issuer shall forthwith be cancelled and shall not be available for re-issue.

## 17 Events of Default

17.1 Each of the events or circumstances set out in this clause 17.1 (*Events of Default*) is an Event of Default:

17.1.1 Non-payment: any failure by the Issuer to pay in full any amount payable under this Deed on its due date (or, if a failure to pay is caused by an administrative or technical error or a Disruption Event, within 5 Business Days of its due date; or

17.1.2 Other obligations: the Issuer or any other person fails to perform or comply with any of its other obligations under the Finance Documents (other than the obligations specified in clause 17.1.1) and, except where such failure is capable of remedy, and is remedied within 10 Business Days of the earlier of:

17.1.2.1 written notice being given by the Agent to the Issuer requiring remedy of such failure; or

17.1.2.2 the date that the Issuer has become aware of such failure; or

17.1.3 Misrepresentation: any material representation, warranty or statement made or deemed to have been made by the Issuer and/or OPHL (as appropriate) in the Finance Documents is or proves to have been incorrect or misleading in any material respect when made or deemed to have been made, unless and to the extent the underlying event or circumstance is remedied within 20 Business Days of the earlier of (a) the date of written notice from the Agent to the Issuer and/or OPHL (as appropriate) requiring remedy of such failure; or (b) the date that the Issuer and/or OPHL (as

appropriate) has become aware of such failure; or

17.1.4 Cross-default:

17.1.4.1 any Financial Indebtedness of the Issuer and/or OPHL is not paid when due or within any applicable grace period; or

17.1.4.2 any Financial Indebtedness of the Issuer and/or OPHL is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (howsoever described); or

17.1.4.3 any commitment for any Financial Indebtedness of the Issuer and/or OPHL is cancelled or suspended by a creditor as a result of an event of default (howsoever described);

17.1.4.4 any creditor of the Issuer and/or OPHL becomes entitled to declare any Financial Indebtedness the Issuer and/or OPHL due and payable prior to its specified maturity as a result of an event of default (howsoever described)

No Event of Default will occur or subsist under this clause

17.1.4 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within clauses 17.1.4.1 to 17.1.4.4 above is less than £100,000 (or its equivalent in any other currency or currencies);

17.1.5 Insolvency:

17.1.5.1 the Issuer and/or OPHL:

(a) is unable or admits inability to pay its debts as they fall due;

(b) is deemed to, or is declared to, be unable to pay its debts under applicable law

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(c) suspends or threatens to suspend making payments on any of its debts; or

(d) by reason of actual or anticipated financial difficulties, commences formal negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness;

17.1.5.2 the value of the assets of the Issuer is less than its liabilities (taking into account contingent and prospective liabilities); or

17.1.5.3 a moratorium is declared in respect of any indebtedness of the Issuer and/or OPHL. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium;

17.1.6 Insolvency proceedings: any corporate action, legal proceedings or other procedure or step is taken in relation to:

17.1.6.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Issuer;

17.1.6.2 a composition, compromise, assignment or arrangement with any creditor of the Issuer (other than for the purposes of a bona fide, solvent scheme of reconstruction or amalgamation previously approved by a Special Resolution);

17.1.6.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Issuer,

17.1.6.4 or any analogous procedure or step is taken in any jurisdiction, except that clause 17.1.6.1 above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 20 days of commencement;

17.1.7 Creditors' process: any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset of the Issuer and is not discharged within 20 Business Days;

17.1.8 Unlawfulness and invalidity:

17.1.8.1 it is or becomes unlawful for the Issuer or any other person to perform any of its material obligations under the Finance Documents; or

17.1.8.2 any material obligation of the Issuer or any other person under any of the Finance Documents is not or ceases to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Holders under the Finance Documents;

17.1.9 Cessation of business: the Issuer suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or substantially all of its business or abandons or ceases to carry on the management, ownership or operation of a material part of the Project;

17.1.10 Expropriation: the authority or ability of the Issuer or any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to the Issuer or any other member

of the Group or any of its assets, in each case, which has or would have a Material Adverse Effect;

17.1.11 Repudiation and rescission of agreements: the Issuer or any other person rescinds or evidences as an intention in writing to rescind or repudiates or evidences as an intention in writing to repudiate a Finance Document; and

17.1.12 Litigation: any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened, or any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made, in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against the Issuer or any member of the Group or its assets, in each case which have, or would have, a Material Adverse Effect.

17.2 The Issuer shall promptly notify the Arranger and the Agent of the occurrence of any Event of Default upon becoming aware of its occurrence (and the steps, if any, being taken to remedy it).

17.3 If any Event of Default occurs and is continuing, the Agent, if so directed in writing by Holders of at least 25 per cent. of the Principal (or by a Special Resolution of the Holders), shall:

17.3.1 by notice in writing (an "**Acceleration Notice**") declare all amounts accrued or outstanding under the Debentures and this Deed to be immediately due and payable, at which time they shall become immediately due and payable;

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17.3.2 be permitted, at the cost and expense of the Issuer (such costs to be proper and reasonable and as far as practicable agreed in advance of appointment), to appoint accountants, lawyers or technical advisers as agreed by the Agent and the Issuer to protect the Holders' interests (taken as a class) under the Finance Documents and to investigate the Event of Default; or

17.3.3 permit the appointment of a Holder Representative in accordance with the terms of the Schedule to the Abundance Terms and Conditions.

17.4 No Holder shall be entitled to take any Enforcement Action or to exercise any other rights, discretions or powers or to grant any consents or releases under or pursuant to any Finance Document or enforce any provision of this Deed or waive, cure or consent to any Event of Default or proposed breach of the terms of this Deed except where such action is permitted by and in accordance with the Abundance Terms and Conditions and the Intercreditor Agreement.

17.5 An Acceleration Notice must be withdrawn with immediate effect by the Agent by way of notice to the Issuer and the Holders if it is directed to do so in writing by Holders of at least 25 per cent. of the Principal (or by a Special Resolution of the Holders) to the effect that the Event of Default or Events of Default in relation to which an Acceleration Notice has been given is or are cured or waived and that such Holders wish that Acceleration Notice to be withdrawn, whereupon that Acceleration Notice will automatically be deemed to be withdrawn and will have no further effect in relation to the Debenture, but without prejudice to any rights or obligations which may have arisen before the Agent withdraws such Acceleration Notice.

