

Dated 25 November 2019

**BORALEX ENERGIE FRANCE**

acting as Borrower

and

**AUXIFIP**

**LA BANQUE POSTALE**

**BPIFRANCE FINANCEMENT**

**CAIXABANK, S.A.**

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

**CRÉDIT INDUSTRIEL ET COMMERCIAL**

acting as Mandated Lead Arrangers

and

**CRÉDIT INDUSTRIEL ET COMMERCIAL**

acting as Agent and Intercreditor and Security Agent

and

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

acting as Account Bank

and

**THE FINANCIAL INSTITUTIONS**

acting as Original Lenders

**EUR 242,746,601.35  
FACILITIES AGREEMENT**

**Linklaters**

Ref: F April / S Bordeleau

Linklaters LLP

DE PARDIEU BROCAS MAFFEI

AVOCATS

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**This Agreement** is made on the date set out on the first signature page **between:**

- (1) **BORALEX ENERGIE FRANCE**, a French *société par actions simplifiée*, whose registered office is at 71 rue Jean Jaurès, 62575 Blendecques, France and registered under number 524 719 838 RCS Boulogne-sur-Mer, acting as borrower (the **"Borrower"**);
- (2) **THE FINANCIAL INSTITUTIONS** which details are listed in paragraph 1 (*The Mandated Lead Arrangers*) of Schedule 1 (*Certain Original Finance Parties*), acting as mandated lead arrangers (the **"Mandated Lead Arrangers"**);
- (3) **CRÉDIT INDUSTRIEL ET COMMERCIAL "CIC"**, a *société anonyme* whose registered office is at 6 Avenue de Provence, 75009 Paris, France and registered with the commercial and companies registry of Paris under number 542 016 381, acting as facility agent (the **"Agent"**);
- (4) **CRÉDIT INDUSTRIEL ET COMMERCIAL "CIC"**, a *société anonyme* whose registered office is at 6 Avenue de Provence, 75009 Paris, France and registered with the commercial and companies registry of Paris under number 542 016 381, acting as intercreditor and security agent (the **"Intercreditor and Security Agent"**);
- (5) **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a *société anonyme* organised and existing under the laws of France, whose registered office is at 12 place des Etats-Unis, CS 70052, 92547 Montrouge Cedex, France and registered with the commercial and companies registry of Nanterre under number 304 187 701, acting as account bank (the **"Account Bank"**); and
- (6) **THE FINANCIAL INSTITUTIONS** which details are listed in paragraph 2 (*The Original Lenders*) of Schedule 1 (*Certain Original Finance Parties*), acting as lenders (the **"Original Lenders"**).

**Whereas:**

- (A) Each of the SPVs (as defined below) owns one or more Power Plants. The SPVs sell all electricity produced by each Power Plant pursuant to PPAs, Aggregation Contracts or Eligible Corporate PPAs entered into in respect of that Power Plant (the **"Project"**).
- (B) The Original Lenders have agreed to make available to the Borrower certain Facilities, including:
  - (i) the Refinancing Tranche of the Refinancing Facility, in order to, among other things, allow the Borrower to finance the Intercompany Loans to be used by each SPV and, as the case may be, Intermediate Holdcos to repay in full its Existing Facilities under each Existing Facilities Agreement to which it is a party, to pay any associated costs relating to those financings (including any hedge termination costs) and to repay a portion of the Shareholders Loans (as defined below); and
  - (ii) the Debt Service Reserve Facility.
- (C) The Borrower has in addition requested that, after the Closing Date, existing or new Lenders may, at their discretion, commit an additional Incremental Facility (and, as the case may be, an Incremental DSRF), in order to refinance the Development Costs in respect of Eligible Projects (and, as the case may be to finance the purchase price of a Permitted Acquisition), to be made available to the Borrower in accordance with the terms of this Agreement. Such Incremental Facility (and, as the case may be, Incremental DSRF)

may be committed by existing and/or new Lenders in accordance with the terms of this Agreement.

- (D) This Agreement records the terms and conditions pursuant to which the Lenders agree to make the Facilities available to the Borrower.

It is agreed as follows:

## 1 Definitions and Interpretation

### 1.1 Definitions

In this Agreement:

**“2016 Feed-in Premium”** means the Feed-in Premium scheme for onshore windfarms with effect as from 1 January 2016 provided by the order dated 13 December 2016 entitled *“Arrêté du 13 décembre 2016 fixant les conditions du complément de rémunération de l'électricité produite par les installations de production d'électricité utilisant l'énergie mécanique du vent”*.

**“2016 Feed-in Premium Power Plants”** means those Power Plants benefiting (or expected to benefit) from the 2016 Feed-in Premium and operated by any member of the Group.

**“Account Bank Fee Letter”** means the letter to be signed on the Signing Date between the Borrower and the Account Bank setting forth the conditions of remuneration of the Account Bank for the purpose of its role under the Finance Documents;

**“Additional Cash Shortfall Amount”** means the theoretical shortfall amount as set out in Part B of Schedule 12 (*Merchant Reserve Amount*) and as revised, as the case may be, pursuant to Clause 24.33 (*Additional Merchant Reserve Amount*);

**“Additional Merchant Reserve Account”** means the account named “Additional Merchant Reserve Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Additional Merchant Reserve Amount”** means the amount to be credited to the Additional Merchant Reserve Account on each Repayment Date in order to cover the Additional Cash Shortfall Amount as set out in Part B of Schedule 12 (*Merchant Reserve Amount*) and as revised, as the case may be, pursuant to Clause 24.33 (*Additional Merchant Reserve Amount*), provided always that:

- (a) any amount which cannot be credited to the Additional Merchant Reserve Account pursuant to the Cash Waterfall on a given Repayment Date shall increase the Additional Merchant Reserve Amount of the next following Repayment Date as set out in Part B of Schedule 12 (*Merchant Reserve Amount*); and
- (b) in no event shall the Borrower credit to the Additional Merchant Reserve Account cumulated Additional Merchant Reserve Amounts exceeding the Aggregated Additional Merchant Reserve Amount applicable on such Repayment Date;

**“Affected Power Unit”** means a Turbine (in respect of a Power Plant which is a wind farm) or a solar Power Plant taken as a whole (in respect of the Power Plant which is a solar farm) which is:

- (a) affected by one or several of the events or circumstances listed in Clause 26.17 (*Limitation with respect to Affected Power Units*); and/or
- (b) held by an SPV which is affected by one or several of the events listed in Clause 26.17 (*Limitation with respect to Affected Power Units*) and which cannot be considered as affecting that Turbine or Power Plant (as relevant) only;

**“Affiliate”** means:

- (a) 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; and
- (b) in relation to Crédit Agricole, any entity or member of the Crédit Agricole Group, where “Crédit Agricole Group” means:
  - (i) Crédit Agricole S.A.;
  - (ii) Crédit Agricole Corporate and Investment Bank;
  - (iii) any Caisse Régionale de Crédit Agricole;
  - (iv) Crédit Agricole Assurances;
  - (v) Le Crédit Lyonnais;
  - (vi) Amundi;
  - (vii) Auxifip;
  - (viii) any company in which one or more of the companies referred to in paragraph (i), (ii), (iii), (iv) or (v) above, together or separately, own a direct majority interest; or
  - (ix) any securitisation fund (including any French Fonds Commun de Titrisation) or compartment thereof whose units, bonds or any type of securities being issued by it would be held by the company described above or any subsidiary thereof;

**“Agency Fee Letter”** means the letter to be signed on the Signing Date between the Borrower and the Agent setting forth the conditions of remuneration of the Agent for the purpose of its role under the Finance Documents;

**“Aggregated Additional Merchant Reserve Amount”** means, on a given Repayment Date, the aggregate of all Additional Merchant Reserve Amounts to be credited to the Additional Merchant Reserve Account pursuant to Clause 25.2.4 (*Additional Merchant Reserve Account*);

**“Aggregated Merchant Reserve Amount”** means, on a given Repayment Date, the aggregate of the Merchant Reserve Amount as set out in Schedule 12 (*Merchant Reserve Amount*);

**“Aggregation Contracts”** means the Eligible Aggregation Contracts;

**“Anti-Corruption Regulations”** means: (i) the French legal and regulatory provisions relating to combatting corruption and trafficking in influence peddling, including but not limited to those set forth in Book IV, Title III “*Des atteintes à l’autorité de l’Etat*” and Title IV “*Des atteintes à la confiance publique*” of the French Code pénal; and (ii) any other foreign

anti-bribery or anti-corruption laws, regulations or rules, to the extent these measures are applicable;

**“Assumptions”** means the economic, financial, technical, environmental and noise curtailment, energy yield (taking into account the portfolio effect), accounting and tax assumptions (including any cash sweeps in relation thereto) as set out in the Financial Model, any available information from the network operators regarding potential outages or curtailments or planned maintenance and any other applicable assumptions agreed between the Borrower and the Agent as amended from time to time in accordance with and subject to this Agreement;

**“Authorisation”** means, in respect of a Power Plant, the administrative authorisations, licences and consents necessary to own, build, operate and maintain the relevant Power Plant;

**“Authorised Investments”** means securities which shall have a scheduled maturity not exceeding one year and which shall be limited to:

- (a) certificates of deposit issued by a bank regulated in an EU member state, which have a short-term senior and unsecured debt rating of at least A- issued by S&P or A3 issued by Moody's;
- (b) bonds or notes of or guaranteed by any supranational entity or EU (including French government treasury bills (*bons du Trésor*)), USA or Swiss sovereign, the unsecured, unguaranteed and unsubordinated medium-term obligations which have a medium-term senior and unsecured debt rating of at least A- issued by S&P or A3 issued by Moody's;
- (c) commercial paper or *billets de trésorerie* constituting direct, primary and unsubordinated obligations and having an outstanding maturity of less than 12 months from the date of purchase by or on behalf of the relevant account holder, which paper has a long-term senior and unsecured debt rating of at least A- issued by S&P or A3 issued by Moody's;
- (d) SICAV (*société d'investissements a capital variable*) incorporated in France and authorised by the *Autorité des Marchés Financiers* (“**AMF**”) which is classified as an “*OPCVM “Monétaire Euro*” according to the AMF instructions no. 2005-02 dated 25 January 2005 and which invests substantially all of its assets in cash or securities of the type described in paragraphs (a) to (c) above and which is rated at least A- by S&P or A3 by Moody's; or
- (e) any other debt instruments to be mutually agreed upon by the Lenders and the Borrower,

in each case, denominated in Euro and if available with the Account Bank;

**“Authorised Investments Additional Merchant Reserve Account”** means the securities account named “Authorised Investments Additional Merchant Reserve Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Authorised Investments DSRA (Incremental Facility)”** means the securities account to be opened in the name of the Borrower with the Account Bank if the Borrower so elects in an Incremental Facility Final Notice, as further described in Clause 25 (*Bank Accounts*);

**“Authorised Investments Insurance Reserve Account”** means the securities account named “Authorised Investments Insurance Reserve Account”, to be opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Authorised Investments Lock-up Account”** means the securities account named “Authorised Investments Lock-up Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Authorised Investments Merchant Reserve Account”** means the securities account named “Authorised Investments Merchant Reserve Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Authorised Investments Partial Lock-up Account”** means the securities account named “Authorised Investments Partial Lock-up Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Authorised Investor”** means a person which:

- (a) is not in an insolvency situation and has the financial capacity to meet its obligations under the Finance Documents; and
- (b) is not a Sanctioned Person;
- (c) meets the “know your customer” requirements of the Lenders;
- (d) or which has been otherwise agreed by the Agent, acting upon instructions of all Lenders;

**“Availability Period”** means:

- (a) with respect to the Refinancing Tranche, the period from and including the Signing Date to and including the date falling 20 Business Days after the Signing Date;
- (b) with respect to the Debt Service Reserve Facility, the period from and including the Closing Date to and including the Repayment Date falling two Repayment Dates before the Final Maturity Date (subject always to the terms of Clause 5.3.4);
- (c) with respect to any Incremental Facility Tranche, the period specified as the Availability Period for that Incremental Facility Tranche in the Incremental Facility Final Notice, which shall not end on a date later than the date falling five years after the Signing Date; and
- (d) with respect to any Incremental DSR Tranche, the period specified as the Availability Period for that Incremental DSR Tranche in the Incremental Facility Final Notice.

