

# PEBBLE INTERCREDITOR AGREEMENT TERM SHEET

## IPFA STANDARD FORM 1.0

PEBBLE is an open market standard, and has been adopted by the IPFA as a standard form. This document is made available in order to facilitate review by parties interested in funding or sourcing funding through the PEBBLE format. Comments can be provided to Allen & Overy LLP (to [pebble@allenoverly.com](mailto:pebble@allenoverly.com)) for consideration for inclusion in the final standard form.



**ALLEN & OVERY**

Allen & Overy LLP

0030277-0000142 ICM:16147729.2

## PEBBLE

### Background

The challenges presented to the project finance market by the regulatory impact on banks of long-term illiquid lending, and the search for new sources of capital, have been well documented. Since 2008 the capital markets have essentially been inaccessible to new greenfield issuers, and more recently long term bank debt has been drying up. Institutional investors recognise the desirability of infrastructure as an asset class, but there are challenges to the creation of a sustainable source of capital markets funding for projects. The most commonly cited challenges are:

- (a) the administrative burden on bondholders of cash management and the consent and waiver requests which arise on every project, especially during the construction phase. Allied to that, the relatively cumbersome decision-making processes used in traditional public bond issuances; and
- (b) the implied or actual credit rating of a project, which anecdotally would be low investment grade (BBB- or equivalent) at best without additional credit enhancement, whereas investor appetite is significantly stronger for bonds with a higher rating.

### Introduction

PEBBLE is a structure which meets both of those challenges. PEBBLE has been developed to set out a common structure across the financing market to deal with the above issues. PEBBLE has been developed as an open format freely available for use by all financiers of infrastructure.

The key details of the PEBBLE structure are set out in the PEBBLE Intercreditor Agreement Term Sheet which accompanies this note. In essence it involves provision of sub-senior debt to enable a diverse range of prospective infrastructure funders to more readily access the market, better meeting the liquidity needs of the infrastructure market. Below is a brief description of the major financing elements which comprise PEBBLE.

### Financing Elements

The main elements of the PEBBLE financing are as described below. Each of the elements mentioned will be lent on the basis of common terms<sup>1</sup>:

- (a) PEBBLE financing is delivered by an SPV (the **PEBBLE Vehicle**), which will be a compartmentalised entity to allow multiple projects to be funded through the same vehicle, to the project company – the financing from the PEBBLE Vehicle to the project company matches the funding of the PEBBLE Vehicle itself;
- (b) the PEBBLE Vehicle (or more precisely each compartment of the PEBBLE Vehicle) is funded with the following financing elements:
  - (i) a **Construction Revolving Facility** provided by commercial banks which is drawn to meet construction costs (against certificated value, in the normal way) and periodically refinanced by a combination of the A Notes and B Loan described below. The use of the revolving facility in the construction phase ensures that sufficient value is periodically built up in the project to allow refinancing through sufficiently sized drawdowns under the A Notes and the B Loan. The Construction Revolving Facility may be drawn to provide liquidity for construction costs in circumstances where a construction contractor event of default has occurred and third party credit enhancement for construction costs has been exhausted, in which case it will amortise pro rata with the A Notes and B Loan;

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<sup>1</sup> Covering representations, warranties, covenants and events of default.

- (ii) **A Notes** which are subscribed for by institutional investors on a fixed drawdown and amortisation schedule (minimising negative carry) and which rank senior to the B Loan; and
- (iii) a **B Loan** (with its related hedging) provided by commercial banks, which ranks junior to the A Notes, but is scheduled to amortise in advance of the A Note principal repayments.

The A Notes and the B Loan will be drawn in a ratio of 85:15.

### **Voting structure**

Prior to their being scheduled to amortise by 35% of their original principal amount (the **Controlling Creditor Threshold**), the **B Lenders** will act as controlling creditor, i.e. they will have the right to take creditor decisions which will bind the A Notes. The decisions which the controlling creditor will be empowered to take prior to the Controlling Creditor Threshold will be decisions which would not have an effect on the A Notes' ability to ultimately recover their principal, so for example:

- a decision to call an event of default;
- changes to the termination compensation payable in a PPP project; and
- changes to key credit metrics such as financial covenants,

would be decisions where A Note consent would always be required. Following the Controlling Creditor Threshold being reached, the A Noteholders and B Lenders will together be controlling creditor, which will essentially mean that A Noteholder consent will be required due to the capital structure. There is a snooze/lose arrangement to ensure that non-responding creditors do not prejudice the ability to take a decision. Due to the subordination of the B Loan, whilst an event of default will arise on non-payment of the B Loan interest or principal, consent of the A Notes will be required to call the event of default. Therefore, in practice, an event of default will only be called if in the interest of the A Notes.

A servicer (the **PEBBLE Servicer**) will be appointed to provide advice to the PEBBLE security trustee on the voting category (see further in the PEBBLE Intercreditor Agreement Term Sheet attached) into which a decision request falls and, following the Controlling Creditor Threshold, to provide an opinion to the A Noteholders on the effect of the relevant decision on the A Noteholders and as a result, on the response which it would propose that the A Noteholders make to the request. This opinion is not binding on the A Noteholders. The PEBBLE Servicer will owe no fiduciary duties to any party as a result of these services.