No such withdrawal shall affect any other Event of Default or any subsequent Event of Default or any right of any Holders in relation thereto.

17.6 If an Acceleration Notice has been provided by the Agent in accordance with clause 17.3 and such notice has not been withdrawn in accordance with clause 17.5, that Acceleration Notice shall automatically apply to all the Debentures and the Agent shall ensure that any Proceeds following that Acceleration Notice shall be applied in accordance with clause 15 (*Application of Proceeds*).

## 18 Notices

18.1 The Issuer will give each notice, and will send any other document, to a Holder by sending such notice to the Agent who will in turn send any document to the relevant Holder using the Abundance Service (which, for the avoidance of doubt, includes the use of e-mail). Each Holder agrees that the Issuer may rely on the Agent to deliver any such notice in accordance with the Abundance Terms and Conditions.

18.2 Any notice from the Holders (or the Agent acting on their behalf) to the Issuer contemplated by this Deed may be given by e-mail to the Issuer at [c.milne@scotrenewables.com](mailto:c.milne@scotrenewables.com) or to such other address as otherwise directed by the Issuer from time to time.

18.3 A notice, document or information sent or supplied by electronic means to an address specified for the purpose is deemed to be given to or received by the intended recipient on the same day it was sent, and in proving service it is sufficient to prove that the communication was properly addressed and sent.

18.4 The Agent shall promptly send to each Holder details of each communication received by it under any Finance Document via the Abundance Service if it is obliged to do so under the terms of that Finance Document.

18.5 The Agent agrees that it will notify the Issuer and each Holder as soon as reasonably practicable if it takes any Enforcement Action.

18.6 The Agent shall promptly forward to the Issuer a copy of any notice or communication addressed to the Issuer by any Holder which is received by the Agent.

## 19 Meetings of Holders, Voting and Modifications to the Deed

19.1 The Abundance Terms and Conditions include provisions for:

19.1.1 convening meetings of Holders;

19.1.2 voting and quorum requirements and powers exercisable in respect of an Ordinary Resolution, Special Resolution or a Written Resolution; and

19.1.3 the ability to appoint (and powers of) a Holders Representative.



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## 20 Modifications, Waivers or Consents

20.1 Provided a Holder Representative (if one has been duly appointed) does not object, the Agent may, without the consent or sanction of the relevant Holders, authorise or sanction any modification of or waive or consent to any breach or proposed breach of, any provisions of this Deed or other Finance Document, which the Agent considers, in its sole opinion, to be of a formal, minor or technical nature or to be necessary to correct a manifest error or to comply with any mandatory provisions of law or, in the case of a waiver of or consent to a breach or proposed breach, is not materially prejudicial to the interests of the relevant Holders.

20.2 Neither the Issuer nor the Agent shall make or concur in making any modification to give any consent under, or grant any waiver in respect of, any breach or proposed breach of any Finance Document to which it is a party if such modification, consent or waiver:

20.2.1 is not a matter to which the provisions of paragraph 20.1 apply;

20.2.2 is a Non-Reserved Matter, unless and until the provisions of paragraph 20.4 below have been complied with; or

20.2.3 is a Reserved Matter, unless and until the provisions of paragraph 20.3 below have been complied with.

20.3 The following matters, actions or provisions of a Finance Document (each a “**Reserved Matter**”) may, from time to time, be modified or, in the case of an actual breach or alleged breach of any such provision, waived or consented to with the approval or sanction of a Special Resolution passed in accordance with the Schedule to the Abundance Terms and Conditions:

20.3.1 any compromise or arrangement proposed to be made between the Issuer, the Agent and the Holders or any of them;

20.3.2 any abrogation, modification or compromise or any arrangement in respect of the rights of the Holders against the Issuer or the rights of the Issuer against the Holders, whether such rights arise under a Finance Document or otherwise;

20.3.3 any scheme for the reconstruction of the Issuer or for the amalgamation of the Issuer with any other company;

20.3.4 postponing or advancing the time for the making of any payment, repayment or redemption under any Finance Document;

20.3.5 any change that has the effect of reducing or increasing any amount payable or rate of any payment under a Finance Document;

20.3.6 changing the basis on which any payments under a Finance Document are calculated or applied (including, without limitation, the frequency of any payment or the length of any payment period or period in which a payment is calculated, the currency of payment, the capitalisation of any amount that would otherwise be payable or changing any relevant definitions that are used for those purposes);

20.3.7 imposing any condition or otherwise changing the Issuer’s obligation to make payments of principal, interest or any other amount in respect of the Debentures;

20.3.8 the appointment of any persons (whether Holders or not) as a committee or committees to represent the interests of the Holders and to confer upon such committee any powers or discretions which the Holders could themselves exercise by Special Resolution;

20.3.9 the exchange or substitution of the Debentures for or the conversion of the Debentures into shares, bonds or other obligations or securities of the Issuer or any other person or any proposal or scheme to do the same;

20.3.10 any change or modification (or proposed change or modification) to those undertakings or to the definitions of Permitted Indebtedness and Permitted Security;

20.3.11 any change in the law governing the Finance Documents or change to the court to whose jurisdiction the Issuer has submitted under the Finance Documents;

20.3.12 any change to the seniority or legal ranking of the Debentures and/or the Security Documents;

20.3.13 except as permitted by any related guarantee, any release of any guarantee issued in relation to the Finance Documents or change to the terms of that guarantee;

20.3.14 any waiver of or consent to any Event of Default or modification (or proposed modification) to the definition of any Event of Default or any other provisions of a Finance Document describing circumstances in which Debentures may be declared due and payable prior to their scheduled maturity date;

20.3.15 any modification to clauses 6, 16, 17.4, 17.5, 17.6 or this clause 20 of this Deed, the definition of Ordinary Resolution or Special Resolution, or any modification to paragraphs 3.6, 5, 6, 7 or 10 of the Schedule to the Abundance Terms and Conditions, or any modification to any majority required to pass any such resolution or any modification to the number of votes required to be cast or the number or percentage of Debentures required to be held, or any modification to any quorum for the holding of any meeting of Holders;

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20.3.16 power to authorise the Agent to concur in and execute and do all such deeds, instruments, acts and things as may be necessary to carry out and give effect to any Special Resolution;

20.3.17 any modification to any clause of or definition within a Finance Document under which Debentures or Holders of Debentures are expressed to be treated the same, equally or rateably as between themselves;

20.3.18 the retirement or removal of the Agent and/or the approval of a successor Agent other than in accordance with the Schedule to the Abundance Terms and Conditions; or

20.3.19 any modification to the definitions of **“Acceleration Notice”**, **“Instructing Party”** or **“Enforcement Action”** in this Deed.