**“Available Commitment”** means, in relation to a Facility, a Lender’s Commitment under that Facility *minus*:

- (a) the amount of its participation in any outstanding Loans under that Facility; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made under that Facility on or before the proposed Utilisation Date other than, in relation to the Debt Service Reserve Facility and the

Incremental DSRF only, that Lender's participation in any DSR Loans and Incremental DSR Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date;

**"Available Facility"** means, in relation to a Facility, the aggregate, at any date, of each Lender's Available Commitment in respect of that Facility;

**"Bank Accounts"** means:

- (a) the Borrower Bank Accounts;
- (b) each SPV Bank Account; and
- (c) each Intermediate Holdcos Bank Account;

**"Bank Levy"** means any amount payable by any Finance Party or any of its Affiliates on the basis of, or in relation to, its balance sheet or capital base or any part of it or its liabilities or minimum regulatory capital or any combination thereof including, without limitation, the French tax levied pursuant to Article 235 ter ZE of the French tax code (*Code général des impôts*) or any other Tax of substantially similar nature, imposed by reference to the assets and liabilities of a financial institution, levied or imposed in any other jurisdiction;

**"Base Case"** means the Forecast prepared in respect of the members of the Group, the projected Gross Revenues (excluding any revenues derived from capacity guarantees) and Operating Costs (including local taxes) utilising the Financial Model, setting out projections relating to the Project as at the Signing Date and updated on the Closing Date and in accordance with Clause 21.2 (*Forecast Dates*), it being specified that such projections were initially prepared on the basis of the assumptions described in Schedule 14 (*Debt sizing conditions*);

**"Base Deductible"** has the meaning given to it in Clause 24.27.1(v)(a);

**"Blocking Law"** means any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996 (or any law implementing it in any member state of the European Union or the United Kingdom) and/or any similar blocking law or regulation;

**"Borex Financing Groups"** means, together:

- (a) the financing group to which belong Borex Production SAS (489 206 623 RCS Boulogne-sur-Mer) acting as borrowing entity and the Finance Parties acting as initial finance parties, created pursuant to a facilities agreement entered into on the date hereof;
- (b) the financing group to which belong the Borrower acting as borrowing entity and the Finance Parties acting as initial finance parties, created pursuant to this Agreement;
- (c) the financing group to which belong Borex Sainte Christine SAS (833 865 751 RCS Boulogne-sur-Mer) acting as borrowing entity and the Finance Parties acting as initial finance parties, created pursuant to a facilities agreement entered into on the date hereof;

**"Borex GmbH"** means Borex, a German *Gesellschaft mit beschränkter Haftung* whose registered office is at having its registered office at Schumannstraße 27, 60325 Frankfurt

am Main, and registered with the commercial register (*Handelsregister*) at the local court (*Amtsgericht*) of Frankfurt am Main under registration number HRB 89712;

**“Boralex SAS”** means Boralex, a French *société par actions simplifiée* whose registered office is at 71, rue Jean Jaurès, 62575 Blendecques (France), registered with the commercial and companies registry of Boulogne-sur-Mer under number 424 442 762;

**“Borrower Bank Accounts”** means:

- (a) the Operating Account;
- (b) the Distribution Account;
- (c) the Merchant Reserve Account;
- (d) the Additional Merchant Reserve Account;
- (e) the Lock-up Account;
- (f) the Partial Lock-up Account;
- (g) the Insurance Reserve Account;
- (h) the CRCA CnF Swap Account;
- (i) as from its opening date pursuant to Clause 2.3.3 only, the DSRA (Incremental Facility);
- (j) the Authorised Investments Additional Merchant Reserve Account;
- (k) as from its opening date pursuant to Clause 2.3.3 only, the Authorised Investments DSRA (Incremental Facility);
- (l) the Authorised Investments Insurance Reserve Account;
- (m) the Authorised Investments Lock-up Account;
- (n) the Authorised Investments Merchant Reserve Account;
- (o) the Authorised Investments Partial Lock-up Account; and
- (p) each special cash account pledged in accordance with the share pledge agreements included in the Global Security Agreement (Borrower);

**“Borrower’s Legal Adviser”** means De Pardieu Brocas Maffei, or such other person as the Borrower may appoint to perform this role in connection with the Finance Documents;

**“Break Costs”** means the amount (if any) by which:

- (a) the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum been paid (or received) on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day

following receipt or recovery and ending on the last day of the current Interest Period;

**“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in Paris and Barcelona and, in relation to any date for payment or purchase of euro or calculation or payment of EURIBOR, which is a Target Day;

**“Calculation Date”** means 31 March, 30 June, 30 September and 31 December of each calendar year between the first Calculation Date (which, for the avoidance of doubt, shall fall on 31 December 2019) and the Final Maturity Date;

**“Calculation Period”** means, in respect of any Calculation Date, a period covering the last 12 months prior to such Calculation Date and ending on such Calculation Date (or if shorter, the period from the Closing Date to such Calculation Period);

**“Cash Available for Debt Service”** means, in respect of the relevant period and in respect of the Borrower and any member of the Group, the aggregate of:

- (a) Gross Revenues (excluding termination payments received under the Hedging Agreements and, in respect of any prospective test, excluding any revenues derived from capacity guarantees); *minus*
- (b) with respect to SPVs which have a minority shareholder which is not a member of the Group, any distribution (dividend or repayment of shareholder loan) to such minority shareholders; *minus*
- (c) Operating Costs (with respect to Taxes, taking into account only those paid to the tax authorities or, provided that the head of Tax Consolidation Group is not a member of the Group, to such head of Tax Consolidation Group); *minus*
- (d) working capital variation (without taking into account cash or debt service) if positive; *plus*
- (e) working capital variation (without taking into account cash or debt service) if negative,

on the basis of the accountings of the relevant companies provided that, for the purposes of this definition, **“working capital”** shall mean, on the basis of the accounting of the relevant companies, the net book value of the following:

- (i) total customer receivables (and related accounts), other operating receivables, down payments made on orders, expenses recorded in advance; *plus*
- (ii) tax receivables (excluding corporation tax) and insurance receivables; *less*
- (iii) total supplier debts (and related accounts), other operating debts and income recorded in advance; *less*
- (iv) tax debts (excluding corporation tax) and insurance debts;

**“Cash Available for Distribution”** means, on a Calculation Date and without double counting, the amounts standing to the credit of the Operating Account on such Calculation Date less all amounts due and payable but still unpaid on such Calculation Date pursuant to Clause 25.2.1(ii)(a)(I) to to 25.2.1(ii)(a)(I)(XVI);

**“Cash Pooling Agreement”** means the Cash Pooling Agreement (*convention de centralisation de trésorerie*) entered into or to be entered into no later than the Closing

Date between the Borrower, as centralising entity, and each SPV and each Intermediate Holdco or any other Cash Pooling Agreement entered into in replacement thereof, in all cases in form and substance satisfactory to the Agent;

**“Cash Shortfall Amount”** means the theoretical shortfall amount as set out in Part A of Schedule 12 (*Merchant Reserve Amount*), as updated immediately after an Incremental Facility Final Notice is issued, corresponding to 50 per cent of the shortfall amount to pay Debt Service Costs on a given Repayment Date during the merchant period in a scenario where no merchant revenues are taken into account in the Base Case;

**“Cash Shortfall Date”** means 5 April 2031 and as revised on the basis of the latest Forecast following a change in the perimeter of the Group made in accordance with the terms of this Agreement (except as a result of an SPV no longer forming part of the Group due to its contribution to the Cash Available for Debt Service no longer being taken into account in the Base Case);

**“Cash Waterfall”** has the meaning given to it in Clause 25.2.1(ii);

**“Change of Control of the Borrower”** means any event which results in the Sponsor ceasing to hold, directly or indirectly, at least 50.1 per cent of the share capital and voting rights in the Borrower;

**“Change of Control of the LTSA Provider”** means, as long as Boralex SAS is an LTSA Provider, any event which results in the Sponsor ceasing to hold directly or indirectly at least 50.1 per cent of the share capital and voting rights in Boralex SAS;

**“Closing Date”** means the first Utilisation Date of the Refinancing Facility;

**“Code”** means the US Internal Revenue Code of 1986;

**“Commissioning Date”** means, in relation to a Power Plant, the date on which the first kWh is sold to EDF (at the tariff indicated in the Financial Model) under the PPA relating to such Power Plant or, as relevant to aggregators under the Aggregation Contract relating to such Power Plant (*mise en service*);

**“Commitment”** means a Refinancing Tranche Commitment, a DSRF Commitment, an Incremental Facility Commitment or an Incremental DSRF Commitment;

**“Competent Authority”** means any local, regional, national or supranational government, agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) which has jurisdiction over any member of the Group or the Power Plants;

**“Confidential Information”** means all information relating to the Sponsor, the Shareholders, a member of the Group, the Group itself, the Project, a Power Plant, the Finance Documents or any Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or any Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information;
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraph (a) or (b) above or is lawfully obtained by that Finance Party after that date from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;

**“Construction Contracts”** means:

- (a) any supply agreement with respect to Turbines or, as the case may be, Modules and Inverters, of any Power Plant which Provisional Acceptance Date occurred less than two years before the Signing Date; and
- (b) any construction contract(s) (unless its amount is less than EUR 80,000) with respect to the construction works of any Power Plant for which Provisional Acceptance Date occurred less than two years before the Signing Date,

as those contracts (for those entered into prior to the Signing Date) are further described in the Legal Report prepared by the Lenders’ Legal Adviser;

**“Construction Suppliers”** means the Turbines suppliers or, as the case may be, the Modules suppliers and the Inverters suppliers of the Power Plants;

**“CRCA CnF Swap Account”** means the account named “CRCA CnF Swap Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Debt Service Costs”** means, in respect of any period, the aggregate of:

- (a) amounts in the nature of principal paid or payable to the Finance Parties under the Finance Documents excluding (i) any voluntary and mandatory prepayment and (ii) any amount of principal due under the DSRF or the Incremental DSRF;
- (b) all amounts in the nature of interest paid or payable by the Borrower under this Agreement;
- (c) all commitment and other fees (but excluding agency fees), commissions, costs and expenses and other payments not in the nature of principal paid or payable by the Borrower or on its behalf under this Agreement, the Fee Letters or any other relevant Finance Document; and
- (d) net payments paid or payable by the Borrower under the Hedging Agreements (less any amount received or to be received by the Borrower during the same period) but excluding any termination payments paid or payable under the Hedging Agreements;

**“Debt Service Reserve Facility”** or **“DSRF”** means the revolving facility made available to the Borrower under Clause 2 (*Facilities*) of this Agreement;

**“Default”** means an Event of Default, or any event or circumstance specified in Clause 26 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default;

**“Defaulting Lender”** means any Lender:

- (a) which has failed to make its participation in a Loan available (or has notified the Agent that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with Clause 5.4 (*Lenders’ participation*);
- (b) which has otherwise rescinded or terminated a Finance Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing,

unless, in the case of paragraphs (a) and (c) above:

- (i) its failure to pay is caused by:
  - (A) administrative or technical error; or
  - (B) a Disruption Event; and
- (ii) payment is made within three Business Days of its due date; or
- (iii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question;

**“Development Costs”** means:

- (a) the development and investment costs incurred by a subsidiary of the Borrower which is not a member of the Group in respect of the development and construction of a solar or wind farm; or
- (b) the purchase price of any Permitted Acquisition and the aggregate of the indebtedness (whether intragroup debt or external debt) incurred by such company in order to finance its development and investment costs in respect of the development and construction of a solar or wind farm;

**“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 any Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out), which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payment operations of a Party preventing that or any other Party:
  - (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;

**“Distribution”** means:

- (a) any payment of dividends or distribution (whether in cash or in kind) to any Shareholder or any of its Affiliates which is not a member of the Group and any bonus issue or any return of capital to any Shareholder or any of its Affiliates which is not a member of the Group, including any payment in respect of, or on the redemption of, any share capital whether at a premium or otherwise made by the Borrower; or
- (b) any payment made by the Borrower of any Financial Indebtedness owed by the Borrower to any Shareholder or any of its Affiliates (excluding by way of conversion of such Financial Indebtedness into share capital of the Borrower), whether in cash or in kind, by way of set-off and whether by way of interest, repayment of principal, purchase of any such Financial Indebtedness or otherwise;

**“Distribution Account”** means the account named “Distribution Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“DSCR”** means, on any Calculation Date, the ratio of:

- (a) the Cash Available for Debt Service; to
- (b) the Debt Service Costs, provided that Debt Service Costs which are also Transaction Costs shall be deducted from the Debt Service Costs,

in each case, calculated in respect of the Calculation Period ending on such Calculation Date (but, with respect to the Debt Service Costs, taking into account the amounts due or to become due on (i) each of the three Repayment Dates preceding the relevant Calculation Date and (ii) the Repayment Date immediately following such Calculation Date);

**“DSRA (Incremental Facility)”** means the account to be opened in the name of the Borrower with the Account Bank if the Borrower so elects in an Incremental Facility Final Notice, as further described in Clause 25 (*Bank Accounts*);

**“DSRA Minimum Balance”** means, at any time as from the date of opening of the DSRA (Incremental Facility) pursuant to Clause 2.3.3, an amount equal to the difference between:

- (a) six months of the projected Debt Service Costs with respect to the Facilities (other than the Debt Service Reserve Facility and the Incremental DSRF) until the Final Maturity Date; and
- (b) the aggregate of (i) the Total DSRF Commitments and (ii) the Total Incremental DSRF Commitments (in both cases to the extent not cancelled, reduced or transferred by it in accordance with the Finance Documents);

**“DSRF Commitment”** means:

- (a) in relation to any Original Lender, the amount set opposite its name under the heading “DSRF Commitment” in respect of that Facility in paragraph 2 (*The Original Lenders*) of Schedule 1 (*Certain Original Finance Parties*) and the amount of any other commitment under that Facility transferred to it in accordance with the Finance Documents; and

(b) in relation to any other Lender, the amount of the DSRF Commitment under that Facility transferred to it in accordance with the Finance Documents,

to the extent not cancelled, reduced or transferred by it in accordance with the Finance Documents;

**“DSR Loan”** means a loan made or to be made under the Debt Service Reserve Facility or the principal amount outstanding for the time being of that loan;

**“EDF”** means Electricité de France, a French *société anonyme*, whose registered office is at 22-29 Avenue de Wagram, 75008 Paris, registered with the commercial and companies registry of Paris under number 552 081 317 RCS Paris;

**“Eligible Aggregation Contract”** means an aggregation contract entered into, after the Signing Date, between an aggregator and an SPV:

(a) pursuant to which:

- (i) the SPV sells the electricity produced by its Power Plant(s) at merchant tariff, such tariff to be completed by a feed-in premium contract (*contrat de complément de rémunération*); or
- (ii) the SPV sells the electricity produced by its Power Plant(s) at merchant tariff; and

(b) meeting the following criteria:

- (i) it is entered into with an Offtaker, which is experienced in the renewable energy sector in Europe;
- (ii) the duration of such contract is at least three years;
- (iii) the M0 risk (for aggregation contracts linked to a feed-in premium contract (*contrat de complément de rémunération*) only) and imbalance risks are not assumed by the SPV;
- (iv) the contract includes standard waiver to the enforceability of article 1195 of French Code civil; and
- (v) the contract includes standard termination and penalty clauses.