### **Conclusion**

As described above, PEBBLE will provide the A Notes with a targeted form of credit enhancement through the provision of a subordinated cushion during the riskiest phase of a project (construction and ramp up).

The PEBBLE structure alleviates the administrative burden on the A Notes of responding to waiver and consent requests, by empowering the B Lenders, who, as commercial banks, will bring their agency and project finance expertise to the analysis of requests. Such a mechanism enables liquidity for infrastructure projects to be sourced from participants looking for a more passive debt instrument. PEBBLE enables infrastructure financiers to opt for the risk return profile that best suits them by subscribing to the A Notes and B Loan to match their appetite. For example, a bank wishing to provide long term funding may choose to fund both A Notes and B Loan, an insurance company looking for a high credit quality may choose to subscribe only for the A Note, and a bank with a preference for a shorter maturity debt instrument may fund purely the B Loan.

## **GENERAL**

This note is a summary of the PEBBLE structure and the information contained in the PEBBLE Intercreditor Agreement Term Sheet. It does not purport to be exhaustive and the PEBBLE Intercreditor Agreement Term Sheet should be reviewed for more detail on the terms. It should also be noted that PEBBLE Intercreditor Agreement Term Sheet itself represents summary terms requiring full implementation in documentation.

The provision of the PEBBLE Intercreditor Agreement Term Sheet does not constitute an offer of finance or a legally binding commitment of any kind by any person or institutions to provide, underwrite or arrange finance, and is not intended to give rise to any enforceable agreement with or any undertaking to any person or persons whatsoever. No assurance is given of the suitability of the PEBBLE structure for any financing.

## PEBBLE INTERCREDITOR AGREEMENT TERM SHEET

### 1. PARTIES

<b>A Note Investors</b>	The investors from time to time in the A Note.
<b>B Lenders</b>	The lenders from time to time of the B Loan <sup>2</sup> .
<b>PEBBLE Hedge Counterparties</b>	The hedge counterparties which enter into PEBBLE Hedging Agreements to hedge the B Loan ( <b>PEBBLE B Loan Hedge Counterparties</b> ) and Construction Revolving Facility ( <b>PEBBLE Construction Revolving Facility Hedge Counterparties</b> ).
<b>Construction Revolving Lenders</b>	The lenders from time to time of the Construction Revolving Facility.
<b>PEBBLE Vehicle</b>	An orphan compartmentalised Luxembourg company which is the issuer of the A Notes and the borrower of the B Loan and the Construction Revolving Facility via one compartment.
<b>PEBBLE Servicer</b>	[●] who will provide administration services to the PEBBLE Vehicle in connection with decision making and other matters.
<b>PEBBLE Security Trustee</b>	[●], who will hold the PEBBLE Security on trust for the PEBBLE Secured Creditors
<b>PEBBLE Cash Manager</b>	[●], who will provide cash management services to the PEBBLE Vehicle
<b>PEBBLE Account Bank</b>	[●]
<b>PEBBLE Domiciliation Agent</b>	[●], who will provide corporate services to the PEBBLE Vehicle (per Luxembourg law requirements)
<b>Construction Revolving Facility Agent</b>	The facility agent for the Construction Revolving Lenders
<b>B Loan Facility Agent</b>	The facility agent for the B Lenders.
<b>A Note Trustee</b>	The note trustee for the A Noteholders.
<b>Principal Paying Agent</b>	The paying agent for the A Note.
<b>A Note Registrar</b>	The registrar for the A Notes.

<sup>2</sup> Which may be structured as a note and "issued" under a loan note issuance facility for regulatory reasons.

## 2. DEFINITIONS

<b>A Notes</b>	The senior notes issued by the PEBBLE Vehicle as detailed in the A Note Term Sheet
<b>Affected PEBBLE Secured Creditor</b>	A PEBBLE Secured Creditor (excluding the holder of the PEBBLE Subordinated ProjCo Held Note who shall have no voting rights) which is affected by an Entrenched Right.
<b>B Loan</b>	The loan lent to the PEBBLE Vehicle which forms part of the PEBBLE Secured Debt, but is subordinated to the A Notes. Further details are in the B Loan Term Sheet
<b>Controlling Creditor</b>	<p>The B Lenders and the PEBBLE Hedge Counterparties, provided that if:</p> <ul style="list-style-type: none"> <li>(a) the Controlling Creditor Threshold Test is reached; or</li> <li>(b) a Trigger Event has occurred and its subsisting,</li> </ul> <p>the B Lenders, the PEBBLE Hedge Counterparties and A Note Investors will together be the Controlling Creditor.</p>
<b>Controlling Creditor Threshold Test</b>	Scheduled repayments of the B Loan being greater than or equal to an amount equal to [35]% of the original principal amount of the B Loan.
<b>Creditor Group</b>	<p>Each of:</p> <ul style="list-style-type: none"> <li>(a) the A Note Investors;</li> <li>(b) the B Lenders;</li> <li>(c) the Construction Revolving Lenders; and</li> <li>(d) the PEBBLE Hedge Counterparties.</li> </ul>
<b>Distribution Condition</b>	<p>Before a payment can be made to the Distribution Account the following conditions will have to be met:</p> <ul style="list-style-type: none"> <li>(a) SADSCR will not be less than 1.10x.</li> <li>(b) SLLCR will not be less than 1.15x</li> <li>(c) ProjCo DSRAs at required balance</li> </ul> <p>No Event of Default Outstanding</p>