20.4 Every Non-Reserved Matter may, from time to time, be modified or, in the case of a breach or proposed breach of any such matter or provision, waived or consented to with the sanction of an Ordinary Resolution.

20.5 Any modification, consent or waiver that has been duly authorised or sanctioned in accordance with this clause 20 shall:

20.5.1 be notified by the Agent to the Issuer and Holders as soon as reasonably practicable after such modification, consent or waiver has been so authorised or sanctioned; and

20.5.2 be binding on all the Holders and the Holders hereby authorise the Agent and the Issuer to execute and deliver on its behalf such deeds or documents required to implement such modification or the terms of such consent or waiver in accordance with clause 20.6.

20.6 In the case of any modification, consent or waiver that has been duly authorised or sanctioned in accordance with this clause 20, as soon as reasonably practicable after such authorisation or sanction, the Agent and the Issuer at the cost of the Issuer, shall execute and deliver any deeds, documents or notices as may be required to be executed and/or delivered in order to give effect to the terms of such modification, waiver or consent (provided that any failure of those parties to meet such timing shall not invalidate the modification, consent or waiver).

## 21 Execution and Registration of Finance Documents

In addition to the Abundance Terms and Conditions and in accordance with the Offer Document, each Holder has appointed the Agent or such person or persons as the Agent may nominate to execute (whether under seal or under hand) and deliver any Finance Document to be executed and delivered on its behalf.

## 22 No Dealings

The Debentures are not capable of being dealt or listed on any stock exchange or other public market in the United Kingdom or elsewhere and no application has been, or is intended to be made, for the Debentures to be listed or otherwise traded on any such stock exchange or other public market.

## 23 Certificates and Determinations

Any certification or determination by the Agent of a rate or amount under any Finance Document is, in the absence of manifest or proven error, conclusive evidence of the matters to which it relates.

## 24 Rights and Obligations

24.1 No rights are conferred on any person under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed, but this does not affect any right or remedy of any person which exists or is available apart from that Act.

24.2 Abundance provides services in accordance with arrangements it has with the Issuer and operates the Abundance Service in accordance with the Abundance Terms and Conditions as agreed by Members.

## 25 Enforcement and preservation costs

The Issuer shall, within five (5) Business Days of demand, pay to the Agent or the Security Trustee (as applicable) the amount of all costs, fees and expenses (including legal fees) together with any associated VAT properly incurred by the Agent or the Security Trustee (as applicable) in connection with the enforcement of or the preservation of any rights under any Finance Document or proceedings instituted by or against the Agent or the Security Trustee (as applicable) as a consequence of enforcing these rights under the Finance Documents.

## 26 Inspection

A copy of this Deed shall be kept at the registered office of the Issuer and any Holder and any person duly authorised in writing by a Holder may at all reasonable times during office hours inspect it.

## 27 Endorsement

A memorandum of execution of any deed supplemental to this Deed shall be endorsed by the Issuer on this Deed.

# The legal agreement

## 28 Conflict

If there is a conflict between the terms of this Deed and the Abundance Terms and Conditions, the terms of this Deed will prevail.

## 29 Counterparts

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

## 30 Governing Law and Jurisdiction

### 30.1 Governing Law

30.1.1 This Deed shall be governed by and construed in accordance with English law, and all claims and disputes between the Parties or any of them arising out of or in connection with this Deed (whether or not contractual in nature) shall be determined in accordance with English law.

30.1.2 If in any court any Party argues that a court other than the courts of England and Wales has jurisdiction to determine any dispute or difference between the Parties or any of them arising out of or in connection with this Deed that issue shall be determined in accordance with English law, and any right any Party might otherwise have to rely upon the law of the forum or any other law is hereby irrevocably and unconditionally waived.

## 30.2 Submission to jurisdiction

30.2.1 Each Party submits to the exclusive jurisdiction of the courts of England and Wales in relation to all claims, disputes, differences or other matters arising out of or in connection with this Deed, provided that nothing in this clause shall prevent the Agent in its sole and unfettered discretion, from commencing proceedings against any other party in any court of competent jurisdiction.

30.2.2 Each Party irrevocably waives any right that it may have:

30.2.2.1 to object on any ground to an action being brought in the courts of England and Wales, to claim that the action brought in the courts of England and Wales has been brought in an inconvenient forum, or to claim that the courts of England and Wales do not have jurisdiction. The waiver contained in this clause 30.2.2.1 includes a waiver of all formal and substantive requirements of any otherwise competent jurisdiction in relation to this clause 30.2.2.1;

30.2.2.2 to oppose the enforcement of any judgment of any court of England and Wales whether on any ground referred to in clause 30.2.2.1 or otherwise.

This document is executed and delivered as a deed and takes effect on the date stated at the beginning of it.

## Schedule 1

### Part 1

#### Conditions precedent to Launch

##### The Issuer

1 A copy of the constitutional documents of the Issuer.

2 A copy of a resolution of the board of directors of the Issuer:

2.1 approving the terms of, and the transactions contemplated by this Deed and the Offer Document;

2.2 approving the issue of the Offer Document; and

2.3 authorising a specified person or persons to execute this Deed on its behalf, to give all notices and take all other action in connection with this Deed and the Offer Document.

3 A copy of a resolution signed by all the holders of the issued shares of the Issuer approving the terms of, and the transactions contemplated by, this Deed and the Offer Document.

4 A copy of the group structure chart.

##### Finance Documents

5 Two original versions of this Deed duly executed by the parties hereto.

##### Project Documents

6 A copy of each Project Document executed by each party thereto.

# The legal agreement

7 Evidence of the transfer of: (i) OMPL's renewable obligation certificate accreditation, as processed by Ofgem; and (ii) all onshore infrastructure owned by OMPL at the Leased Facilities by OMPL to the Issuer in accordance with the terms of the ROC and Infrastructure Transfer Agreement.

## Other documents and evidence

8 A duly signed copy of the engagement letter between the Issuer and Abundance Investment Ltd.

9 A copy of the Business Plan

10 Satisfaction of (and such evidence as may be required in order to complete) the Agent's "know your customer" and such other regulatory or administrative checks and compliance processes in respect of the Issuer.