**“Eligible Corporate PPA”** means, in respect of an SPV, any power purchase agreement to be entered into in respect of a period after the term of its PPA and providing for at least the following terms:

- (a) it is entered into with an Offtaker;
- (b) it provides that any balancing risk is borne by the Offtaker or any third party;
- (c) it provides for minimum guaranteed electricity prices by way of a floor price and/or fixed price for 100% (in aggregate with any other Eligible Corporate PPA relating to such Power Plant) of the projected production of the Power Plant corresponding to the P90 scenario), and such prices are at least equal to the price assumptions set forth in the Base Case;
- (d) the SPV can terminate it by giving a prior notice which cannot exceed one month as of the failure of the Offtaker to fulfil any of its material obligations (including payment obligation);

- (e) it includes standard waiver to the enforceability of article 1195 of French *Code civil*; and
- (f) it is not reasonably likely, from a financial perspective, to impact materially and negatively the SPV (having regard inter alia to its contractual liabilities upon an SPV default or its termination);

**“Eligible Project”** means an onshore wind or solar farm (ground or rooftop) located in metropolitan France:

- (a) which is owned by a limited liability company, in which the Borrower owns directly or indirectly a majority of the issued share capital and voting rights and controls distributions of dividends and other payments to Affiliates;
- (b) which has been commissioned (i.e. it has been taken over under the relevant construction contract (without any major punch-list items), its grid connection has been fully commissioned, the *CONSUEL* has been issued in relation thereto and it has started to produce electricity and sell it at the tariff indicated in the Financial Model to an Offtaker);
- (c) which has obtained all relevant Authorisations, which are not subject to recourses from third parties;
- (d) the refinancing of which through an Incremental Facility Loan will not have a Material Adverse Effect and will not negatively impact the risk profile of the existing Lenders (including in respect of merchant risk); and
- (e) which is not a 2016 Feed-in Premium Power Plant and complies with the following requirements:
  - (i) the electricity produced by such power plant is sold pursuant to a power purchase agreement entered into with EDF or pursuant to an Aggregation Contract (completed with a feed-in premium contract (*contrat de complément de rémunération*) entered into with EDF);
  - (ii) the technology used to operate such plant is acceptable to the Agent (acting on the instructions of the Majority Lenders) it being agreed that, subject always to paragraph (iii)(A) below, any technology used by Power Plants held by SPVs are deemed satisfactory; and
  - (iii) with respect to wind farms:
    - (A) no turbine installed on such wind farm has been manufactured by Senvion or one of its subsidiaries (unless Senvion is no longer affected by any of the events referred to in Clause 26.6 (*Insolvency*) or Clause 26.7 (*Insolvency proceedings*) and has been taken over by a company satisfactory for the Lenders); and
    - (B) an operation and maintenance agreement similar to the O&M Agreements is entered into by the company owning such wind farm with the turbine supplier for at least two years and, thereafter, the operation and maintenance of the wind farm is subject to an LTSA with Boralex SAS in form and substance similar to the LTSA entered into with the other members of the Group; or

- (C) an LTSA is entered into with Boralex SAS in form and substance similar to the LTSA entered into with the other members of the Group and an operation and maintenance agreement similar to the O&M Agreements had been entered into by Boralex SAS with the turbine supplier for at least two years; or
- (D) provided that:
  - (I) either, Boralex SAS already carries out, in any Boralex Financing Group, the operation and maintenance of the same wind turbine model for at least two years, or
  - (II) the Lenders' Technical Adviser confirms that Boralex SAS has the technical capacity to carry out the operation and maintenance works of the relevant wind farm,

an LTSA is entered into with Boralex SAS in form and substance similar to the LTSA entered into with the other members of the Group;

**"ENEDIS"** means ENEDIS, a French *société anonyme* whose registered office is at 34, place des corolles, 92079 Paris la Défense, registered with the commercial and companies registry of Nanterre under number 444 608 442 R.C.S. Nanterre;

**"Energy Yield Assessment Adviser"** means DNV GL, Dewi, Everoze UL or such other person as the Agent may appoint to perform this role in connection with the Finance Documents with the approval of the Borrower, such approval not to be unreasonably withheld or delayed;

**"Environment"** means the following:

- (a) fauna and flora;
- (b) soil, water, air, climate and the landscape; and
- (c) cultural heritage and the built environment,

and includes occupational and community health and safety matters and working conditions;

**"Environmental Claim"** means, in relation to the Project (i) any claim or proceeding made or initiated by any person against a member of the Group or with any Competent Authority or (ii) any claim or proceeding or investigation made, initiated or threatened in writing by any Competent Authority, in both cases in respect of any Environmental Law;

**"Environmental Law"** means any law or regulation (including, for the avoidance of doubt, directly applicable provisions of European Union laws and international treaties), applicable to the Project, a Power Plant, a member of the Group and which relates to:

- (a) the pollution, degradation or protection of the Environment;
- (b) harm to or the protection of human health;
- (c) any emission or substance capable of causing harm to any living organism or the Environment;
- (d) town planning and zoning;

- (e) protection of monuments and sites;
- (f) building safety;
- (g) fire prevention; or
- (h) any other matter directly affecting the environment or part of it;

**“Environmental Permit”** means any permit, licence, consent, approval or other authorisation required from any Competent Authority under any Environmental Law for the construction or operation of the Power Plants or the business of a member of the Group conducted on, or from the properties owned or used by such member of the Group;

**“Equator Principles”** means those principles so entitled and described in "The 'Equator Principles' – A financial industry benchmark for determining, assessing and managing social and environmental risk in projects" dated June 2013 and available at the date of this Agreement at: <http://www.equator-principles.com/index.php/equator-principles-3>, as adopted in such form by certain financial institutions;

**“Equity Support Agreement”** means (i) the equity support agreement dated on or about the Signing Date entered into between, *inter alios*, the Borrower, the Sponsor and the Intercreditor and Security Agent; and (ii) any other any equity support agreement that may be entered into pursuant to Clause 2.3.3(v);

**“€STR”** means, in respect of any TARGET Business Day, a reference rate equal to the daily euro short-term rate for such TARGET Business Day as provided by the European Central Bank, as administrator of such rate (or any successor administrator of such rate), on the website of the European Central Bank currently at <http://www.ecb.europa.eu>, or any successor website officially designated by the European Central Bank (in each case, on or before 9:00am, Central European Time, on the TARGET Business Day immediately following such TARGET Business Day);

**“EURIBOR”** means, in relation to any Loan in euro:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate; or
- (c) (if no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan) the Reference Bank Rate,

as of 11.00 a.m. on the Quotation Day for euros and for the applicable period;

**“Euro”, “euro”, “€” or “EUR”** means the single currency of the Participating Member States;

**“Event of Default”** means any event or circumstance specified as such in Clause 26 (*Events of Default*);

**“Existing Bank Accounts”** means together the Existing Borrower Bank Accounts, the Existing Intermediate Holdcos Bank Accounts and the Existing SPV Bank Accounts.

**“Existing Borrower Bank Accounts”** means, in relation to the Borrower, all account(s) bearing the number referred to in Schedule 11 (*Accounts*) held by the Borrower and to be closed in accordance with Clause 24.20 (*Bank Accounts*);

**“Existing Intermediate Holdcos Bank Accounts”** means, in relation to any Intermediate Holdco, all account(s) bearing the number referred to in Schedule 11 (*Accounts*) held by such Intermediate Holdco and to be closed in accordance with Clause 24.20 (*Bank Accounts*);

**“Existing SPV Bank Accounts”** means, in relation to an SPV, all account(s) bearing the number referred to in Schedule 11 (*Accounts*) held by such SPV and to be closed in accordance with Clause 24.20 (*Bank Accounts*);

**“Existing Facilities”** means each loan facility (including any VAT facilities) made available by financial institutions to members of the Group under the Existing Facilities Agreement;

**“Existing Facilities Agreement”** means each facility agreement to be refinanced through the utilisation of the Refinancing Tranche made in accordance with Clause 3.1 (*Purpose*), the Structure Memorandum and the funds flow delivered to the Agent as condition precedent to be fulfilled on the Signing Date;

**“Facilities”** means the DSRF, the Refinancing Facility, any Incremental Facility (once committed) and any Incremental DSRF (once committed);

**“Facility Office”** means, in relation to a Lender, the office notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days’ written notice) as the office through which it will perform its obligations under this Agreement, provided that a Lender shall not nominate more than one Facility Office unless it is necessary in order to receive payments due to it under any Finance Document without withholding or deduction of or on account of Tax or to benefit from the provisions of Clause 14 (*Tax Gross-up and Indemnities*);

**“FATCA”** means:

- (a) sections 1471 to 1474 of the Code and any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; and
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

**“FATCA Application Date”** means:

- (a) in relation to a **“withholdable payment”** described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a **“passthru payment”** described in section 1471(d)(7) of the Code not falling within paragraph (a) the first date from which such payment may become subject to a deduction or withholding required by FATCA;

**“FATCA Deduction”** means a deduction or withholding from a payment under a Finance Document required by FATCA;

**“FATCA Exempt Party”** means a Party that is entitled to receive payments free from any FATCA Deduction;

**“FBF Master Agreement”** means the FBF master agreement relating to Transactions on forward financial instruments published by the *Fédération Bancaire Française* in its 2013 version;

**“Fee Letter”** means the Agency Fee Letter, the Upfront Fee Letter, the Account Bank Fee Letter and any other letter or letters dated on or about the Signing Date setting out the amount and payment requirements of certain fees by the Borrower in relation to the financing contemplated by this Agreement;

**“Fight Against Money Laundering and Financing of Terrorism Regulations”** means (i) any French legal and regulatory provisions relating to fight against money laundering, including but not limited to those set forth in Book III, Title II *“Des autres atteintes aux biens”* of the French Code pénal, and those relating to fight against financing of terrorism in particular those included in Book IV, Title II *“Du Terrorisme”* of the French Code pénal and those included in Book V, Title VI *“Obligations relatives à la lutte contre le blanchiment des capitaux, le financement des activités terroristes, les lotteries, jeux et paris prohibés et l’évasion et la fraude fiscale”* of the French Code monétaire et financier and (ii) the foreign regulations relating to fight against money laundering and financing of terrorism, to the extent these regulations are applicable;

**“Final Maturity Date”** means:

- (a) in relation to the Refinancing Tranche and the DSRF, 5 October 2036;
- (b) in relation to any Incremental Facility Tranche and any Incremental DSR Tranche, the date set out in the relevant Incremental Facility Final Notice;

**“Finance Documents”** means:

- (a) this Agreement;
- (b) any Fee Letter;
- (c) any Hedging Agreement (other than where the term “Finance Document” is used in, and construed for the purposes of, Clauses 14 (*Tax Gross-Up and Indemnities*) to 16 (*Other Indemnities*));
- (d) the Intercreditor Agreement;
- (e) the Intercompany Loan Agreement;
- (f) any Security Document;
- (g) each Equity Support Agreement;
- (h) the Tax Consolidation Agreement;
- (i) any TEG Letter;
- (j) any Utilisation Request (including any funds flow attached thereto);
- (k) any Transfer Agreement; and
- (l) any other document designated as such by the Agent and the Borrower.