<b>Trigger Events</b>	Failure to meet a Distribution Condition
<b>Decision Period</b>	In relation to a Matter, a period of [10] <sup>3</sup> business days from the later of:  (a) the date of determination by the PEBBLE Security Trustee of the Voting Category in relation to the Matter; and  (b) in the event that a Qualifying PEBBLE Secured Creditor disputes the PEBBLE Security Trustee's determination under limb (a), the final date of determination of the Voting Category in relation to the Matter.
<b>Entrenched Rights</b>	The Matters set out in Schedule 3.
<b>PEBBLE Hedged Amount</b>	The net amount of B Loan or Construction Revolving Facility (as applicable) interest payable by the PEBBLE Vehicle on any periodic payment date, assuming that such amounts are hedged by the PEBBLE Hedging Agreements.
<b>Majority Creditor Matters</b>	The Matters set out in Schedule 1.
<b>Matter</b>	Any matter or circumstance where a decision of the PEBBLE Secured Creditors (or any one or more Creditor Groups) is required, which may be a decision required in respect of ProjCo or in respect of the PEBBLE Vehicle itself and/or the PEBBLE Finance Documents.
<b>Controlling Creditor Matters</b>	All Matters which are not Discretion Matters, Majority Creditor Matters, Super Majority Creditor Matters or which do not give rise to an Entrenched Right.
<b>Discretion Matters</b>	Any Matter in which the PEBBLE Security Trustee may exercise its discretion to approve any request made in a Matter Notification without any requirement to seek the approval of any PEBBLE Secured Creditor or any of their representatives. Discretion Matters include (i) correcting errors which have arisen through manifest error, or is of a formal, minor, administrative or technical nature; (ii) modifications/consents/waivers which in the PEBBLE Security Trustee's opinion, is not materially prejudicial to the interests of any of the Qualifying PEBBLE Secured Creditors.

<sup>3</sup> May need varying periods to dovetail with relevant periods under PEBBLE/ProjCo Debt Document.

<b>Qualifying PEBBLE Secured Creditors</b>	<ul style="list-style-type: none"> <li>(a) the A Note Investors;</li> <li>(b) the B Lenders;</li> <li>(c) the Construction Revolving Lenders; and</li> <li>(d) each PEBBLE Hedge Counterparty.</li> </ul>
<b>PEBBLE Finance Documents</b>	<ul style="list-style-type: none"> <li>(a) the A Note deed poll/trust deed;</li> <li>(b) the A Note subscription agreement;</li> <li>(c) the agency documents relating to the A Notes;</li> <li>(d) the B Loan facility agreement;</li> <li>(e) the Construction Revolving Facility agreement</li> <li>(f) any fee letters;</li> <li>(g) security documents creating the PEBBLE Security;</li> <li>(h) the PEBBLE Intercreditor Agreement;</li> <li>(i) the PEBBLE cash management agreement;</li> <li>(j) the PEBBLE Account Bank agreement;</li> <li>(k) the PEBBLE Servicer Agreement; and</li> <li>(l) the PEBBLE Hedging Agreements (including the ISDA Master Agreement, Schedules and any confirmations),</li> </ul> <p>any other document designated as such by the PEBBLE Security Trustee.</p>
<b>PEBBLE Intercreditor Agreement</b>	The intercreditor agreement described in this term sheet.
<b>PEBBLE/ProjCo Debt Documents</b>	The documentation evidencing the on-lending by the PEBBLE Vehicle of the proceeds of the Construction Revolving Facility and the A Note issuance and drawdowns under the B Loan (in the latter cases to the extent not fully used to refinance loans under the Construction Revolving Facility).



<p><b>PEBBLE Secured Creditors</b></p>	<p>(a) the A Note Investors;</p> <p>(b) the B Lenders;</p> <p>(c) the Construction Revolving Lenders;</p> <p>(d) each PEBBLE Hedge Counterparty;</p> <p>(e) the PEBBLE Security Trustee;</p> <p>(f) the PEBBLE Cash Manager;</p> <p>(g) the PEBBLE Servicer;</p> <p>(h) the PEBBLE Account Bank;</p> <p>(i) the B Loan Facility Agent;</p> <p>(j) the Construction Revolving Facility Agent;</p> <p>(k) the A Note Trustee;</p> <p>(l) the A Note Registrar;</p> <p>(m) the PEBBLE Domiciliation Agent;</p> <p>(n) the Principal Paying Agent; and</p> <p>(o) ProjCo as holder of the PEBBLE Subordinated ProjCo Held Note,</p> <p>and any other person designated as such by the PEBBLE Security Trustee.</p>
<p><b>PEBBLE Secured Liabilities</b></p>	<p>All amounts due to the PEBBLE Secured Creditors under the PEBBLE Finance Documents.</p>
<p><b>PEBBLE Security</b></p>	<p>The security granted by the PEBBLE Vehicle to the PEBBLE Security Trustee in respect of the PEBBLE Secured Liabilities<sup>4</sup>.</p>

<sup>4</sup> This will be security over all of the PEBBLE Vehicle's assets.