11 A copy of any other Authorisation or other document, report, or assurance or evidence which the Agent considers to be reasonably necessary in connection with the entry into and performance of the transactions contemplated by any of the Finance Documents or for the validity and enforceability of any of the Finance Document.

## Part 2

### Conditions precedent to the Effective Date

Prior to the Holders subscribing for and the Debentures being issued (in accordance with clause 3.4), the Issuer must have provided the Agent with all of the following documents and evidence in form and substance satisfactory to it:

#### 1 Corporate Authorisations

1.1 A copy of a resolution of the board of directors or sole director (as applicable) of the Issuer and OPHL:

1.1.1 approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute, deliver and perform the Finance Documents to be entered into on the Effective Date; and

1.1.2 authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf, to give all notices and take all other action in connection with the Finance Documents to be entered into on the Effective Date.

1.2 A copy of a resolution signed by all the holders of the issued shares of the Issuer and OPHL approving the terms of, and the transactions contemplated by, the Finance Documents to be entered into on the Effective Date.

1.3 A copy of the group structure chart showing the group as at the Effective Date.

1.4 A certificate of the Issuer and OPHL (in each case signed by a director) as at a date no earlier than the Effective Date confirming:

1.4.1 that borrowing, guaranteeing or securing, as appropriate, the Issuance Amount would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded;

1.4.2 that each copy document relating to it specified in Schedule 1 (*Conditions Precedent*) of this Deed is correct, complete and in full force and effect as at a date no earlier than the Effective Date; and

1.4.3 containing a specimen of the signature of each person authorised by the resolutions referred to in paragraph 2.1 of Part 1 (*Conditions precedent to Launch*) of Schedule 1 (*Conditions Precedent*) of this Deed.

#### 2 Finance Documents

2.1 An original of the Intercreditor Agreement, duly executed by each of the parties thereto.

2.2 An original of the Security Trust Deed, duly executed by the parties thereto.

2.3 Two originals of each Security Document, save for the Issuer Share Pledge, duly executed by the parties thereto, together with (a) an executed copy of each notice required to be executed and (b) each deliverable required, in each case, thereunder.

2.4 An signed but undated original of the Issuer Share Pledge duly executed by the parties thereto, together with undated versions of each deliverable required thereunder.

(a) to the account bank in respect of the Debt Service Reserve Account in agreed form with the relevant account bank, executed by the Issuer and, in the case of the Debt Service Reserve Account, a copy of the acknowledgement to the notice of charge, duly executed by the relevant account bank;

# The legal agreement

(b) to each insurer; and

(c) to each counterparty to a document which has been assigned by way of security,

each substantially in the relevant form set out in the relevant Security Document.

2.6 An original of each Direct Agreement duly executed by each of the parties thereto.

2.7 Any other Finance Document not delivered pursuant to Part 1 of this Schedule 1.

2.8 A certified copy of each of the Junior Creditor Security Documents.

## 3 Regulatory

The Arranger has confirmed that the 14 day "Cooling-off Period" has expired.

## 4 Other evidence

4.1 A copy of an agreed form (between the Issuer and the Agent) template to be used for ongoing monitoring and reporting.

4.2 Evidence, by way of a letter from the Issuer's insurance brokers addressed to the Finance Parties, that the insurance cover to be put in place in respect of the Project will comply with the requirements of paragraph 4 (*Insurances*) of Schedule 4 (*Positive Undertakings*) of this Deed and that the Issuer's insurance brokers will provide a copy of the schedule confirming this, when the necessary premia has been paid.

4.3 Certified copies of the latest unaudited accounts of the Issuer and OPHL.

4.4 Evidence that each account required pursuant to a Finance Document or the Business Plan (including, without limitation, the Debt Service Reserve Account) have been opened and are fully operational.

4.5 An original duly executed copy of any deed of release and any other release documentation as may be required in relation to the removal of any existing Security.

4.6 Evidence that OPHL is entitled to become the holder of the entire issued share capital of the Issuer immediately upon stamp duty (if any) being adjudicated and paid on any shares in the issued share capital of the Issuer transferred to OPHL on or around the Effective Date (subject to, and but for, the Issuer Share Pledge).

4.7 Copies of all due diligence, legal and tax advice received by the Issuer, OMPL and/or OPHL in respect of the corporate restructure which preceded the Effective Date which effected the corporate structure whereby (i) OMPL is the holder (or is entitled to become the holder) of the entire issued share capital of OPHL and (ii) OPHL is the holder (or is entitled to become the holder) of the entire issued share capital of the Issuer.

4.8 Evidence that OPHL has injected not less than £7,000,000 by way of equity into the Issuer.

4.9 A copy of any other Authorisation or other document, report, or assurance or evidence which the Agent considers to be reasonably necessary in connection with the entry into and performance of the transactions contemplated by any of the Finance Documents or for the validity and enforceability of any of the Finance Documents.

## Schedule 2

### Holder Restrictions

1 The Debentures may only be acquired or held by Members who are eligible to invest in accordance with the Abundance Terms and Conditions, which, as at the date of this Deed, includes:

1.1 individuals aged 18 years or over who have their permanent residence in an Eligible EEA Country or the United Kingdom;

1.2 those who are not individuals, being persons who have a permanent place of business in an Eligible EEA Country and are duly incorporated, authorised, established or formed in accordance with the relevant laws and regulations in the relevant Eligible EEA Country or the United Kingdom; or

1.3 other Members who fulfil all the applicable criteria of eligibility to acquire and to hold Debentures in accordance with the Abundance Terms and Conditions from time to time.

2 The Debentures may not be acquired or held by any Restricted Person.

3 The Debentures have not been and will not be registered under the United States Securities Act of 1933, as amended, or qualified for sale under the laws of the US or under the laws of any country, jurisdiction, state or territory outside the United Kingdom.

4 The Issuer, or Abundance on its behalf, may require reasonable evidence that a proposed transfer is exempt from or not subject to a registration or similar requirement in the US or any other jurisdiction outside the United Kingdom.