**“Finance Parties”** means the Agent, the Intercreditor and Security Agent, the Mandated Lead Arrangers, the Hedging Banks and the Lenders;

**“Financial Indebtedness”** means any indebtedness for or in respect of:

- (a) monies borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;

**“Financial Model”** means the financial computer model prepared by the Borrower in respect of the Group and agreed between the Borrower and the Lenders, used to produce the Forecasts and including the Base Case and which is represented by material contained on computer disks, copies of which are held by the Borrower and the Agent, as audited by the Lenders’ Model Auditor and as amended from time to time in accordance with Clause 21 (*Forecasts*);

**“Financial Ratio Certificate”** means a certificate signed by one of the Borrower’s legal representatives, including the information set out in Clause 20.3 (*Financial Ratio Certificate*), substantially in the form set out in Schedule 8 (*Form of Financial Ratio Certificate*) or otherwise in form and substance satisfactory to the Agent;

**“Financial Year”** means, in relation to a person, the annual accounting period of such person ending on a calendar year end;

**“First Repayment Date (Refinancing Tranche)”** means 5 January 2020;

**“Fitch”** means Fitch Ratings Ltd and includes any successor to its rating business;

**“Flexed Deductible”** has the meaning given to it in Clause 24.27.1(v)(b);

**“Forecast”** means the Base Case or any forecast prepared pursuant to and agreed in accordance with Clause 21 (*Forecasts*) using the Financial Model and setting out projections relating to the Project and the members of the Group;

“**Forecast Date**” means any of the dates referred to in Clause 21.2 (*Forecast Dates*);

“**GAAP**” means generally accepted accounting principles in France, including IFRS;

“**Global Security Agreement (Borrower)**” means the global French law security agreement and the related statements of pledge (*déclarations de nantissement*) and certificates of pledge (*attestations de nantissement*) entered into on or about the Closing Date between, *inter alios*, the Borrower as security provider and Intercreditor and Security Agent pursuant to which the Borrower, in order to secure all of its obligations under the Finance Documents:

- (a) creates a first ranking pledge (*nantissement de créance de solde de compte bancaire*) over all Borrower Bank Accounts (except for the Distribution Account) and all Existing Borrower Bank Accounts; and
- (a) creates a first ranking pledge over the receivables that may be held by the Borrower against the Lenders pursuant to the termination of the assignment of receivables pursuant to the Global Security Agreement (Borrower) to secure the obligations of the Borrower under the Hedging Agreements and the Hedging Transactions;
- (b) creates a first ranking financial securities account pledge agreement (*nantissement de comptes-titres*) in relation to the SPVs’ shares and the Intermediate Holdco’s shares held by the Borrower;
- (c) agrees to assign to the Lenders, *inter alia*, its receivables against (i) each SPV and each Intermediate Holdco under the Intercompany Loan Agreement and (ii) the Hedging Banks under the Hedging Agreements pursuant to article L.313-23 *et seq.* of the French *Code Monétaire et Financier*;

“**Global Security Agreement (Intermediate Holdcos)**” means the global French law security agreement and the related statements of pledge (*déclarations de nantissement*) and certificates of pledge (*attestations de nantissement*) entered into on or about the Closing Date between, *inter alios*, each Intermediate Holdco as security provider, the Borrower and the Intercreditor and Security Agent, pursuant to which each Intermediate Holdco, in order to secure all of their obligations under the Intercompany Loan Agreement (or, in relation to an Intermediate Holdco which is not a borrowing entity under the Intercompany Loan Agreement, in order to secure all of the obligations under the Intercompany Loan Agreement of the SPV it holds):

- (a) creates a first ranking pledge (*nantissement de créance de solde de compte bancaire*) over all Intermediate Holdcos Bank Accounts and all Existing Intermediate Holdcos Bank Accounts;
- (b) creates a first ranking financial securities account pledge agreement (*nantissement de comptes-titres*) in relation to the SPVs’ shares held by it; and
- (c) creates a first ranking pledge over the receivables arising from, *inter alia*, the Main Project Documents entered into by it and, if any, any present or future intercompany loan agreement or shareholder loan agreement entered into with an SPV;

“**Global Security Agreement (Shareholders)**” means the global French law security agreement entered into on or about the Closing Date and the related statements of pledge (*déclarations de nantissement*) and certificates of pledge (*attestations de nantissement*)

entered into between, *inter alios*, each Shareholder as security provider and the Intercreditor and Security Agent, pursuant to which each Shareholder, in order to secure all of the Borrower's obligations under the Finance Documents:

- (a) creates a first ranking financial securities account pledge agreement (*nantissement de compte-titres*) in relation to the Borrower's shares held by each Shareholder; and
- (b) creates a first ranking *nantissement de créances* whereby a Shareholder creates a pledge over its receivables against the Borrower arising under any existing or future Shareholder Loan;

**"Global Security Agreement (SPVs)"** means the global French law security agreement entered into on or about the Closing Date between, *inter alios*, each SPV as security provider, the Borrower and the Intercreditor and Security Agent, pursuant to which each SPV, in order to secure all of its obligations under the Intercompany Loan Agreement, creates a first ranking pledge over:

- (a) all SPV Bank Accounts and all Existing SPV Bank Accounts; and
- (b) the receivables arising from, *inter alia*, the Main Project Documents (other than Land Documents and Grid Agreements) entered into by each of such SPVs and the Insurances taken out by each SPV;

**"Grid Agreements"** means each grid usage agreement (*conditions particulières de la convention d'exploitation*), grid connection agreement (*convention de raccordement*) and grid access agreement (*contrat d'accès au réseau*) to which a member of the Group is a party in relation to a Power Plant;

**"Gross Revenues"** means, without double counting and in respect of any member of the Group in any applicable period, the aggregate of:

- (a) amounts received by the SPVs arising out of their activity in the relevant period;
- (b) subsidies received by the SPVs in the relevant period from the French State, if any;
- (c) Insurance Proceeds received by or on behalf of the SPVs for loss of revenue (including under business interruption and delay start-up Insurances);
- (d) Insurance Proceeds received to repair any damage to a Power Plant;
- (e) compensation received by the SPVs for loss of revenue, other than insurance indemnities;
- (f) income arising out of any Hedging Transactions and any amount paid to the Borrower under a Hedging Transaction as a result of its termination or the termination of any transaction thereunder in the relevant period;
- (g) any refund or rebate on Tax received by a member of the Group in the relevant period;
- (h) interest, investment income, profits and realised gains received by the Borrower under the Authorised Investments in the relevant period;
- (i) interest over monies deposited in any of the Bank Accounts (other than the Distribution Account) paid to a member of the Group in the relevant period;

- (j) all amounts received pursuant to equity contributions made pursuant to Clause 23.3 (*Equity Cure*) in the form of Shareholder Loans or transferred to the Operating Account from the Insurance Reserve Account in accordance with Clause 25.2.7(ii)(b); and
- (k) all such other amounts as the Borrower and the Agent (acting upon the instructions of the Majority Lenders) may agree to include as Gross Revenues, acting reasonably,

but excluding:

- (i) VAT;
- (ii) any amount paid or advanced to the Borrower under the Finance Documents;
- (iii) for the avoidance of doubt, all the proceeds received following a Permitted SPV Disposal up to the amount to be applied in mandatory prepayments under this Agreement; and
- (iv) all Insurance Proceeds required to be applied in mandatory prepayments under this Agreement;

**“Group”** means the Borrower, the Intermediate Holdcos and the SPVs;

**“Group Structure Chart”** means the group structure chart delivered to the Agent as a condition precedent to be fulfilled on the Signing Date set out in Schedule 2 (*Conditions Precedent*), Part I (*Conditions Precedent to be fulfilled on the Signing Date*), as updated by the group structure chart delivered to the Agent as a condition precedent to the first Utilisation set out in Schedule 2 (*Conditions Precedent*), Part II (*Conditions Precedent to be fulfilled on the First Utilisation Date of the Refinancing Tranche*);

**“Hedging Agreement”** means any 2013 FBF Master Agreement relating to transactions on forward financial instruments including their schedule entered into pursuant to Clause 24.26 (*Hedging Strategy*) between the Borrower and each relevant Hedging Bank and any confirmation relating to a Hedging Transaction;

**“Hedging Banks”** means the Original Hedging Banks and any of their successors, permitted transferees and assigns in title which enters into a Hedging Transaction with the Borrower and becomes a party to the Intercreditor Agreement as a Hedging Bank;

**“Hedging Strategy”** means the hedging strategy to be implemented between the Borrower and the Hedging Banks in accordance with Clause 24.26 (*Hedging Strategy*);

**“Hedging Transaction”** means each hedging transaction entered pursuant to any Hedging Agreement;

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

**“IFRS”** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements;

**“Impaired Agent”** means the Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Finance Documents by the due date for payment unless:
  - (i) its failure to pay is caused by:
    - (A) administrative or technical error; or
    - (B) a Disruption Event,and payment is made within three Business Days of its due date; or
  - (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question;
- (b) the Agent otherwise rescinds or terminates a Finance Document;
- (c) (if the Agent is also a Lender), it is a Defaulting Lender under paragraph (a), (b) or (c) of the definition of “Defaulting Lender”; or
- (d) an Insolvency Event has occurred and is continuing with respect to the Agent;

**“Incremental DSR Loan”** means a loan made or to be made under the Incremental DSRF or the principal amount outstanding for the time being of that loan;

**“Incremental DSR Tranche”** means each tranche of the Incremental Facility committed to be made available under an Incremental Facility Final Notice;

**“Incremental DSRF”** means any revolving facility made available to the Borrower pursuant to Clause 2.3 (*Incremental Facility and Incremental DSRF*) under the form of one or more Incremental DSR Tranches and as described in Clause 2.3 (*Incremental Facility and Incremental DSRF*);

**“Incremental DSRF Commitments”** means:

- (a) in relation to any Incremental DSRF Lender, the amount set opposite its name under the heading “Incremental DSRF Commitment” in any Incremental Facility Final Notice and the amount of any other Incremental DSRF Commitment transferred to it in accordance with the Finance Documents; and
- (b) in relation to any other Lender, the amount of any Incremental DSRF Commitment transferred to it in accordance with the Finance Documents,

to the extent not cancelled, reduced or transferred by it in accordance with the Finance Documents;

**“Incremental DSRF Lender”** means:

- (a) a Lender or one of its Affiliates;
- (b) any other bank and financial institution or any other entity which complies with the following requirements:
  - (i) it acts through an office registered in an OECD member state;
  - (ii) it is not a Sanctioned Person;

- (iii) it is duly licensed or otherwise entitled to carry out a banking business (*opérations de crédit*) in France; and
- (iv) it has a minimum rating equal to or higher than BBB+ issued by S&P (or equivalent) or it has a significant experience in the financing of renewable energy in France,

in accordance with the terms of Clause 2.3 (*Incremental Facility and Incremental DSRF*), which provides Incremental DSRF Commitments;

**“Incremental Facility”** means any term loan facility made available under this Agreement pursuant to Clause 2.4 (*Incremental Facility and Incremental DSRF*) under the form of one or more Incremental Facility Tranches and as described in Clause 2.3 (*Incremental Facility and Incremental DSRF*);

**“Incremental Facility Commitments”** means:

- (a) in relation to any Incremental Facility Lender, the amount set opposite its name under the heading “Incremental Facility Commitment” in any Incremental Facility Final Notice and the amount of any other Incremental Facility Commitment transferred to it in accordance with the Finance Documents; and
- (b) in relation to any other Lender, the amount of any Incremental Facility Commitment transferred to it in accordance with the Finance Documents,

to the extent not cancelled, reduced or transferred by it in accordance with the Finance Documents;

**“Incremental Facility Date”** means the date specified as such in an Incremental Facility Final Notice being the date upon which the relevant Incremental Facility Tranche (and, as the case may be, the relevant incremental DSRF Tranche) is to be committed;

**“Incremental Facility Final Notice”** means a notice substantially in the form set out in Schedule 13 (*Incremental Facility Final Notice*) signed by the Borrower and the Agent in accordance with Clause 2.3.7 which sets out the terms of an Incremental Facility Tranche which is committed;

**“Incremental Facility Initial Notice”** means a notice delivered by the Borrower to the Agent in accordance with Clause 2.3.1 pursuant to which the Borrower request the commitment of (all or part) the Incremental Facility;

**“Incremental Facility Lender”** means

- (a) a Lender or one of its Affiliates;
- (b) any other bank and financial institution or any other entity which complies with the following requirements:
  - (i) it acts through an office registered in an OECD member state;
  - (ii) it is not a Sanctioned Person;
  - (iii) it is duly licensed or otherwise entitled to carry out a banking business (*opérations de crédit*) in France; and
  - (iv) it has a minimum rating equal to or higher than BBB+ issued by S&P (or equivalent) or it has a significant experience in the financing of renewable energy in France,

in accordance with the terms of Clause 2.3 (*Incremental Facility and Incremental DSRF*), which provides Incremental Facility Commitments;

**“Incremental Facility Loan”** means the loan made or to be made under an Incremental Facility Tranche or the principal amount outstanding for the time being of that loan;

**“Incremental Facility Tranche”** means each tranche of the Incremental Facility committed to be made available under an Incremental Facility Final Notice;

**“Initial Operating Budget”** means the budget included in the Base Case provided to the Agent on or before the Signing Date and covering the 2020 calendar year;

**“Insolvency Event”** means, in relation to a Finance Party, that the Finance Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person not described in paragraph (d) above, and:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) is not dismissed, discharged, stayed or restrained, in each case, within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (h) has a secured party taking possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;

- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) (inclusive) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