<b>PEBBLE Secured Debt</b>	All amounts outstanding and/or due: (a) under the A Notes; (b) under the B Loan; (c) under the PEBBLE Hedging Agreements; or (d) under the Construction Revolving Facility.
<b>PEBBLE Subordinated ProjCo Held Note</b>	A note issued by the PEBBLE Vehicle to ProjCo, the interest rate under which will be operate so that all available amounts at the relevant level of the Priorities of Payment (less the principal amount of the PEBBLE Subordinated ProjCo Held Note) will be payable as interest on the PEBBLE Subordinated ProjCo Held Note on the final discharge date of the PEBBLE Secured Debt.
<b>ProjCo</b>	A special purpose company with limited liability which has entered into a project or concession agreement (the <b>Project Agreement</b> ) with a procuring authority (the <b>Authority</b> ).
<b>ProjCo Intercreditor Agreement</b>	The intercreditor agreement entered into to rank ProjCo's debt (including debt owed to the PEBBLE Vehicle).
<b>Project</b>	[●]
<b>Construction Revolving Facility</b>	The revolving facility lent to the PEBBLE Vehicle by the Construction Revolving Facility Lenders as detailed in the Construction Revolving Facility Term Sheet.
<b>Swept Distribution Account Amounts</b>	Amounts standing to the credit of ProjCo's distribution account which, in accordance with the PEBBLE/ProjCo Debt Documents, may be withdrawn and applied to meet Subordinated Hedge Counterparty Payments or additional amounts resulting from the replacement of a Hedge Counterparty.
<b>Super Majority Matters</b>	The Matters set out in Schedule 2.

<p><b>Subordinated Hedge Counterparty Payments</b></p>	<p>Amounts payable to a PEBBLE Hedge Counterparty where it is the defaulting party under a PEBBLE Hedging Agreement and/or it has been downgraded and has not taken the required action under the PEBBLE Hedging Agreement or amounts payable as a result of the termination or replacement of a PEBBLE Hedge Counterparty (which may include interest amounts payable to the B Lenders or the Construction Revolving Lenders in excess of the relevant PEBBLE Hedged Amount).</p>
<p><b>Voting Category</b></p>	<p>Whether a Matter:</p> <ul style="list-style-type: none"> <li>(a) is a Discretion Matter;</li> <li>(b) is a Controlling Creditor Matter;</li> <li>(c) is an Majority Creditor Matter;</li> <li>(d) is a Super Majority Creditor Matter; or</li> <li>(e) gives rise to an Entrenched Right.</li> </ul>

### 3. VOTING PROCESS

<p><b>PEBBLE Voting Entitlement</b></p>	<p>The PEBBLE Vehicle will exercise its voting entitlement under the ProjCo Intercreditor Agreement and the PEBBLE/ProjCo Debt Documents as directed by the Qualifying PEBBLE Secured Creditors in accordance with the PEBBLE Intercreditor Agreement.</p>
<p><b>Matter Notification</b></p>	<p>Where the PEBBLE Vehicle is notified of any matter requiring a decision of the PEBBLE Vehicle under the ProjCo Intercreditor Agreement and/or the PEBBLE/ProjCo Debt Documents, it shall promptly notify the PEBBLE Servicer (acting as an agent for the PEBBLE Vehicle) and the PEBBLE Security Trustee (by a <b>Matter Notification</b>) of the matter.</p> <p>In relation to Matters which relate solely to the PEBBLE Secured Liabilities or the PEBBLE Finance Documents, either the PEBBLE Vehicle or any PEBBLE Secured Creditor (except for the holder of the PEBBLE Subordinated ProjCo Held Note who shall have no voting rights) may deliver a Matter Notification to the PEBBLE Servicer and the PEBBLE Security Trustee.</p>
<p><b>Determination of Voting Category</b></p>	<p>The PEBBLE Security Trustee will either concur with the PEBBLE Vehicle's opinion on the Voting Category (as set out in the Matter Notification) or determine that another Voting Category is applicable within [●] business days of receipt of the Matter Notification<sup>5</sup> and will notify the Qualifying PEBBLE Secured Creditors on the day on which it makes such determination.</p> <p>In making such determination, the PEBBLE Security Trustee may rely on the contents of the Matter Notification (including the PEBBLE Vehicle's opinion on the applicable Voting Category) which will be based on the advice of the PEBBLE Servicer. The PEBBLE Security Trustee will have no liability to any PEBBLE Secured Creditor or any other person for any act or omission on its part in reaching its determination.</p>

<sup>5</sup> These timings generally will need to accommodate timings under the ProjCo Intercreditor Agreement and project documents.