# The legal agreement

## Schedule 3

### Representations and Warranties

1 The Issuer represents and warrants to each of the Secured Parties that:

#### 1.1 Status:

1.1.1 it is a public limited company; and

1.1.2 OPHL is a limited company

in each case duly incorporated and validly existing under the laws of its Original Jurisdiction and having full power to own its assets and carry on its business;

1.2 Binding obligations: the obligations expressed to be assumed by each of it and OPHL in each of the Finance Documents are, subject to the Legal Reservations, legal, valid, binding and enforceable obligations;

#### 1.3 Non-conflict with other obligations

The entry into and performance by it and OPHL of, and the transactions contemplated by, the Finance Documents:

1.3.1 do not conflict with any law or regulation applicable to it; and

1.3.2 do not and will not conflict with its constitutional documents or any agreement or instrument binding upon it or any of its assets;

1.4 Power and authority: each of it and OPHL has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents and the transactions contemplated by the Finance Documents;

1.5 Validity and admissibility in evidence: each of it and OPHL has obtained all required or desirable Authorisations to enable it to enter into, exercise its rights and comply with its obligations in the Finance Documents and to make them admissible in evidence in its jurisdiction of incorporation. Any such Authorisations are in full force and effect;

1.6 Governing law and enforcement: the choice of governing law of the Finance Documents will be recognised and enforced in its and OPHL's jurisdiction of incorporation and any judgment obtained in England, Wales or Scotland in relation to a Finance Document will be recognised and enforced in that jurisdiction;

#### 1.7 Insolvency: no:

1.7.1 corporate action, legal proceeding or other procedure or step described in clause 17.1.6 (*Insolvency Proceedings*); or

1.7.2 creditors' process described in clause 17.1.7 (*Creditors' Process*),

have been taken or, to its knowledge, threatened in relation to it or OPHL; and none of the circumstances described in clause 17.1.5 (*Insolvency*) of this Deed applies to it or OPHL;

#### 1.8 No default:

1.8.1 no Event of Default is continuing or is reasonably likely to result from the entry into or the performance of any Finance Document by it or OPHL, or the issuance of the Debentures by the Issuer;

1.8.2 no other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it, OPHL or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect;

#### 1.9 Ownership

It is the sole legal and beneficial owner of all the assets of the Project.

#### 1.10 Security

No Security exists over any of the Issuer's or OPHL's assets other than any Permitted Security.

#### 1.11 Share Capital

There are no restrictions on the sale or transfer (including any lien, pre-emption right, or director discretion) upon enforcement by a mortgagee of security held over of all or any of its shares under its articles of association or other constitutional or organisational documents or otherwise.

1.12 Arm's length: the Finance Documents to which it and/or OPHL is expressed to be a party have been, are being or will be entered into in good faith for its benefit and on arm's length terms;



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## 1.13 Information:

1.13.1 to the best of its knowledge and belief (having taken all reasonable care to ensure it is so) all written information that it and/or OPHL has given in connection with the Offer Document and the Finance Documents was true and accurate in all material respects as at the date it was provided, as at any date the information is expressed to be given or (as the case may be) as at the date of the relevant document containing the information;

1.13.2 any financial projections contained in the information referred to in paragraph 1.13.1 above have been prepared as at the date they were provided or stated to be given on the basis of both recent and historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;

1.13.3 no event or circumstance has occurred or arisen and no information has been omitted from the information referred to in paragraph 1.13.1 and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the information referred to in paragraph 1.13.1 being untrue or misleading in any material respect;

## 1.14 Financial Information:

1.14.1 the most recent financial statements delivered pursuant to paragraph 6 (*Financial Information*) of Schedule 4 (*Positive Undertakings*) of this Deed fairly present its financial condition as at the end of, and consolidated or unconsolidated results of operations for, the period to which they relate;

1.14.2 since the date of the most recent financial statements delivered pursuant to paragraph 6 (*Financial Information*) of Schedule 4 (*Positive Undertakings*) of this Deed there has been no event which would have a Material Adverse Effect on the Issuer;

## 1.15 No litigation:

1.15.1 other than as disclosed by the Issuer in the Offer Document, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, is reasonably likely to have a Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) has been started or threatened against it, OPHL or any of its Subsidiaries;

1.15.2 no judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it, OPHL or any of its Subsidiaries;

1.16 No breach of laws: neither it nor OPHL has breached any law or regulation where breach would have a Material Adverse Effect;

## 1.17 Environmental laws:

1.17.1 each member of the Group is in compliance with paragraph 9 (*Environmental compliance*) of Schedule 4 (*Positive Undertakings*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance, in each case, in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect;

1.17.2 no Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has a reasonable prospect of success and has or is reasonably likely to have, if determined against that member of the Group, a Material Adverse Effect;

## 1.18 Taxation:

1.18.1 it is not materially overdue in the filing of any Tax returns and it is not, and no member of the Group is, overdue in the payment of any amount in respect of Tax of £50,000 (or its equivalent in any other currency) or more;

1.18.2 no claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes such that a liability of, or claim against it of £50,000 (or its equivalent in any other currency) is reasonably likely to arise; and

1.18.3 it is resident for Tax purposes only in its Original Jurisdiction.

1.19 Group structure chart: the group structure chart delivered to the Arranger pursuant to Schedule 1 Part 1 (Conditions precedent to Launch) of this Deed is true, complete and accurate in all material respects and shows each member of the Group, including current name and company registration number, its Original Jurisdiction (in the case of the Issuer), its jurisdiction of incorporation or establishment (in the case of any other member of the Group), in each case as at the date of this Deed;

1.20 Trustee: neither it nor OPHL is entering into any Finance Document as a trustee;

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1.21 Centre of main interests and establishments: for the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings and/or Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (as applicable) (the “**Regulation**”) its and OPHL’s centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in the United Kingdom and it has no “establishment” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction in each case to the extent that such terms form part of the law of the United Kingdom by virtue of the European Union (withdrawal Agreement) Act 2018;

1.22 Business purpose: it is a single purpose vehicle whose sole business is owning the Project as contemplated by the Transaction Documents and has no debt other than Permitted Indebtedness;

1.23 Security Documents: the Security created or purported to be created by the Security Documents has or will have first ranking in priority and is not subject to any prior ranking or *pari passu* Security and no Security exists over all or any of the present of future assets of the Issuer (other than Permitted Security); and

1.24 Project Documents:

1.24.1 it and OMPL have complied with the material terms of the Project Documents and to the best of its knowledge and belief no person has disputed, repudiated or disclaimed liability under any Project Document or evidenced an intention to do so; and

1.24.2 it and OMPL have preserved and enforced all of its rights and pursued all of its claims and remedies arising under the Project Documents.