**“Insurance Company”** means Axa and FM Global and thereafter any renowned insurance company, rated at least at A- by S&P or by A.M. Best Company, Inc. (or any successor rating agency) or the equivalent by Fitch at the time of taking out or renewal of the relevant Insurances and selected by the relevant member of the Group to provide such Insurances;

**“Insurance Proceeds”** means all net proceeds of the Insurances payable to or received by or on behalf of a member of the Group, but excluding any such proceeds paid directly by any insurer to a third party claimant;

**“Insurance Reserve Account”** means the account named “Insurance Reserve Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Insurance Reserve Amount”** means, at any time:

- (a) an amount of EUR 0 if the Borrower (i) has not exercised its discretion to determine a Flexed Deductible or (ii) has done so and such Flexed Deductible is not higher than the Base Deductible; or
- (b) if the Borrower has exercised its discretion to determine a Flexed Deductible and such Flexed Deductible is higher than the Base Deductible, an amount in EUR equal to the difference between:
  - (i) an amount of EUR 2,000,000, *pro rata* to the aggregate installed capacity of the Power Plants against the aggregate installed capacity of all power plants controlled by Boralex Production SAS (489 206 623 RCS Boulogne-sur-Mer), Boralex Energie France SAS (524 719 838 RCS Boulogne-sur-Mer) and Boralex Sainte Christine SAS (833 865 751 RCS Boulogne-sur-Mer) (as evidenced to the Agent by the Borrower), provided always that the Borrower agrees to discuss in good faith, at the request of the Agent, any required adjustment to such allocation if required by the Agent to take into account the history of insurance claims by beneficiaries of the Insurances, age of assets, location of assets, changes that have occurred in the composition of the Boralex Financing Groups and other relevant risk criteria; *less*
  - (ii) the Base Deductible;

**“Insurance Reserve LC”** means any French law independent guarantee governed by article 2321 of the French *Code civil* (or any letter of credit governed by a legal system acceptable to the Majority Lenders) and issued on standard terms in favour of the Agent, without recourse to the Borrower or any other member of the Group, by an entity duly licensed or otherwise entitled to carry out a banking business (*opérations de crédit*) in France and having a long-term credit rating for unsecured debt of at least BBB+ issued by S&P or Fitch or Baa3 issued by Moody's;

**“Insurances”** means all contracts and policies of insurance of any kind relating to the Power Plants taken out or, as the context requires, to be taken out from time to time and

maintained in each case in accordance with Part A (*Insurance programme*) of Schedule 6 (*Insurance*) by or on behalf of the Borrower and/or the SPVs or renewed with an Insurance Company by or on behalf of the Borrower and/or the SPVs, and such other policy or contract of insurance as the Agent and the Borrower agree shall be an Insurance;

**“Intellectual Property”** means intellectual property of every designation existing anywhere in the world (including patents, copyrights, database rights, designs, applications for registration (and the right to apply for registration) for any of the foregoing, trademarks, service marks, know-how and confidential information (whether registered or unregistered));

**“Intercompany Loan”** means any intercompany loan made available by the Borrower to each SPV or Intermediate Holdcos pursuant to the Intercompany Loan Agreement;

**“Intercompany Loan Agreement”** means the loan agreement between the Borrower and each SPV and Intermediate Holdcos pursuant to which the Borrower can make available Intercompany Loans to the SPVs and Intermediate Holdcos;

**“Intercreditor Agreement”** means the intercreditor agreement dated on or about the Signing Date entered into between, *inter alios*, the Borrower, the Original Lenders, the Agent, the Mandated Lead Arrangers, the Hedging Banks, the Shareholders and the Intercreditor and Security Agent;

**“Interest Payment Date”** means the last day of any Interest Period;

**“Interest Period”** means, in relation to a Loan, each period determined in accordance with Clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.3 (*Default interest*);

**“Intermediate Holdco”** means any company which is owned by the Borrower and which owns one or more SPVs, being at Closing Date the companies listed in Part C of Schedule 5 (*Companies and Power Plants*), but only until the date on which revenues generated by the SPVs it holds are not taken into account in the Base Case to size the Refinancing Facility on a 10-year P90 scenario, and **“Intermediate Holdcos”** means all of them together;

**“Intermediate Holdcos Bank Account”** means, in relation to an Intermediate Holdco, the relevant bank account opened in the name of that Intermediate Holdco and identified in paragraph 3 (*Accounts of the Intermediate Holdcos*) of Schedule 11 (*Accounts*);

**“Interpolated Screen Rate”** means, in relation to EURIBOR for a Loan, the rate which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period for that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan;

**“Inverters”** means the inverters installed (or, where relevant, to be installed) on each Power Plant which is a solar farm;

**“Joint Venture”** means any joint venture entity, whether a company, unincorporated firm, undertaking, association, joint venture or partnership or any other entity;

**“Land Documents”** means the leases, easements and other agreements or consents granting occupational rights (including for the avoidance of doubt any authorisation to occupy the public domain) entered into between each relevant member of the Group as lessee and the relevant owner of the land as lessor or otherwise benefiting a member of the Group in relation to each Power Plant (or, in relation to an entity that becomes an SPV after the Signing Date, the relevant Eligible Project);

**“Legal Reports”** means the legal due diligence reports prepared by the Lenders’ Legal Adviser (audit), Lenders’ Legal Adviser (corporate audit) and the Lenders’ Legal Adviser, relating to the Project and delivered pursuant to the terms of this Agreement;

**“Legal Reservations”** means the qualifications of law (but not of fact) in the legal opinions referred to in paragraph 6 (*Legal opinions*) of Part I of Schedule 2 (*Conditions precedent*) and paragraph 9 (*Legal opinions*) of Part II of Schedule 2 (*Conditions precedent*);

**“Lender”** means:

- (a) the Original Lenders;
- (b) any Incremental Facility Lender,
- (c) any Incremental DSRF Lender; and
- (d) any entity (excluding, for the avoidance of doubt, any natural person) which has become a Party in accordance with Clause 27 (*Changes to the Lenders*);

and which in each case has not ceased to be a Party in accordance with the terms of this Agreement;

**“Lenders’ Insurance Adviser”** means Marsh or such other person as the Agent may appoint to perform this role in connection with the Finance Documents with the approval of the Borrower, such approval not to be unreasonably withheld or delayed;

**“Lenders’ Legal Adviser”** means Linklaters LLP or such other person as the Agent may appoint to perform this role in connection with the Finance Documents with the approval of the Borrower, such approval not to be unreasonably withheld or delayed;

**“Lenders’ Legal Adviser (audit)”** means Volta Avocats or such other person as the Agent may appoint to perform this role in connection with the Finance Documents with the approval of the Borrower, such approval not to be unreasonably withheld or delayed;

**“Lenders’ Legal Adviser (corporate audit)”** means K&L Gates or such other person as the Agent may appoint to perform this role in connection with the Finance Documents with the approval of the Borrower, such approval not to be unreasonably withheld or delayed;

**“Lenders’ Model Auditor”** means E&Y or such other person as the Agent may appoint to perform this role in connection with the Finance Documents with the approval of the Borrower, such approval not to be unreasonably withheld or delayed;

**“Lenders’ Tax Adviser”** means KPMG Avocats or such other person as the Agent may appoint to perform this role in connection with the Finance Documents with the approval of the Borrower, such approval not to be unreasonably withheld or delayed;

**“Lenders’ Technical Adviser”** means Mott MacDonald or such other person as the Agent may appoint to perform this role in connection with the Finance Documents with the approval of the Borrower, such approval not to be unreasonably withheld or delayed;

“**Loan**” means the Refinancing Tranche Loan, an Incremental Facility Loan, a DSR Loan or an Incremental DSR Loan;

“**Lock-up Account**” means the account named “Lock-up Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

“**LTSA**” means in relation to an SPV, the operation and maintenance agreement entered into between such SPV and the relevant LTSA Provider, as operator as further described, for those SPVs as at the date hereof, in Part C (*LTSA*s) of Schedule 7 (*Main Project Documents*), and “**LTSA**s” means all of them together;

“**LTSA Provider**” means either:

- (a) Boralex SAS with respect to all Power Plants; and
- (b) Vestas with respect to the following Power Plants, but only until expiry of the LTSA entered into with Vestas:
  - (i) Power Plant ART;
  - (ii) Power Plant CDG; and
  - (iii) Power Plant VMO;

in their capacity as LTSA Provider, and any company acting as LTSA Provider under a LTSA from time to time;

“**Main Authorisations**” means, in relation to each Power Plant:

- (a) the relevant ICPE (*installations classées pour la protection de l’environnement*) authorisation or, as the case may be, *autorisation unique* or *autorisation environnementale*, if any;
- (b) the relevant building permit(s) (including for the avoidance of doubt as a result of a *déclaration préalable*); and
- (c) the relevant licence to operate (“*autorisation d’exploiter*”);

“**Main Project Document**” means:

- (a) each PPA;
- (b) each Aggregation Contract;
- (c) any Eligible Corporate PPA;
- (d) each LTSA;
- (e) each Management Services Agreement;
- (f) the Cash Pooling Agreement;
- (g) each O&M Agreement;
- (h) each Construction Contract with respect to each Power Plant (but only until the date falling two years after the start of the first warranty period under the relevant Construction Contract);
- (i) each Land Document;

- (j) each Grid Agreement;
- (k) each Settlement Agreement (*Accord de Sillage*); and
- (l) any other document which the Borrower and the Agent (acting upon the instructions of the Majority Lenders) agree should be designated a Main Project Document;

**“Major Event of Default”** means each of the Events of Default set out in Clauses 26.1 (*Non-payment*), 26.5 (*Cross-default*) to 26.11 (*Expropriation*), 26.14 (*Litigation*) and 26.15 (*Change of control*);

**“Majority Lenders”** means:

- (a) if no Utilisation is then outstanding, a Lender or Lenders whose Commitments aggregate more than two thirds ( $\frac{2}{3}$ ) of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than two thirds ( $\frac{2}{3}$ ) of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Utilisations then outstanding aggregate more than two thirds ( $\frac{2}{3}$ ) of all the Utilisations then outstanding;

**“Management Services Agreement”** means the management services agreement to be entered into on the Closing Date in the form agreed with the Agent between the Management Services Provider as service provider and the SPVs (and, as the case may be, an Intermediate Holdco) as employer;

**“Management Services Provider”** means Boralex SAS in its capacity as asset manager;

**“Margin”** means: **[Redacted for confidentiality reasons.]**

**“Market Disruption Event”** has the meaning given to it in Clause 12.2.3;

**“Material Adverse Effect”** means any effect resulting from any event or circumstance (or series of events and circumstances) which materially and adversely affects or would be reasonably likely to affect:

- (a) the business, assets or financial condition of the Borrower, the SPVs, the LTSA Provider or the Group taken as a whole; and/or
- (b) the ability of the Borrower or a Material Project Party to perform (i) any of its obligations under the Finance Documents or (ii) any of its material obligations under any Main Project Documents; and/or
- (c) subject to the Legal Reservations and any applicable perfection requirements, the validity or enforceability of the security interests under the Security Documents (or the effectiveness or ranking of any such Security Documents), and if capable of remedy, not remedied within 30 Business Days of the Borrower becoming aware of the issue or being given notice of the issue by the Agent;

**“Material Project Party”** means:

- (a) the Borrower;
- (b) the SPVs;

- (c) the Sponsor but only until the date of expiry of its equity contribution commitments under the Equity Support Agreement;
- (d) each LTSA Provider but only as long as it is a party to an LTSA;
- (e) ENEDIS;
- (f) the Management Services Provider but only as long as it is a party to the Management Services Agreement;
- (g) each Offtaker (including, for the avoidance of doubt, EDF under each PPA, each aggregator under an Aggregation Contract and each offtaker under an Eligible Corporate PPA, but only as long as they are a party thereto);
- (h) each O&M Provider but only as long as it is a party to an O&M Agreement; and
- (i) each Construction Supplier with respect to each Power Plant (but only until the date falling two years after the start of the first warranty period under the relevant Construction Contract);

**“Merchant DSCR (Base Case)”** means the DSCR calculated pursuant to the Base Case and taking into account only the Cash Available for Debt Service originated from electricity sold at merchant price (being at least equal to 1.40x on each Repayment Date);

**“Merchant Reserve Account”** means the account named “Merchant Reserve Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Merchant Reserve Amount”** means the amount to be credited to the Merchant Reserve Account on each Repayment Date in order to cover the Cash Shortfall Amount as set out in Part A of Schedule 12 (*Merchant Reserve Amount*), it being specified that any amount which cannot be credited to the Merchant Reserve Account pursuant to the Cash Waterfall on a given Repayment Date shall increase the Merchant Reserve Amount of the next following Repayment Date as set out in Part A of Schedule 12 (*Merchant Reserve Amount*). In no event shall the Borrower credit to the Merchant Reserve Account cumulated Merchant Reserve Amounts exceeding the Aggregated Merchant Reserve Amount applicable on such Repayment Date;

**“Merchant Risk Adviser”** means Pöyry or such other person as the Agent may appoint to perform this role in connection with the Finance Documents with the approval of the Borrower, such approval not to be unreasonably withheld or delayed;

**“Modules”** means the modules installed (or, where relevant, to be installed) on each Power Plant which is a solar farm;

**“Month”** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) subject to paragraph (c) below, 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;
- (b) 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

- (c) 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.