<b>Dispute as to Voting Category</b>	Any Qualifying PEBBLE Secured Creditor may within [●] business days dispute the Voting Category determined by the PEBBLE Security Trustee. In the event of a dispute which cannot be resolved amicably, the determination will be made by an independent expert.
<b>Voting Process</b>	The Matter Notification will contain the following: <ul style="list-style-type: none"> <li>(a) reasonable details of the Matter;</li> <li>(b) the PEBBLE Vehicle's opinion on the applicable Voting Category;</li> <li>(c) the Decision Period; and</li> <li>(d) any other supporting information necessary.</li> </ul>
<b>Voting mechanics</b>	The Qualifying PEBBLE Secured Creditors entitled to vote in relation to a Matter will vote by notice to PEBBLE Security Trustee and the PEBBLE Servicer. Subject to the quorum requirements set out below, if the vote of a PEBBLE Secured Creditor is not received before the end of the Decision Period, the commitment of that PEBBLE Secured Creditor will be excluded for the purposes of determining whether the Matter has been approved.
<b>Quorum</b>	A quorum of [●]% of the relevant Creditor Group(s) (on an aggregated basis) is required for a vote to take place on Matters except for Matters relating to Entrenched Rights.
<b>Voting basis</b>	Each Qualifying PEBBLE Secured Creditor which is entitled to vote will vote the aggregate of its principal outstanding and its unfunded commitment. Each PEBBLE Hedge Counterparty will vote its mark-to-market amount to the extent that they have terminated/closed out their swaps.
<b>Majorities<sup>6</sup>:</b>	
<b>Controlling Creditor Matters</b>	A simple majority of the Creditor Groups (on an aggregated basis) constituting the Controlling Creditor.
<b>Majority Creditor Matters</b>	A simple majority of the Creditor Groups (on an aggregated basis)

<sup>6</sup> Subject in each case to the Decision Period mechanic.

<b>Super Majority Creditor Matters</b>	[●]% of the Creditor Groups (on an aggregated basis).
<b>Entrenched Right</b>	The consent of each Affected PEBBLE Secured Creditor (including each PEBBLE Hedge Counterparty which is an Affected PEBBLE Secured Creditor) will be required <sup>7</sup> .
<b>Disenfranchisement</b>	<p>Where:</p> <ul style="list-style-type: none"> <li>(a) a PEBBLE Secured Creditor has failed to comply with any funding obligation under a PEBBLE Finance Document and that failure has not been remedied or an insolvency event occurs in relation to it;</li> <li>(b) a Matter relates to a proposed or actual contractual or other relationship with an affiliate of a PEBBLE Secured Creditor;</li> <li>(c) a PEBBLE Secured Creditor is an affiliate of a sponsor or major contractor in relation to the Project,</li> </ul> <p>that PEBBLE Secured Creditor does not have the right to vote (except in relation to Entrenched Rights).</p>

<sup>7</sup> Changes to the ISDA Schedule are effectively Entrenched Rights.

#### 4. RANKING

<p><b>Pre-Enforcement Priority of Payments:</b></p>	<p>Prior to enforcement of the PEBBLE security, on each periodic payment date, all available funds of the PEBBLE Vehicle (including amounts received by the PEBBLE Vehicle from the ProjCo DSRAs) will be applied by the PEBBLE Vehicle (or the PEBBLE Cash Manager on its behalf) in accordance with the following priority of payments (provided that amounts due under paragraph (e) below may only be met from Swept Distribution Account Amounts):</p>
	<p>(a) all amounts due to the PEBBLE Security Trustee;</p>
	<p>(b) all fees, other remuneration, indemnity payments, costs, charges, liabilities and expenses due to (i) the A Note Trustee (ii) the PEBBLE Account Bank, (iii) the PEBBLE Servicer, (iv) the PEBBLE Cash Manager, (v) the Construction Revolving Facility Agent, (vi) the PEBBLE Domiciliation Agent, (vii) the Principal Paying Agent, (viii) the A Note Registrar and (ix) the B Loan Facility Agent;</p>
	<p>(c) all third party amounts not otherwise provided for and tax amounts payable;</p>
	<p>(d) <i>pari passu</i> and <i>pro rata</i>:</p> <p>(i) all amounts due under the Construction Revolving Facility Priority of Payments (see definition below); and</p> <p>(ii) all amounts due under the A/B Priority of Payments (see definition below);</p>
	<p>(e) Subordinated Hedge Counterparty Payments;</p>
	<p>(f) all amounts due under the PEBBLE Subordinated ProjCo Held Note;</p>
	<p>(g) any amounts to be applied towards mandatory or voluntary prepayment of any PEBBLE Secured Debt; and</p>
	<p>(h) the surplus, if any, to the ProjCo or to other persons entitled thereto.</p>