1.25 Conditions Precedent to Launch

1.25.1 Each copy document relating to the Issuer, OMPL or OPHL delivered to the Agent under Part 1 (*Conditions precedent to Launch*) of Schedule 1 (*Conditions precedent*) to this Deed is correct, complete and in full force and effect as at the date of this Deed and the Effective Date.

1.25.2 The representations and warranties set out in this Schedule 3 (*Representations and Warranties*) (other than paragraph 1.14 (*Financial information*)) are made by the Issuer on the date of this Deed and on the date on which the last of the documents and evidence specified in Schedule 1 (*Conditions precedent*) of this Deed is provided to the Agent in form and substance satisfactory to it and on the Effective Date

1.25.3 Subject to paragraph 1.25.4 below, the Repeating Representations are also deemed to be made by the Issuer on the first day of each Interest Period by reference to the facts and circumstances then existing.

1.25.4 The Repeating Representation contained in paragraph 1.14 (*Financial Information*) above shall be deemed to be made by the Issuer in relation to each set of financial statements delivered under this Deed when such financial statements are provided to the Agent.

1.25.5 Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

## Schedule 4

### Positive Undertakings

Subject to the terms of this Deed, the Issuer undertakes to the Beneficiaries as follows:

1 **Authorisations:** the Issuer and each member of the Group must promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation of England and Wales and/or Scotland that enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document or that enable it to own its assets and carry on its business as it is being conducted, except where failure to obtain or effect such Authorisations would not materially adversely impair its ability to perform its payment obligations under the Finance Documents to which it is expressed to be a party.

2 **Compliance with laws:** the Issuer and each member of the Group must comply with any law or regulation (including any Environmental Law) to which it is subject where such breach would materially adversely affect its ability to perform its obligations under the Finance Documents or result in a liability against it in an amount which exceeds £50,000.

3 **Taxes:** the Issuer must pay all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment and must promptly pay to HM Revenue & Customs all VAT and related interest and penalties payable by it.

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## 4 Insurances:

4.1 The Issuer must ensure that at all times from the Effective Date insurance policies are maintained in full force and effect, covering the risks, perils or contingencies against which a prudent company or other person in the same business as that relevant Issuer would insure in each case in an amount and in a form, and with an insurance company or underwriters, acceptable at all times to the Security Trustee.

4.2 The Issuer must procure that the Security Trustee (as security trustee for the Secured Parties) is named as composite insured in respect of its own separate insurable interest under each of the insurance policies (other than public liability and third party liability insurances) but without:

4.2.1 any liability on the part of the Security Trustee or the Agent or Arranger for any premium in relation to those insurance policies (unless the Security Trustee has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any of those insurance policies); or

4.2.2 any obligation on the part of the Security Trustee or the Agent or Arranger to make any disclosure to any insurer or any insurance broker in relation to those insurance policies unless and until the Security Trustee becomes a mortgagee in possession of any property, in which circumstance an obligation shall apply on the part of the Security Trustee or the Agent or Arranger to make disclosure to any insurer or any insurance broker in relation to the insurance policy or insurance policies in respect of that property pursuant to the terms of that insurance policy or those insurance policies.

4.3 The Issuer must procure that the insurance policies comply with the following requirements:

4.3.1 each insurance policy must contain:

4.3.1.1 a non-invalidation and non-vitiation clause under which the insurance policies will not be avoided or vitiated as against any insured party as a result of any circumstances beyond the control of that insured party or any misrepresentation, non-disclosure, or breach of any policy term or condition, on the part of any other insured party or any agent of any other insured party;

4.3.1.2 a waiver of the rights of subrogation of the insurer as against the Issuer, the Security Trustee, each Secured Party and (as/if applicable) any tenants of a property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of any property or any insurance policy; and

4.3.1.3 a loss payee clause under which the Security Trustee is named as first loss payee (other than in respect of any claim under any public liability and third party liability insurances);

4.3.2 each insurer must give at least 30 days' notice to the Security Trustee if it proposes to:

4.3.2.1 repudiate, rescind or cancel any insurance policy;

4.3.2.2 treat any insurance policy as avoided in whole or in part; and

4.3.2.3 treat any insurance policy as expired due to non-payment of premium; or

4.3.2.4 otherwise decline any claim under any insurance policy by or on behalf of any insured party,

and, in respect of paragraph 4.3.2.3 above, must in the notice give the Security Trustee the opportunity to rectify any such non-payment of premium within the notice period; and

4.3.3 the Issuer must be free to assign or otherwise grant Security over all amounts payable to it under each of its insurance policies and all its rights in connection with those amounts in favour of the Security Trustee.

4.4 The Issuer must use all reasonable endeavours to ensure that the Agent receives copies of the insurance policies, receipts for the payment of premiums for insurance and any information in connection with the insurance policies and claims under them which the Agent may reasonably require.

4.5 The Issuer must promptly notify the Agent of:

4.5.1 the proposed terms of any future renewal of any of the insurance policies;

4.5.2 any amendment, supplement, extension, termination, avoidance or cancellation of any of the insurance policies made or, to its knowledge, threatened or pending;

4.5.3 any claim, and any actual or threatened refusal of any claim, under any of the insurance policies; and

4.5.4 any event or circumstance which has led or may lead to a breach by the Issuer of any term of this paragraph 4 (*Insurances*).

4.6 The Issuer must:

4.6.1 comply with the terms of the Insurances;

4.6.2 not do or permit anything to be done which may make void or voidable any of the insurance policies; and

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4.6.3 comply with all reasonable risk improvement requirements of its insurers.

4.7 The Issuer must ensure that:

4.7.1 each premium for the insurance policies is paid within the period permitted for payment of that premium; and

4.7.2 all other things necessary are done so as to keep each of the insurance policies in force.

4.8 The proceeds of any insurance policies received in respect of a property or relevant insured asset must, if the Agent so requires and/or to the extent required by the basis of settlement under any insurance policies, be applied towards replacing, restoring or reinstating that property or relevant insured asset.

4.9 Where, in accordance with paragraph 4.8 of Schedule 4 above, the proceeds of any insurance policies received in respect of any insured asset have not been applied towards replacing, restoring or reinstating the relevant asset, they shall be applied in accordance with clause 15 (*Application of Proceeds*).