The above rules will only apply to the last Month of any period;

“**Moody’s**” means Moody’s Investor Services, Inc., or any succeeding credit rating agency;

“**Noise and Environmental Curtailment Measures**” means, with respect to a Power Plant which is a wind farm, the first curtailment measures determined by Gantha, Sixense Environment, Venathec, Erea Ingénierie, Sim Engineering (cogénération), Gamba Acoustique, Orfea Acoustique, Echopsy or JLBI Acoustique or any other independent expert acceptable to the Lenders on the basis of the following studies:

- (a) noise studies required to comply with the applicable laws and regulations, and  
(b) if required under the relevant ICPE Authorization, environmental studies,

with respect to noise and environmental curtailment pertaining to wind turbine generators in France and to be made no later than 24 Months following the Commissioning Date of such Power Plant, as such curtailment measures are notified to the Agent pursuant to Clause 20.10 (*Notification of the Noise and Environmental Curtailment Measures*) (excluding, for the avoidance of any doubt, any other curtailment measures implemented thereafter).

“**Non-Cooperative Jurisdiction**” means a “non-cooperative state or territory” (*Etat ou territoire non coopératif*) as set out in the list referred to in article 238-0 A of the French tax code (*Code Général des Impôts*), as such list may be amended from time to time;

“**O&M Agreement**” means, until replaced by an LTSA, each operation and maintenance agreement entered into between an SPV and an O&M Provider;

“**O&M Provider**” means each service provider under the O&M Agreements;

“**Offtaker**” means:

- (a) with respect to a PPA, EDF (or, where relevant, any *entreprise locale de distribution* or similar non-nationalised entity) and  
(b) with respect to an Eligible Aggregation Contract, any offtaker (i) having (itself or through credit support) a long-term credit rating for unsecured debt of at least BBB+ issued by S&P or Fitch or Baa3 issued by Moody’s or (ii) having provided the relevant SPV with a bank guarantee (issued by a bank or financial institution having a long-term credit rating for unsecured debt of at least A- issued by S&P or Fitch or A3 issued by Moody’s) or a corporate guarantee (provided that the guarantor fulfils the conditions set forth in paragraph (i) above) to secure its payment obligations towards that SPV for an amount equal to not less than three months of expected revenues (P50) pursuant to the relevant Eligible Aggregation Contract; and  
(c) with respect to an Eligible Corporate PPA, any offtaker:  
(i) having (itself or through credit support) a long-term credit rating for unsecured debt of at least BB+ issued by S&P or Fitch or Ba1 issued by Moody’s; or

- (ii) having provided the relevant SPV with a bank guarantee (issued by a bank or financial institution having a long-term credit rating for unsecured debt of at least BBB+ issued by S&P or Fitch or Baa1 issued by Moody's) or a corporate guarantee (provided that the guarantor fulfils the conditions set forth in paragraph (i) above) or cash collateral (*gages-espèce*) credited on the relevant SPV Bank Account to secure its payment obligations towards that SPV for an amount equal to not less than one month of expected revenues (P50) pursuant to the relevant Eligible Aggregation Contract; or
- (iii) having an EBITDA of at least EUR 50,000,000 and a Financial Indebtedness to EBITDA ratio not exceeding 4.0x, provided that the revenues to be generated under the Eligible Corporate PPAs entered into with such offtaker may not exceed (x) in respect of Eligible Corporate PPAs coming into force before the Cash Shortfall Date, 50% of total merchant revenues in the Base Case and (y) in respect of Eligible Corporate PPAs coming into force after the Cash Shortfall Date, 33% of the total merchant revenues in the Base Case.

**“Operating Account”** means the account named “Operating Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Operating Budget”** means:

- (a) the Initial Operating Budget; and
- (b) thereafter each Revised Operating Budget finalised and approved in accordance with Clause 22.1 (*Operating Budget*);

**“Operating Costs”** means the aggregate of, for any period and without double counting:

- (a) all costs and expenses paid or to be paid in that period by any relevant member of the Group in connection with the operation of its Power Plant and of the administration of such relevant member of the Group, in each case in respect of that period, including *inter alia*:
  - (i) operation and maintenance costs of the Power Plants (including payments to be made under any LTSA and any amounts due and payable under the Main Project Documents and any other operating contracts);
  - (ii) Taxes (excluding for the avoidance of doubt any VAT);
  - (iii) land lease costs (including pursuant to any Land Document);
  - (iv) any other operating costs incurred by an SPV;
  - (v) administrative expenses (such as accountants, account bank and advisers' fees);
  - (vi) any fee to be paid in accordance with any Management Services Agreement;
  - (vii) insurance premia; and
  - (viii) capital expenditure (excluding VAT) necessary to repair any damage to a Power Plant that resulted in the payment of insurance indemnities and

capital expenditure required to maintain the capacity and availability of a Power Plant; and

- (b) all costs and expenses paid in that period by the Borrower and the Intermediate Holdcos in connection with their operation and administration, in each case in respect of that period, including *inter alia*:
- (i) Taxes (excluding for the avoidance of doubt any VAT);
  - (ii) fees due to advisers, auditors and the Account Bank (except any Transaction Costs incurred on or prior to the Closing Date);
  - (iii) agency fees payable to the Agent and the Intercreditor and Security Agent in accordance with the relevant Fee Letter;
  - (iv) administrative expenses;
  - (v) any fee to be paid in accordance with any Management Services Agreement;
  - (vi) insurance premia; and
  - (vii) any other items which the Borrower and the Agent (acting upon the instructions of the Majority Lenders) agree shall be an Operating Cost;

but excluding in all cases Construction Costs and Development Costs;

**“Operating Report”** means each report prepared in accordance with Clause 20.4 (*Operating Report*), substantially in the form set out in Schedule 16 (*Form of Operating Report*), including information with respect to *inter alia* the revenues, the operation and maintenance of the Power Plants and covering the last semester of operation (historic);

**“Original Hedging Banks”** has the meaning given to such term in the Intercreditor Agreement;

**“Original Lenders”** means the financial institutions referred to in paragraph 2 (*The Original Lenders*) of Schedule 1 (*Certain Original Finance Parties*) as Original Lenders;

**“Over-Hedging Event”** has the meaning given to such term in the Intercreditor Agreement;

**“Partial Lock-up Account”** means the account named “Partial Lock-up Account”, bearing the number referred to in Schedule 11 (*Accounts*), opened in the name of the Borrower with the Account Bank as further described in Clause 25 (*Bank Accounts*);

**“Partial Lock-up Amount”** has the meaning given to it in Clause 24.18.4;

**“Partial Lock-up Event”** means any event leading to a Turbine (in respect of a Power Plant which is a wind farm) or a solar Power Plant taken as a whole (in respect of the Power Plant which is a solar farm) being an Affected Power Unit;

**“Participating Member State”** means any member state of the European Union that adopts or has adopted, and in each case continues to adopt, the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;

**“Party”** means a party to this Agreement;

**“Pending Litigation”** means the two pending litigations between the Borrower and Innovent in relation to: (a) the payment by the Borrower to Innovent of an additional

purchase price in respect of the sale of the shares of three wind farms, currently subject to an arbitration proceeding before the International Chamber of Commerce and (b) forcing Innovent and Mr. Verhaeghe to offer the Borrower to acquire the shares in two wind farms, currently subject to court proceedings before the *tribunal de commerce* de Lille;

**“Permitted Acquisition”** means, with respect to the Borrower or any Intermediate Holdcos, the acquisition or investment in any company which is a limited liability company owning (or intending to develop) a solar farm or a wind farm located in France, provided that:

- (a) all requisite governmental approvals or other consents (including in respect of foreign investment control regulations, where applicable) have been obtained in relation to such acquisition and evidence thereof has been provided to the Agent at least five Business Days before the completion of such acquisition;
- (a) no Event of Default is continuing and no Default would result from the contemplated acquisition;
- (b) the completion of such acquisition will not have a Material Adverse Effect;
- (c) such company does not own or operate a 2016 Feed-in Premium Power Plant; and
- (d) such acquisition is financed:
  - (i) to the extent the solar farm or wind farm owned by such company is an Eligible Project, by an Utilisation of an Incremental Facility Loan;
  - (ii) by amounts standing to the credit of the Distribution Account or new equity contributed to the Borrower for this purpose by the Shareholder by way of Shareholder Loans or through capital increases of the Borrower (subject to any new financial instruments issued by the Borrower in this context being pledged in favour of the Finance Parties); or
  - (iii) through intragroup asset contributions (*apports partiels d’actifs*), provided that a satisfactory structure memorandum is delivered to the Agent at least 5 Business Days before the completion of such acquisition confirming that such asset contribution has no material negative impact for the Group;

**“Permitted Disposal”** means:

- (a) with respect to the Borrower, any sale, lease, licence, transfer or other disposal:
  - (i) of any Authorised Investments for cash or in exchange for other Authorised Investments;
  - (ii) of the share capital of (or all or substantially all of the assets of) any company it holds directly and which is not a member of the Group;
  - (iii) which is a Permitted SPV Disposal; or
  - (iv) which is approved in advance by the Agent (acting upon the instructions of the Majority Lenders);
- (b) with respect to any SPV, any sale, lease, licence transfer or other disposal:
  - (i) which is a Permitted SPV Disposal;

- (ii) on arm's length terms and on normal commercial terms of surplus, obsolete, redundant or worn-out assets (including disposals made for recycling purposes);
  - (iii) on arm's length terms and on normal commercial terms of assets in exchange or replacement of assets comparable or superior as to type, value and quality in accordance with good industry practice;
  - (iv) made in the ordinary course of business on arm's length and on normal commercial terms up to an aggregated value for all SPVs of EUR 100,000 per year and EUR 1,000,000 during the life of the Facilities; or
  - (v) approved in advance by the Agent (acting upon the instructions of the Majority Lenders);
- (c) with respect to any Intermediate Holdco, any sale, lease, licence transfer or other disposal:
- (i) of the share capital of (or all or substantially all of the assets of) any company it holds directly and which is not a member of the Group; or
  - (ii) which is a Permitted SPV Disposal;

**"Permitted Indebtedness"** means Financial Indebtedness, provided that such Financial Indebtedness is not incurred in the form of a bond issue (*émission obligataire*) of whatever form:

- (a) existing pursuant to the Existing Facilities or otherwise described in the Structure Memorandum;
- (b) arising under the Intercompany Loans or any intercompany loan between the Borrower and any other member of the Group, or any other intercompany loan entered into with the prior consent of the Agent (acting upon the instructions of the Majority Lenders);
- (c) arising under any Finance Document;
- (d) arising under the Cash Pooling Agreement;
- (e) arising in the ordinary course of business, provided that such Financial Indebtedness does not exceed at any time an aggregate of EUR 500,000;
- (f) arising under any Shareholder Loan; or
- (g) which is otherwise identified in the Structure Memorandum or permitted by the Agent from time to time;

it being specified that any limited-liability company which is not a member of the Group shall be entitled to incur Financial Indebtedness as long as:

- (i) such Financial Indebtedness is in the form of a financing without recourse against any member of the Group (other than pledges over the shares of such entity and over the receivables arising from any shareholder loan made available to such entity);
- (ii) no member of the Group will act as director, manager or legal representative of such limited-liability company;

- (iii) such limited-liability company has and will have a legal representative taking all management decisions and none of these decisions will be taken by a member of the Group as sole shareholder (except those required to be taken by the sole shareholder by operation of law);
- (iv) no such limited-liability company is or will become a party to the Cash Pooling Agreement until such time as such limited-liability company becomes an SPV (where relevant); and
- (v) such Financial Indebtedness does not have a Material Adverse Effect;;

**“Permitted Merger”** means:

- (a) the merger of Holdco 2.3 and the Borrower, if the Borrower is the surviving entity;
- (b) the merger of Holdco 2.2 and the Borrower, if the Borrower is the surviving entity; and
- (c) the merger of SPVs held directly by the Borrower with an Intermediate Holdco to be incorporated and held directly by the Borrower, if such Intermediate Holdco is the surviving entity;

provided always that, prior to the implementation of each above-mentioned merger, the Agent, acting upon instructions of the Majority Lenders:

- (i) is satisfied that amendments to the Finance Documents are made to reflect such Permitted Merger (including the amendment or granting of adequate Security to preserve the Finance Parties’ interests);
- (ii) has received a satisfactory structure memorandum detailing the corporate steps and tax impacts of the contemplated merger; and
- (iii) has received an updated Financial Model demonstrating to its satisfaction that, after the implementation of such Permitted Merger, the DSCR on all Calculation Dates until the Final Maturity Date of the Refinancing Facility is at least equal to the projected DSCR for each such Calculation Date as it appears in the latest Forecast;

**“Permitted Modifications of the Tax Consolidation Groups”** means the integration of any new SPV or Intermediate Holdco, created in accordance with the terms of this Agreement, in the Tax Consolidation Group (Borex Energie France);