<b>Post-Enforcement Priority of Payments:</b>	Following enforcement of the PEBBLE Security, the proceeds of enforcement of the PEBBLE Security will be applied in accordance with the following priority of payments:
	(a) all amounts due to the PEBBLE Security Trustee;
	(b) all fees, other remuneration, indemnity payments, costs, charges, liabilities and expenses due to (i) the A Note Trustee (ii) the PEBBLE Account Bank (iii) the PEBBLE Servicer, (iv) the PEBBLE Cash Manager, (v) the Construction Revolving Facility Agent, (vi) the PEBBLE Domiciliation Agent, (vii) the Principal Paying Agent, (viii) the A Note Registrar and (ix) the B Loan Facility Agent;
	(c) <i>pari passu</i> and <i>pro rata</i> :  (i) all amounts due under the Construction Revolving Facility Priority of Payments (see definition below); and  (ii) all amounts due under the A/B Priority of Payments (see definition below);
	(d) Subordinated Hedge Counterparty Payments;
	(e) all amounts due under the PEBBLE Subordinated ProjCo Held Note; and
	(f) the surplus, if any, to the ProjCo or to other persons entitled thereto.
<b>Construction Revolving Facility Priority of Payments:</b>	All amounts payable at paragraph d(i) of the Priority of Payments will be applied as follows:
	(a) <i>pari passu</i> and <i>pro rata</i> up to an maximum aggregate amount of the relevant PEBBLE Hedged Amount (i) all amounts of interest due on the Construction Revolving Facility and (ii) all scheduled amounts due to the PEBBLE Construction Revolving Facility Hedge Counterparties (other than Subordinated Hedge Counterparty Payments); and



	(b) <i>pari passu</i> and <i>pro rata</i> , (i) all amounts of principal due on the Construction Revolving Facility and (ii) all unscheduled amounts (including termination payments) due to the PEBBLE Construction Revolving Facility Hedge Counterparties (other than Subordinated Hedge Counterparty Payments).
<b>A/B Priority of Payments:</b>	All amounts payable at paragraph d(ii) of the Priority of Payments will be applied as follows:
	(a) all amounts of interest due on the A Notes;
	(b) all amounts of principal due on the A Notes;
	(c) <i>pari passu</i> and <i>pro rata</i> up to a maximum aggregate amount of the PEBBLE Hedged Amount, (i) all amounts of interest due on the B Loan and (ii) all scheduled amounts due to the PEBBLE B Loan Hedge Counterparties (other than Subordinated Hedge Counterparty Payments); and
	(d) <i>pari passu</i> and <i>pro rata</i> , (i) all amounts of principal due on the B Loan and (ii) all unscheduled amounts (including termination payments) due to the PEBBLE B Loan Hedge Counterparties (other than Subordinated Hedge Counterparty Payments).
<b>Application of amounts from ProjCo DSRAs:</b>	<p>Prior to enforcement of the PEBBLE security, amounts received by the PEBBLE Vehicle from the ProjCo DSRAs shall be applied by the PEBBLE Vehicle (or the PEBBLE Cash Manager on its behalf) shall be applied down the Pre-Enforcement Priority of Payments as follows:</p> <p>(a) amounts received from the ProjCo A Note DSRA may only be applied to meet the following amounts in the following order of priority:</p> <p>(i) amounts due under paragraphs (a) to (c) of the Pre-Enforcement Priority of Payments<sup>8</sup>;</p> <p>(ii) where Contingent Facility Usage has not taken place, amounts due</p>

<sup>8</sup> Fees and expenses of administrative parties ranking in priority to PEBBLE Secured Debt.

	<p>under paragraphs (a) and (b) of the A/B Priority of Payments<sup>9</sup>; and</p> <p>(iii) where Contingent Facility Usage has taken place, <i>pro rata</i> and <i>pari passu</i>:</p> <p>(A) up to a maximum amount of the A Amount, amounts due under paragraphs (a) and (b) of the Construction Revolving Facility Priority of Payments<sup>10</sup>; and</p> <p>(B) amounts due under paragraphs (a) and (b) of the A/B Priority of Payments.</p> <p><b>A Amount</b> means at any time an amount equal the A Proportion of CRF Debt Service up to a maximum of the A Proportion of DSRA A</p> <p><b>A Proportion</b> means:</p> $\frac{A}{A + B}$ <p>(b) amounts received from the ProjCo B Loan DSRA may only be applied to meet the following amounts in the following order of priority:</p> <p>(i) where Contingent Facility Usage has not taken place, amounts due under paragraph (c) of the A/B Priority of Payments<sup>11</sup>; and;</p> <p>(ii) where Contingent Facility Usage has taken place, <i>pro rata</i> and <i>pari passu</i>:</p> <p>(A) up to a maximum amount of the B Amount, amounts due under paragraphs (a) and (b) of the Construction Revolving Facility Priority of Payments; and</p> <p>(B) amounts due under paragraph (c) of the A/B</p>
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<sup>9</sup> A Note principal and interest.  
<sup>10</sup> CRF principal and interest.  
<sup>11</sup> B Loan interest.

Priority of Payments.

