

# SILVERTOWN TUNNEL

## Volume 3: Project Agreement – Schedules 2 to 31

### Schedule 26 – Refinancing

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**SCHEDULE 26****REFINANCING****1. TFL CONSENT**

Project Co shall obtain TfL's prior written consent (such consent not to be unreasonably withheld) to any Qualifying Refinancing and both TfL and Project Co shall at all times act in good faith with respect to any Refinancing.

**2. ASSESSMENT OF REFINANCING GAIN**

2.1 Project Co shall promptly provide TfL with full details of any proposed Qualifying Refinancing, including a copy of the proposed financial model relating to it (if any) and the basis for the assumptions used in the proposed financial model. TfL shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing (whether that Refinancing is a Qualifying Refinancing or not).

2.2 TfL and Project Co will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and (if applicable) payment of TfL's share of the Refinancing Gain (taking into account TfL's entitlement to receive a share of a Refinancing Gain under paragraph 2.3 and how TfL has elected to receive its share of the Refinancing Gain under paragraph 2.5). If the Parties fail to agree the basis and method of calculation of the Refinancing Gain or the payment of TfL's share within sixty (60) Working Days of the Qualifying Refinancing, the dispute shall be determined in accordance with the Disputes Resolution Procedure.

2.3 Following a Qualifying Refinancing, TfL shall be entitled to receive ██████% of the Refinancing Gain, howsoever the Refinancing Gain arose.

2.4 TfL shall have the right to elect to receive its share of any Refinancing Gain as:

- (a) a cash sum at the time of the Refinancing;
- (b) a reduction in the Availability Payment over the remaining Agreement Period; or
- (c) a combination of any of the above.

2.5 The Parties acknowledge and agree that to the extent a payment of TfL's share of the Refinancing Gain is tax-deductible, the benefit of this to Project Co should be taken into account in the calculation of the Refinancing Gain.

2.6 The Refinancing Gain shall be calculated after taking into account any breakage costs necessary to facilitate the Qualifying Refinancing together with the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by TfL will be paid to TfL by Project Co within twenty (20) Working Days of any Qualifying Refinancing.

2.7 Without prejudice to the other provisions of this paragraph 2, Project Co shall:

- (a) notify TfL of all Notifiable Financings on becoming aware of the same and again when they are entered into and provide full details of the same; and

- (b) include a provision in the Financing Agreements (other than the Subordinated Financing Agreements) whereby it is entitled to be informed of any proposals which the Senior Funders may have to refinance the Financing Agreements (other than the Subordinated Financing Agreements) other than any Exempt Refinancing.

**3. TFL RIGHT TO REQUEST REFINANCING**

- 3.1 If TfL (acting reasonably) considers the funding terms generally available in the market to be more favourable than those reflected in the Senior Financing Agreements (other than Subordinated Financing Agreements), TfL may, by notice in writing to Project Co, require Project Co to consider requesting potential funders to provide terms for a potential Refinancing (a "**Refinancing Notice**").
- 3.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which TfL believes such funding terms to be available.
- 3.3 Following the receipt of a Refinancing Notice by Project Co:
- (a) Project Co shall:
- (i) act promptly, diligently and in good faith with respect to considering whether to request potential funders to provide terms for a potential Refinancing; and
- (ii) within twenty (20) Working Days, respond in writing to TfL setting out in reasonable detail whether Project Co considers that the funding terms generally available in the market to be more favourable than those reflected in the Senior Financing Agreements (other than Subordinated Financing Agreements); and
- (b) Project Co and TfL shall meet to discuss the Refinancing Notice within ten (10) Working Days of receipt of Project Co's response pursuant to paragraph 3.3(a)(ii) in order to consider the evidence available to the Parties about the availability of funding terms for a potential Refinancing.
- 3.4 TfL shall be entitled to issue a Refinancing Notice under paragraph 3.1 at any time but not more than once in any two (2) year period.
- 3.5 TfL shall be entitled to withdraw the Refinancing Notice at or before a meeting referred to in paragraph 3.3(b), or within ten (10) days following the meeting.