**“Permitted Security”** means:

- (a) save as otherwise permitted under this Agreement, any Security or Quasi-Security existing as at the Signing Date over assets of any member of the Group so long as the Security or Quasi-Security is irrevocably removed or discharged by no later than the Closing Date;
- (b) the Security or Quasi-Security created pursuant to any Finance Document;
- (c) any lien arising by operation of law and in the ordinary course of the business of the Borrower (as carried on in accordance with the Main Project Documents) up to an aggregated value per Financial Year of EUR 100,000 and an aggregated value of EUR 300,000 during the life of the Facilities;

- (d) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (e) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the Signing Date if:
  - (i) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group; and
  - (ii) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
  - (iii) the Security or Quasi-Security is removed or discharged within two Months of the date of acquisition of such asset;
- (f) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (g) any Security or Quasi-Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any permitted under paragraphs (a) to (f) above) does not exceed EUR 150,000 (or its equivalent in another currency or currencies);
- (h) any Security or Quasi-Security granted by any company which is not a member of the Group; or
- (i) any share pledge over the shares of a company which is not a member of the Group and any pledge over the receivables arising from any shareholder loan made available to any company which is not a member of the Group Security, provided that, in both cases, the Security is granted in order to secure Permitted Financial Indebtedness incurred by such company; or
- (j) any other Security or Quasi-Security created or subsisting with the consent of the Agent (acting upon the instructions of all Lenders);

**"Permitted SPV Disposal"** means the disposal:

- (a) by the Borrower of all the shares issued by any other member of the Group together with any Intercompany Loans under the relevant Intercompany Loan Agreement;
- (b) by an Intermediate Holdco of all the shares issued by an SPV together with any Intercompany Loans under the relevant Intercompany Loan Agreement;
- (c) by an SPV of all or substantially all of its assets,

but provided always that:

- (i) no Default is continuing (other than a Default relating solely to the SPV or Power Plant which is part of the concerned disposal) or would occur as a result of such disposal;

- (ii) all requisite governmental approvals or other consents (including in respect of foreign investment control regulations, where applicable) have been obtained in relation to such disposal and evidence thereof has been provided to the Agent at least five Business Days before the completion of such disposal;
- (iii) no member of the Group grants any guarantee or security to the purchaser in relation to such disposal (save for those covered by an insurance or a counter-guarantee granted by any company which is not a member of the Group, in both cases without recourse against any member of the Group);
- (iv) save for the disposal of any member of the Group party to an initial PPA (or holding a SPV party to a PPA) which has expired at its initially scheduled maturity (in which case the condition set forth in this paragraph (iv) does not apply), the contribution of such member of the Group to the Cash Available for Debt Service of the Group from the date of such disposal to the Final Maturity Date as per the Base Case at the Signing Date (updated to include Eligible Projects financed under the Incremental Facility), when aggregated with the contribution of the other members of the Group from the date of such disposal to the Final Maturity Date which have been subject to a Permitted SPV Disposal from time to time since the Closing Date, does not result in the aggregate of the Cash Available for Debt Service as set forth in the Base Case at the Signing Date (updated to include Eligible Projects financed under the Incremental Facility) from the date of such disposal to the Final Maturity Date being reduced by more than 15 per cent. by comparison with the aggregate of the Cash Available for Debt Service from the date of such disposal to the Final Maturity Date as set forth in the Base Case at the Signing Date; and
- (v) the Agent has received a satisfactory structure memorandum detailing the corporate steps and tax impacts of the contemplated disposal; and
- (vi) the Borrower demonstrates that:
  - (a) the level of the DSCR for each Calculation Date following or after such disposal (but taking into account any mandatory prepayment to be made in accordance with Clause 8.3 (*Permitted SPV Disposal*)) is at least equal to the projected DSCR for each such Calculation Date as it appears in the latest Forecast (using the debt sizing ratios as set out in Schedule 14 (*Debt sizing conditions*)), as updated to take into account the impact of such disposal and to update the portfolio effect; and
  - (b) as regards the disposal of an SPV which is party to a PPA that has not expired or terminated at the time of such disposal:
    - (x) the electricity price breakeven scenario, defined as the lowest electricity price possible (non-inflated flat electricity price) to ensure that on each Repayment Date the sum of (x) the Cash Available for Debt Service and (y) the cash available on the Merchant Reserve Account is at least equal to the Debt Service Costs (i.e. DSCR no less than 1.00x in any Repayment Date), is not higher than the electricity price breakeven as it appears in the updated Forecast referred to in Clause 21.2.2, and
    - (y) following such disposal, the Merchant Reserve Amount does not represent more than 50% of the Cash Available after Debt Service

Costs on each Calculation date and the Merchant Reserve Account is fully funded at least one year before the Cash Shortfall Date.

**“Pledge over Moveable Assets Agreement”** means the first ranking *convention de gage sans dépossession* over any present or future equipment of each Power Plant (including the Turbines, Modules and the Inverters, as the case may be) entered into on or about the Closing Date between, *inter alios*, each relevant member of the Group as pledgor and the Borrower as beneficiary;

**“Power Plant”** means:

- (a) each wind farm and solar farm as described in more detail in Part D of Schedule 5 (*Companies and Power Plants*); and
- (b) any other power plant which has been financed or refinanced through an Incremental Facility Loan,

in all cases, as long as such Power Plants are owned by an entity which qualifies as an “SPV”.

**“Power Plant Waiting for Noise or Environmental Curtailment Measures”** means Power Plant CDG (in respect of environmental studies only);

**“PPA”** means, in relation to an SPV:

- (a) the power purchase agreement entered into between such SPV and EDF (or, where relevant, any *entreprise locale de distribution* or similar non-nationalised entity) pursuant to which such SPV sells electricity to EDF (or, where relevant, any *entreprise locale de distribution* or similar non-nationalised entity); or
- (b) the feed-in premium contract (*contrat de complément de rémunération*) entered into between such SPV and EDF (or, where relevant, any *entreprise locale de distribution* or similar non-nationalised entity) in connection with the relevant Power Plant,

as further described, for those SPVs which are Subsidiaries of the Borrower as at the date hereof, in Part A (*PPAs*) of Schedule 7 (*Main Project Documents*);

**“Property Damage Insurance Proceeds”** means all proceeds of the Insurances payable to, or received by, or on behalf of a member of the Group under any property damage insurance contract directly relating to a Power Plant, and excluding any amount corresponding to coverage of business interruption, delay in start-up and/or loss of revenue and/or third-party liability insurance;

**“Provisional Acceptance Date”** means, in relation to a Power Plant, the date on which the taking over (*réception*) was declared in relation to such Power Plant;

**“Qualifying Lender”** has the meaning given to it in Clause 14.1.1(ii);

**“Quasi-Security”** means any of the following arrangements or transactions entered into by a member of the Group:

- (a) any sale, transfer or other disposal of any of its assets on terms whereby they are or may be leased to or re-acquired by such member of the Group;
- (b) any sale, transfer or other disposal of any of its receivables on recourse terms;

- (c) any arrangement (except the Hedging Agreements entered into in accordance with the Hedging Strategy) under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset;

**“Quotation Day”** means, in relation to any period for which an interest rate is to be determined, two Target Days before the first day of that period unless market practice differs in the Relevant Interbank Market, in which case, the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and, if quotations for that currency and period would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days);

**“Reasonable and Prudent Operator”** means a person seeking, in good faith, to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions;

**“Reference Bank Quotation”** means any quotation supplied to the Agent by a Reference Bank;

**“Reference Bank Rate”** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks as the rate at which the relevant Reference Bank could borrow funds in the European interbank market, in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period;

**“Reference Banks”** means, in relation to EURIBOR, such entities as may be appointed by the Agent in consultation with the Borrower, provided that the relevant entity has agreed to its appointment as Reference Bank;

**“Refinancing Facility”** means the term loan facility made available under Clause 2 (*Facilities*) of this Agreement composed of the Refinancing Tranche.

**“Refinancing Tranche”** means the tranche of the Refinancing Facility made available to the Borrower under Clause 2 (*Facilities*) of this Agreement;

**“Refinancing Tranche Commitment”** means:

- (a) in relation to any Original Lender, the amount set opposite its name under the heading “Refinancing Tranche Commitment” in respect of the Refinancing Tranche in paragraph 2 (*The Original Lenders*) of Schedule 1 (*Certain Original Finance Parties*) and the amount of any other commitment under the Refinancing Tranche transferred to it in accordance with the Finance Documents; and
- (b) in relation to any other Lender, the amount of the Refinancing Tranche Commitment under the Refinancing Tranche transferred to it in accordance with the Finance Documents,

to the extent not cancelled, reduced or transferred by it in accordance with the Finance Documents;

**“Refinancing Tranche Loan”** means the loan made or to be made under the Refinancing Tranche or the principal amount outstanding for the time being of that loan;

**“Relevant Interbank Market”** means the European interbank market;

**“Repayment Date”** means 5 April, 5 July, 5 October and 5 January of each year;

**“Repayment Schedule (Incremental Facility)”** means, with respect to an Incremental Facility Loan made available to the Borrower, the relevant repayment schedule delivered by the Agent to the Borrower and any other repayment schedule updated in accordance with Clause 6.5.2(i);

**“Repayment Schedule (Refinancing Tranche)”** means, with respect to the Refinancing Tranche Loan, the repayment schedule referred to in Part I of Schedule 10 (*Repayment Schedule*) and any other repayment schedule updated in accordance with Clause 6.1.1;

**“Repeating Representations”** means each of the representations set out in Clause 19 (*Representations and Warranties*), other than (i) the representations mentioned in Clause 19.3 (*Binding Obligations*), 19.6 (*Authorisations*), 19.9 (*Land rights*), 19.10 (*Taxation and withholding taxes*), 19.12 (*No filing or stamp taxes*), 19.15.1, 19.16 (*Insurances*), 19.18 (*Pari passu ranking*), 19.19 (*No proceedings pending*), 19.20 (*Security*), 19.21 (*No Insolvency*), 19.24.1, or 19.25 (*Financial Statements*) and, after the Closing Date (excluded), (ii) Clauses 19.30 (*Group Structure Chart*), 19.31 (*Compliance with anti-bribery and corruption regulations*) and 19.11(*Tax integration*);

**“Replacement Benchmark”** means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
  - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
  - (ii) any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the “Replacement Benchmark” will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to that Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to a Screen Rate;

**“Reports”** means:

- (a) the Legal Reports;
- (b) the Technical Report;

- (c) the Structure Memorandum;
- (d) the due diligence reports relating to certain aspects of the Project and delivered to the Agent on or prior to the Signing Date by:
  - (i) the Lenders' Model Auditor;
  - (ii) the Energy Yield Assessment Adviser; and
  - (iii) the Lenders' Insurance Adviser;
- (e) the most recent Pöyry Wholesale Electricity Price Projections for France (solar and onshore wind capture price), being delivered by the Merchant Risk Adviser on a reliance basis;

**"Revised Operating Budget"** has the meaning given to it in Clause 22.1.2;

**"S&P"** means Standard and Poor's Rating Group, a division of McGraw Hill Inc or any succeeding credit rating agency;

**"Sanctioned Country"** means any country or territory that is the subject of any general or country-wide/territory-wide prohibitions or restrictions under any Sanctions (including but without limitation relating to exports, imports, financings or investments). As at the date hereof, the Sanctioned Countries are North Korea, Cuba, Iran, Sudan, Syria and the territory of Crimea, it being specified that this list may change from time to time.