**B Amount** means at any time an amount equal the B Proportion of CRF Debt Service up to a maximum of the B Proportion of DSRA B

**B Proportion** means:

$$\frac{B}{A + B}$$

Where:

**A** is the amount of A Note interest and principal then due

**B** is the amount of B Loan interest then due

**CRF Debt Service** is the aggregate amount of interest and principal then due under the Construction Revolving Facility

**DSRA A** is the amount standing to the credit of the ProjCo A Note DSRA

**DSRA B** is the amount standing to the credit of the ProjCo B Loan DSRA

**5. UNDERTAKINGS**

<p><b>Undertakings of PEBBLE Secured Creditors:</b></p>	<p>Each PEBBLE Secured Creditor undertakes not to:</p> <ul style="list-style-type: none"> <li>(a) permit or require the PEBBLE Vehicle to discharge any of the PEBBLE Secured Liabilities owed to it;</li> <li>(b) accelerate or permit or require the PEBBLE Vehicle to cancel, pay, prepay, repay, redeem, purchase, terminate early or otherwise acquire any PEBBLE Secured Liabilities owed to it;</li> <li>(c) take any action under the PEBBLE Finance Documents so as to constitute a breach of the Common Terms Agreement or the PEBBLE Intercreditor Agreement;</li> <li>(d) take, accept or receive the benefit of any Security Interest, guarantee, indemnity or other assurance against financial loss from the PEBBLE Vehicle in respect of any PEBBLE Secured Liabilities owed to it;</li> <li>(e) take, accept or receive from the PEBBLE Vehicle by way of set-off against any PEBBLE Secured Liabilities owed to it; or</li> <li>(f) take any enforcement action in respect of the PEBBLE Security.</li> </ul> <p>in each case except as permitted under the Common Terms Agreement and the PEBBLE Finance Documents.</p>
<p><b>Undertakings of the PEBBLE Vehicle:</b></p>	<p>The PEBBLE Vehicle undertakes not to, <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>(a) discharge any of the PEBBLE Secured Liabilities owed by it save as permitted or required under the Common Terms Agreement and the PEBBLE Finance Documents; or</li> <li>(b) create or permit to subsist any Security Interest, guarantee, indemnity or other assurance against financial loss in respect of the PEBBLE Secured Liabilities owed by it, except as pursuant to the PEBBLE Security created by the PEBBLE Security Documents.</li> </ul>

6. MISCELLANEOUS

<p><b>Project Debt Service Reserve Accounts (ProjCo DSRAs)</b></p>	<p>Held at ProjCo under PEBBLE/ProjCo Debt Documents (and includes the ProjCo A Note DSRA, ProjCo B Loan DSRA) to service ProjCo’s senior debt (including amounts due under the PEBBLE/ProjCo Debt Documents).</p>
<p><b>Project A Note Debt Service Reserve Account (ProjCo A Note DSRA)</b></p>	<p>Held at ProjCo under PEBBLE/ProjCo Debt Documents for A Note debt service. Amounts withdrawn from the ProjCo A Note DSRA may, once paid to PEBBLE only be used to meet A Note interest and principal, and interest and principal on the Construction Revolving Facility in case of Contingent Facility Usage.</p>
<p><b>Project B Loan Debt Service Reserve Account (ProjCo B Loan DSRA)</b></p>	<p>Held at ProjCo under PEBBLE/ProjCo Debt Documents to service interest on the B Loan. Amount withdrawn from the ProjCo B Loan DSRA may, once paid to PEBBLE only be used to meet B Loan interest, and interest and principal on the Construction Revolving Facility in case of Contingent Facility Usage.</p>
<p><b>Debt Service Reserve Required Amount</b></p>	<p>The amount required in terms of the PEBBLE Finance Documents to be standing to the credit of the following accounts:</p> <p>(a) <b>ProjCo A Note DSRA</b> an amount at least equal to:</p> <ul style="list-style-type: none"> <li>(i) prior to B Loan Final Maturity Date, 12 months' interest on the A Notes; or</li> <li>(ii) after the B Loan Final Maturity Date, [6]<sup>12</sup> months' interest and principal on the A Notes.</li> </ul> <p>(b) <b>ProjCo B Loan DSRA</b> - an amount at least equal to 6 month's interest on the B Loan.</p>
<p><b>PEBBLE Servicer arrangements</b></p>	<p>The PEBBLE Servicer will enter into a servicing agreement which will contain a scope of services, limitations on liability and confirmation that the PEBBLE Servicer owes no fiduciary duties to the PEBBLE Secured Creditors, but acts as agent of the PEBBLE Vehicle.</p>
<p><b>Additional PEBBLE Secured Creditors</b></p>	<p>May accede to the PEBBLE Finance Documents if</p>

<sup>12</sup> May vary depending upon the level of bonding provided by the O&M Contractor.