## 5 Reserve

The Issuer shall at all times on and from the first Cash Return Date maintain in the Debt Service Reserve Account an amount in free cash at least equal to the aggregate amount of Interest and Principal due for payment on the next Cash Return Date (the “**Reserve**”)

The Debt Service Reserve Account is to be secured in favour of the Security Trustee (for the benefit of the Secured Parties) pursuant to the Accounts Assignment by way of an assignment in security and the Issuer shall only be permitted to withdraw amounts from that account with the Security Trustee’s consent and to be used solely in repayment of Principal and payment of Interest due under this Deed.

If the Issuer intends to withdraw any amount from the Debt Service Reserve Account, it shall give not less than five Business Days’ prior written notice to the Security Trustee:

(a) setting out the amount it intends to withdraw and the proposed withdrawal date;

(b) specifying the Principal and/or Interest payment and relevant Cash Return Date such withdrawal is required to fund; and

(c) accompanied by evidence satisfactory to the Security Trustee (acting reasonably) that it has insufficient other cash funds available to it to make payment of the relevant Principal and/or Interest.

Upon receipt of such notice, the Security Trustee shall grant its consent (not to be unreasonably withheld or delayed) to the withdrawal and countersign a notice (signed by the Issuer) (in form and substance satisfactory to it) providing its consent to such withdrawal to the account bank in respect of the Debt Service Reserve Account accordingly and specifying the account of the Agent referred to in clause 15.1 as the account for payment of the proceeds of such withdrawal. The Issuer confirms that each and any such payment is directed and authorised by it to be applied by the Agent towards satisfaction of its obligation to make payment on the relevant Cash Return Date under the terms of this Deed.

If the Issuer makes any payment out of the Debt Service Reserve Account in accordance with this paragraph 5, the Issuer shall fund the resulting shortfall before the end of the next Interest Period.

## 6 Financial Information:

6.1 The Issuer shall supply to the Agent copies of:

6.1.1 as soon as they become available, but in any event within 180 days after the end of each of its financial years, its audited financial statements for that financial year;

6.1.2 a monitoring report (in the agreed form, as provided as a condition precedent to this Deed) on or before the date five Business Days before each Cash Return Date and containing such information as the Agent may reasonably require; and

6.1.3 promptly on request, such further information regarding the financial condition, assets and operations of the Issuer (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by the Issuer pursuant to this Deed) as the Agent may reasonably request.

6.2 Each set of financial statements delivered to the Agent pursuant to paragraph 6.1.1 (*Financial information*) shall be certified by a director of the Issuer as giving a true and fair view of its financial condition as at the date at which those financial statements were drawn up.

6.3 The Issuer shall supply a compliance certificate to the Agent with each set of its financial statements delivered pursuant to this paragraph 6 (*Financial Information*) setting out, amongst other things, (in reasonable detail) computations as to compliance with paragraph 7 (*Financial Statements*)

**7 Financial statements:** The Issuer shall ensure that the financial statements delivered to the Agent pursuant to paragraph 6 (*Financial Information*) above shall:

7.1 be prepared in accordance with the Accounting Principles as applied to the first set of financial statements delivered in accordance with this Deed; and

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7.2 fairly present the Issuer's assets, liabilities, financial position and profit or loss during the relevant accounting period; and

7.3 have been approved by the Issuer's directors in compliance with section 393 of the Companies Act 2006.

## 8 Security

8.1 The Issuer shall ensure there are no restrictions on the sale or transfer (including any lien, right of pre-emption, or director discretion) upon enforcement by a mortgagee of security held over all or any of its shares under its articles of association or other constitutional or organisational documents, or otherwise.

8.2 The Issuer shall within 30 Business Days of the Effective Date (i) exhibit to the Agent evidence satisfactory to the Agent that OPHL it is the registered holder of the entire issued share capital of the Issuer and (ii) deliver to the Agent two originals of the Issuer Share Pledge, duly executed by the parties thereto, together with each deliverable required thereunder.

9 **Environmental compliance:** the Issuer shall, and shall ensure that each member of the Group will:

9.1 comply with all Environmental Law;

9.2 obtain, maintain and ensure compliance with all requisite Environmental Permits;

9.3 implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

10 **Environmental claims:** the Issuer shall procure that each member of the Group shall inform it, promptly upon becoming aware of the same, and the Issuer shall in turn inform the Agent in writing of:

10.1 any Environmental Claim against any member of the Group which is current, pending or threatened; and

10.2 any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group, where the claim has a reasonable prospect of success and, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

11 **Project Documents:** the Issuer and OMPL shall each exercise its rights under and comply with its material obligations under each Project Document to which it is a party in a proper and timely manner and shall preserve and enforce all of its rights and pursue all of its claims and remedies under the Project Documents.

12 **Access:** the Issuer shall allow the Agent or any person or persons appointed on the Agent's or Holders' behalf in accordance with clauses 17.3.2 or 17.3.3 (*Events of Default*) of this Deed (respectively) or the Schedule to the Abundance Terms and Conditions (each a "**Holder Appointee**") and any of their officers, employees, professional advisers and agents to have, and shall ensure that the Agent and/or the Holder Appointee (as applicable) are given, access to the premises, assets, books, accounts and records of the Issuer during normal business hours on reasonable notice, being notice which is given no less than 20 Business Days prior to the proposed day of access, and further provided that such requests are made no more frequently than once in any six-month period.

## Schedule 5

### Negative Undertakings

Subject to the terms of this Deed, the Issuer undertakes to the Beneficiaries that it shall not, without the consent of the Agent:

1 **Financial Indebtedness:** incur or allow to remain outstanding any Financial Indebtedness other than pursuant to the Finance Documents or Permitted Indebtedness;

2 **Lending:** be a creditor in respect of any Financial Indebtedness;

### 3 Dividends:

3.1 at any time (i) prior to the first Cash Return Date; (ii) while the Debt Service Reserve Account is funded to a value less than the Reserve; (iii) whilst an Event of Default is continuing and/or (iv) when the Issuer has not demonstrated to the satisfaction of the Agent that immediately following the taking of any action referred to in paragraphs 3.1 a) to d) below it will have available cash sitting to the credit of its bank accounts (including, without limitation, the Debt Service Reserve Account) in an amount not less than 150% of the amount of the Reserve:

a) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);

b) repay or distribute any dividend or share premium reserve;

c) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so; or

# The legal agreement

d) make any distribution of assets or other payment whatsoever in respect of share capital whether directly or indirectly,