	an accession memorandum is executed by the PEBBLE Vehicle, the proposed Additional PEBBLE Secured Creditor and the PEBBLE Security Trustee (the <b>Accession Memorandum</b> ).
<b>Benefits of the PEBBLE Transaction Documents</b>	PEBBLE may not assign all or any of its rights or transfer all or any of its rights and obligations under the PEBBLE Transaction Documents except (a) pursuant to the security documents creating the PEBBLE Security, or (b) as may be required by law.
	No PEBBLE Secured Creditor may assign or transfer to any person the whole or any part of its rights or obligations under the PEBBLE Finance Documents to which it is a party except as permitted by the relevant PEBBLE Finance Document <b>provided that</b> it will be an additional condition to any such assignment or transfer that the assignee or transferee (to the extent not already a PEBBLE Secured Creditor) previously or simultaneously (a) agrees with the other parties to the PEBBLE Intercreditor Agreement to be bound by the provisions of the PEBBLE Intercreditor Agreement and the Common Terms Agreement as if it was named as a PEBBLE Secured Creditor therein <i>ab initio</i> and (b) executes and delivers to the PEBBLE Security Trustee an Accession Memorandum, supported by legal opinions <sup>13</sup> .
<b>Non-petition/limited recourse</b>	Each of the PEBBLE Secured Creditors will agree not to initiate or consent to winding-up/liquidation or similar proceedings against the PEBBLE Vehicle and will agree that their recourse in respect of the PEBBLE Secured Liabilities will be limited to the proceeds of the PEBBLE Security.
<b>Retirement/Removal of PEBBLE Security Trustee provisions</b>	<p>The PEBBLE Security Trustee may retire at any time on giving at least [3] months' notice to the PEBBLE Vehicle and the PEBBLE Security Trustee provided that no such retirement will take effect until a successor trustee has been appointed.</p> <p>Removal of the PEBBLE Security Trustee will be a Majority Creditor Matter, provided that no such removal will take effect until a successor trustee has been appointed.</p>

<sup>13</sup> As to due incorporation, capacity and due authorisation of the assignee or transferee and the binding effect of the PEBBLE Intercreditor Agreement, the Common Terms Agreement and the Accession Memorandum on the assignee or transferee

<b>PEBBLE Security Trustee provisions</b>	There will be market-standard trustee protection language (consistent with capital markets financings) for the PEBBLE Security Trustee.
<b>Indemnities</b>	<p>The trustee indemnity from ProjCo under the ProjCo Intercreditor Agreement will be worded to ensure that it captures costs of the PEBBLE Security Trustee.</p> <p>The PEBBLE Secured Creditors will provide a residual indemnity to the PEBBLE Security Trustee on market-standard terms.</p>
<b>Governing law</b>	English.
<b>Jurisdiction</b>	English courts.
<b>Process Agent</b>	To be appointed in England.

## SCHEDULE 1

### MAJORITY CREDITOR MATTERS

Matters relating to:

- (d) amounts payable by the Authority under Project Documents [(except for termination compensation and amounts designated to repay the Lump Sum Bridge Facility)]<sup>14</sup>;
- (e) agreement to changes under Project Documents<sup>15</sup>;
- (f) voluntary cancellations/prepayments/redemption of the A Note and B Loan;
- (g) any amendment or waiver which would result in an event of default;
- (h) amendments to/waiver relating to key provisions e.g.
  - (i) financial covenants and financial ratios;
  - (ii) restricted payment/lock-up provisions;
  - (iii) completion date(s);
  - (iv) construction milestones;
  - (v) mandatory prepayments;
  - (vi) payment mechanism;
  - (vii) major maintenance reserve provisions;
  - (viii) reserves/liquidity requirements; and
  - (ix) amounts payable/bonding requirements/guarantee requirements under sub-contracts<sup>16</sup>;
- (i) waivers related to the transfer of any interest in PEBBLE Secured Debt; and
- (j) removal of the PEBBLE Security Trustee.

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<sup>14</sup> Subject to a materiality threshold.

<sup>15</sup> Subject to a materiality threshold.

<sup>16</sup> Subject to a materiality threshold.



## SCHEDULE 2

### SUPER MAJORITY CREDITOR MATTERS

Matters relating to, *inter alia*,:

- (a) termination of/events of default under Project Documents [and amounts designated to repay the Lump Sum Bridge Facility];
- (b) calling an event of default/waiving an existing event of default under the finance documentation;
- (c) release of security other than in accordance with documentation<sup>17</sup>; and
- (d) acceleration/enforcement.

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<sup>17</sup> Release of some types of security may fall under the “Entrenched Rights” category.

**SCHEDULE 3**  
**ENTRENCHED RIGHTS**

Analogous to LMA all Lender decisions, including:

- (a) change in economic terms (margin, principal amount, dates for payment, amortisation amounts, currency of payment, fees/costs/recoveries due)<sup>18</sup>;
- (b) rescheduling;
- (c) change in ranking/subordination;
- (d) changes to key definitions/voting mechanics;
- (e) changes to gross-up provisions;
- (f) changes to compensation provisions under project documents;
- (g) changes to the PEBBLE Vehicle's constitution which would affect PEBBLE's tax status; and
- (h) amendments to PEBBLE Intercreditor Agreement<sup>19</sup>.

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<sup>18</sup> Including any change to the PEBBLE Hedging Agreements.  
<sup>19</sup> Other than Discretion Matters.