(provided that, subject always paragraphs 3.2 and 3.3 below, for the avoidance of doubt there shall be no restrictions on the provision of dividends by the Issuer to OPHL at any time other than those instances set out in this paragraph 3.1) and, having demonstrated compliance with condition (iv) above, the Issuer shall be entitled to utilise any available cash in its bank accounts in excess of the Reserve as it may decide (subject always to compliance with the Finance Documents);

3.2 at any time redeem, repurchase, defease, retire or repay any redeemable preference share or resolve to do so; nor

3.3 at any time declare, make or pay any amount or make any distribution whatsoever (whether in cash or in kind) on or in respect of any shares which have been constituted due to a conversion of loan notes or resolve to do so;

4 **Negative pledge:** create or permit to subsist any encumbrance over any of its assets other than Permitted Security;

5 **Merger:** enter into any amalgamation, demerger, merger or corporate reconstruction without the prior consent of the Holders by Ordinary Resolution;

6 **Disposals:** enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer, licence, surrender, set-off or otherwise to dispose of all or any part of its property, assets, shares, account or rights under a contract subject to a Security Document, without the Agent's prior written consent, unless the proceeds of such disposal are sufficient, and are used, to repay in full all amounts outstanding under or in connection with this Deed;

7 **Joint venture:** form, enter into, invest in or transfer any asset to any partnership, consortium or joint venture entity or any other incorporated or unincorporated association for the purposes of any business or form or acquire any subsidiary undertaking (as defined in section 1162 of the Companies Act 2006);

8 **Change in business:** change the general nature of its business;

9 **Scheme:** establish any pension or life insurance scheme, or any bonus, profit sharing, share option or other incentive scheme for its directors or employees;

10 **Project Documents:** amend, vary, waive, novate, supplement or replace (or procure or allow any other party to do so in respect of) any Project Document or any material term thereof; nor

11 **Conversion:** convert the Debentures or any repayments of Principal or payments of Interest in relation to the same into shares or any other securities of the Issuer without the sanction of a Special Resolution in accordance with the Schedule to the Abundance Terms and Conditions.

## Schedule 6

### Cash Return Schedule



# The legal agreement

Cash Return Date	Interest income (£)	Capital repayment (£)	Total Cash Return (£)	Outstanding capital at beginning of year (£)
31/12/2022	68,493.75	166,666.67	235,160.42	4,000,000.00
30/06/2023	68,493.75	166,666.67	235,160.42	3,833,333.33
31/12/2023	68,493.75	166,666.67	235,160.42	3,666,666.66
30/06/2024	68,493.75	166,666.67	235,160.42	3,499,999.99
31/12/2024	68,493.75	166,666.67	235,160.42	3,333,333.32
30/06/2025	68,493.75	166,666.67	235,160.42	3,166,666.65
31/12/2025	68,493.75	166,666.67	235,160.42	2,999,999.98
30/06/2026	68,493.75	166,666.67	235,160.42	2,833,333.31
31/12/2026	68,493.75	166,666.67	235,160.42	2,666,666.64
30/06/2027	68,493.75	166,666.67	235,160.42	2,499,999.97
31/12/2027	68,493.75	166,666.67	235,160.42	2,333,333.30
30/06/2028	68,493.75	166,666.67	235,160.42	2,166,666.63
31/12/2028	68,493.75	166,666.67	235,160.42	1,999,999.96
30/06/2029	68,493.75	166,666.67	235,160.42	1,833,333.29
31/12/2029	68,493.75	166,666.67	235,160.42	1,666,666.62
30/06/2030	68,493.75	166,666.67	235,160.42	1,499,999.95
31/12/2030	68,493.75	166,666.67	235,160.42	1,333,333.28
30/06/2031	68,493.75	166,666.67	235,160.42	1,166,666.61
31/12/2031	68,493.75	166,666.67	235,160.42	999,999.94
30/06/2032	68,493.75	166,666.67	235,160.42	833,333.27
31/12/2032	68,493.75	166,666.67	235,160.42	666,666.60
30/06/2033	68,493.75	166,666.67	235,160.42	499,999.93
31/12/2033	68,493.75	166,666.67	235,160.42	333,333.26
30/06/2034	68,493.75	166,666.59	235,160.34	166,666.59
<b>Total</b>	<b>1,643,850.00</b>	<b>4,000,000.00</b>	<b>5,643,850.00</b>	

# The legal agreement

## Signatures

### The Issuer

Executed as a deed by Orbital Marine Power (Orkney) plc acting by two directors

.....  
Signature of Director

.....  
Full Name of Director (Please Print)

.....  
Signature of Director

.....  
Full Name of Director (Please Print)

### The Arranger

Executed as a deed by Abundance Investment Ltd acting by a director

.....  
Signature of Director

.....  
Full Name of Director (Please Print)

In the presence of a witness:

.....  
Witness (Signature)

.....  
Witness Full Name

.....  
Witness Address

### The Agent

Executed as a deed by Abundance Investment Ltd acting by a director

.....  
Signature of Director

.....  
Full Name of Director (Please Print)

In the presence of a witness:

.....  
Witness (Signature)

.....  
Witness Full Name

.....  
Witness Address

# Our service providers

## Issuer, we or us:

### **Orbital Marine Power (Orkney) plc (Orbital Orkney)**

Company registration number: SC609187  
Innovation Centre – Orkney Hatston Pier Road  
Crowness Business Park  
Kirkwall  
Orkney KW15 1ZL

## Legal advisors to Orbital Orkney:

### **Brodies LLP**

58 Morrison Street  
Edinburgh EH3 8BP

## Arranger and distributor:

### **Abundance Investment Ltd (Abundance)**

Hamilton House  
Mabledon Place  
London WC1H 9BB

## Legal advisors to Abundance:

### **Keystone Law Limited**

48 Chancery Lane  
London WC2A 1JF

### **Harper Macleod LLP**

The Ca'd'oro  
45 Gordon St  
Glasgow G1 3PE

The Finance Documents, as defined in the Deed on page 46, can be made available on request.

Terms and conditions for the use of the Abundance service are available at [www.abundanceinvestment.com](http://www.abundanceinvestment.com)

We would like to thank you for taking the time to read our Offer Document. Orbital Marine Power (Orkney) plc accepts responsibility for the information it contains, which is true to the best of our knowledge and belief (having taken all reasonable care to ensure this is so) and reflects the facts without omitting anything which could affect its importance.



**Directors of Orbital Marine Power (Orkney) plc**