**"Sanctioned Person"** means any person or persons who is/are a designated target of Sanctions or is/are otherwise a subject of Sanctions (including as a result of being (a) owned or controlled directly or indirectly (as such terms are defined by the relevant Sanctions Authority), by any person or persons which is/are a designated target of Sanctions, or (b) organised under the laws of, or a citizen or resident of, any Sanctioned Country;

**"Sanctions"** means any economic, financial or trade sanctions laws, regulations, embargoes or other restrictive measures enacted, administered or enforced by any of the following (each a **"Sanctions Authority"**):

- (a) the United Nations Security Council; and/or
- (b) the United States of America; and/or
- (c) the European Union (or any of its member states); and/or
- (d) the United Kingdom; and/or
- (e) the respective institutions and agencies of any of the foregoing including the Office of Foreign Assets Control of the U.S. Department of the Treasury OFAC), and/or the Bureau of Industry and Security (BIS) of the US Department of Commerce, and/or the United States Department of State, and/or the United States Department of Commerce, and/or the French Treasury and/or Her Majesty's Treasury, to the extent these measures are applicable;

**"Screen Rate"** means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page

of such other information service which publishes that rate from time to time in place of Thomson Reuters. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Lenders;

**“Screen Rate Replacement Event”** means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders and the Borrower, materially changed;
- (b)
  - (i)
    - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
    - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,  
  
provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
  - (ii) the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
  - (iii) the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
  - (iv) the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
- (c) the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
  - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or
  - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than one month; or
- (d) in the opinion of the Majority Lenders and the Borrower, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

**“Security”** means:

- (a) any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, delegation, *affectation fiduciaire*, trust arrangement, reservation of title for the

purpose of providing security or other security interest of any kind in any jurisdiction;

- (b) any right of set-off created by agreement (except pursuant to the Hedging Agreements); and
- (c) any other agreement or arrangement having a similar effect;

**“Security Documents”** means:

- (a) the Global Security Agreement (Borrower) and any *bordereau de cession de créances* executed pursuant to its terms;
- (b) the Global Security Agreement (Shareholders);
- (c) the Global Security Agreement (Intermediate Holdcos);
- (d) the Global Security Agreement (SPVs);
- (e) the Pledge over Moveable Assets Agreement;
- (f) the Share Pledge Agreement (Borrower);
- (g) the Share Pledge Agreement (Holdco 2.3); and
- (h) any other document evidencing or creating Security to secure any obligation of the Borrower or an SPV to a Finance Party (in any capacity) under the Finance Documents;

**“Senvion”** means Senvion GMBH, a company organised under the laws of Germany, registered with the commercial register of Hamburg under n° 137 187, Uberseering 10, 22297 Hamburg, Germany (formerly Repower Systems SE);

**“Settlement Agreement (Accord de Sillage)”** means each settlement agreement (*accord de sillage*) entered into between an SPV and a third party in relation to energy yield losses affecting the relevant Power Plant caused by a neighbouring wind farm owned by such third party and pursuant to which the relevant SPV is to be financially compensated therefrom;

**“Share Pledge Agreement (Borrower)”** means the agreement entitled “*Convention de nantissement de parts sociales*” entered into on or about the Closing Date between the Borrower as security provider and the Intercreditor and Security Agent pursuant to which the Borrower, in order to secure its obligations under the Finance Documents, creates a first ranking pledge on the SPVs’ shares held by the Borrower in respect of SPVs incorporated and existing as a *société à responsabilité limitée*;

**“Share Pledge Agreement (Holdco 2.3)”** means the agreement entitled “*Convention de nantissement de parts sociales*” entered into on or about the Closing Date between Holdco 2.3 as security provider and the Intercreditor and Security Agent pursuant to which Holdco 2.3, in order to secure its obligations under the Intercompany Loan Agreement, creates a first ranking pledge on the SPV VMO’s shares held by it;

**“Shareholder”** means:

- (a) the Sponsor;
- (b) Boralex GmbH; and
- (c) any other entity that becomes a direct shareholder of the Borrower in accordance with the terms of the Finance Documents;

**“Shareholder Loan”** means each subordinated loan granted or to be granted by a Shareholder to the Borrower pursuant to any Shareholder Loan Agreement (including pursuant to clause 23.3 (*Equity Cure*) and for the purposes of making Permitted Acquisitions), the repayment of which is subject to the terms of the Intercreditor Agreement;

**“Shareholder Loan Agreement”** means any agreement for granting of Shareholder Loans signed between a Shareholder and the Borrower;

**“Signing Date”** means the date on which this Agreement is signed by all Parties;

**“Site”** means the parcels of land on which the Power Plants have been built;

**“Sponsor”** means Boralex Europe S.à r.l., a Luxembourg *société à responsabilité limitée, simplifiée* whose registered office is at 39 avenue J.F. Kennedy L-1855 (Luxembourg), registered with the commercial and companies registry of Luxembourg under number B150284;

**“SPV”** means:

- (a) each of the SPVs which details are listed in Part A and Part B of Schedule 5 (*Companies and Power Plants*) until the date on which revenues generated by such SPV are not taken into account in the Base Case to size the Refinancing Facility on a 10-year P90 scenario;
- (b) as the case may be, any company which has become an SPV pursuant to this Agreement until the date on which revenues generated by such SPV are not taken into account in the updated Base Case to size the Incremental Facility Tranche on a 10-year P90 scenario;

and **“SPVs”** means all of them together and, provided always that, for the avoidance of doubt, any SPV which has been subject to (i) a Permitted Merger or (ii) a Permitted SPV Disposal, shall cease to be an SPV;

**“SPV Bank Account”** means, in relation to an SPV, the relevant bank account opened in the name of that SPV and identified in paragraph 2 (*Accounts of the SPVs*) of Schedule 11 (*Accounts*);

**“Structure Memorandum”** means the structure paper prepared by KPMG relating to the Project and to be delivered to the Agent on the Closing Date pursuant to the terms of this Agreement;

**“Subsidiary”** means, in relation to any company, another company that is controlled by it within the meaning of article L.233-3 of the French *Code de Commerce*;

**“Supermajority Lenders”** means:

- (a) if no Utilisation is then outstanding, a Lender or Lenders whose Commitments aggregate more than 75 per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 75 per cent of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Utilisations then outstanding aggregate more than 75 per cent of all the Utilisations then outstanding;

“**Target Day**” means any day on which TARGET2 is open for the settlement of payments in euro;

“**TARGET2**” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007;

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

“**Tax Consolidation Agreement**” means the tax consolidation agreement (*convention d'intégration fiscale*) entered into on 1 January 2011 (as amended from time to time including on 11 February 2019) between, *inter alios*, the Borrower, Holdco 2.1, Holdco 2.2, SPV AVL-S, SPV CAL, SPV SPA and SPV VRO which sets up a French tax group (*intégration fiscale*) pursuant to Article 223 A and seq. of the French tax code with the Borrower acting as head of the tax consolidation group (the “**Tax Consolidation Group (Boralex Energie France)**”);

“**Technical Report**” means a technical due diligence report prepared by the Lenders' Technical Adviser relating to the specific circumstances of the Project and delivered pursuant to the terms of this Agreement;

“**TEG Letter**” means any *lettre de taux effectif global* to be issued in accordance with Clause 10.5 (*Effective Global Rate (taux effectif global)*), the form of which is attached in Schedule 9 (*Form of TEG Letter*);

“**Total Commitments**” means the aggregate of the Total DSRF Commitments, the Total Refinancing Facility Commitments, the Total Incremental Facility Commitments and the Total Incremental DSRF Commitments;

“**Total DSRF Commitments**” means the aggregate of all DSRF Commitments of the Lenders set out in paragraph 2 (*The Original Lenders*) of Schedule 1 (*Certain Original Finance Parties*), being EUR 14,731,650.75 at the Signing Date;

“**Total Incremental DSRF Commitments**” means, once the Incremental DSRF is committed, the aggregate of the Incremental DSRF Commitments, being zero at the Signing Date;

“**Total Incremental Facility Commitments**” means, once the Incremental Facility is committed, the aggregate of the Incremental Facility Commitments, being zero at the Signing Date and never being more than EUR 57,003,737.65;

“**Total Refinancing Facility Commitments**” means the Total Refinancing Tranche Commitments;

“**Total Refinancing Tranche Commitments**” means the aggregate of all Refinancing Tranche Commitments of the Lenders set out in paragraph 2 (*The Original Lenders*) of Schedule 1 (*Certain Original Finance Parties*), being EUR 228,014,950.60 at the Signing Date;

“**Transaction Costs**” means any documented fees, commissions, costs and expenses incurred by or on behalf of the Borrower (including VAT) in connection with the implementation of the refinancing to be made under the Refinancing Facility or under this Agreement, the Fee Letters, any other Finance Documents or to restructure the Group in

relation to the Project (including adviser fees), provided always that they are due and payable on or about the Closing Date;

**"Transaction Documents"** means the Finance Documents and the Main Project Documents;

**"Transfer Agreement"** means an agreement substantially in the form set out in Schedule 4 (*Form of Transfer Agreement*) or any other form agreed between the Agent and the Borrower;

**"Transfer Date"** means, in relation to a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Transfer Agreement; and
- (b) the date on which the Agent executes the relevant Transfer Agreement;

**"Turbines"** means the turbines installed (or, where relevant, to be installed) on each Power Plant which is a wind farm;

**"Unpaid Sum"** means any sum due and payable but unpaid by the Borrower under the relevant Finance Documents;

**"Upfront Fee Letter"** means the letter to be signed on the Signing Date between the Borrower and the Agent, for the account of the Original Lenders, setting forth the conditions of remuneration of the Original Lender in respect of the structuring of the Facilities;

**"US"** means the United States of America;

**"Utilisation"** means a utilisation of the DSRF, the Refinancing Facility, the Incremental Facility or the Incremental DSRF;

**"Utilisation Date"** means a date of Utilisation, being the date on which the relevant Loan is to be made;

**"Utilisation Request"** means a notice in compliance with the requirements of this Agreement and substantially in the form set out in Schedule 3 (*Utilisation Request*);

**"VAT"** means any tax imposed in accordance with the Council Directive of 28 November 2006 on the common system of the value added tax (EC Directive 2006/112) and any other tax of a similar nature, whether imposed in a member state of the European Union or elsewhere, in substitution for or levied in addition to such tax;

**"Vestas"** means Vestas France SAS, a French *société par actions simplifiée* whose registered office is at 770 avenue Alfred Sauvy, 34470 Pérols, registered with the commercial and companies registry of Montpellier under number 440 849 016 R.C.S. Montpellier.

## 1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in this Agreement to:

- (i) the **"Agent"**, any **"Mandated Lead Arranger"**, the **"Borrower"**, any **"SPV"**, the **"Shareholder"**, any **"Sponsor"**, any **"Intermediate Holdcos"**, any **"Finance Party"**, any **"Lender"**, any **"Original Lender"**, the **"Account Bank"**, any **"Hedging Bank"**, any **"Party"** or the **"Intercreditor and Security Agent"** shall be construed so as to include its successors in title,

permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;

- (ii) **“assets”** includes present and future properties, revenues and rights of every description;
- (iii) **“control”** means a *“contrôle”* within the meaning of article L.233-3 of the French Code de Commerce;
- (iv) **“corporate reconstruction”** includes in relation to any company any contribution of part of its business in consideration of shares (*apport partiel d’actifs*) and any demerger (*scission*) implemented in accordance with articles L.236-1 to L.236-24 of the French *Code de Commerce*;
- (v) a **“Finance Document”** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any of its schedule, appendix or annex as well as any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or other agreement or instrument;
- (vi) **“gross negligence”** means *“faute lourde”*;
- (vii) a **“group of Lenders”** includes all the Lenders;
- (viii) a **“guarantee”** includes any type of *“sûreté personnelle”*;
- (ix) **“indebtedness”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (x) **“merger”** includes any *fusion* implemented in accordance with articles L.236-1 to L.236-24 of the French *Code de Commerce*;
- (xi) a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or entity (whether or not having separate legal personality);
- (xii) a **“regulation”** includes any regulation, rule, official directive, request or guideline (having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (xiii) a **“security interest”** includes any type of security (*sûreté réelle*) and assignment or transfer by way of security;
- (xiv) a **“transfer”** includes any means of transfer of rights and/or obligations under French law;
- (xv) **“trustee, fiduciary and fiduciary duty”** has in each case the meaning given to such term under any applicable law;
- (xvi) **“wilful misconduct”** means *“faute intentionnelle”*;

(xvii) a provision of law is a reference to that provision as amended or re-enacted; and

(xviii) a time of day is a reference to Paris time.

1.2.2 Section, Clause and Schedule headings are for ease of reference only.

1.2.3 Unless a contrary indication appears in this Agreement, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

1.2.4 A Default or an Event of Default is “**continuing**” if it has not been remedied or waived.

1.2.5 The words “**include**” and “**including**” are to be construed without limitation.

1.2.6 Terms defined in Clause 1.1 (*Definitions*) or elsewhere in this Agreement may be used in the singular or the plural sense as required by the context thereof.

1.2.7 If there is any conflict between any provision of the Finance Documents and the provisions of the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail.

## 2 Facilities

### 2.1 Refinancing Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a term loan facility in Euro in an aggregate amount equal to the Total Refinancing Tranche Commitments.

### 2.2 Debt Service Reserve Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a revolving loan facility in Euro in an aggregate amount equal to the Total DSRF Commitments.

### 2.3 Incremental Facility and Incremental DSRF

2.3.1 The Borrower may, at any time after the Closing Date, request, on one or more occasions (the Borrower undertaking to use its best efforts to limit the number of requests per year by gathering, if practicable, in a single request the financing request of several Power Plants), the commitment of (all or part of) the Incremental Facility by delivering to the Agent an Incremental Facility Initial Notice, provided that each Incremental Facility Lender agreeing (at its sole discretion) to provide an Incremental Facility Commitment shall make an Incremental Facility Loan under the Incremental Facility Tranche specified in the relevant Incremental Facility Final Notice pursuant to Clause 2.3.7 below, and such Loan shall thereafter be deemed to be an Incremental Facility Loan under the relevant Incremental Facility Tranche for all purposes of this Agreement and the other Finance Documents.

2.3.2 For the purpose of Clause 2.3.1 above, the Borrower will deliver to the Agent an updated and audited Financial Model indicating the aggregate principal amount of the Incremental Facility being requested (the “**Required Amount**”), the revised

Cash Shortfall Amount and demonstrating that, taking into account such Required Amount and revised Cash Shortfall Amount, the Base Case is met.

**2.3.3** No less than 30 Business Days prior to the contemplated Incremental Facility Date, the Borrower shall have given the existing Lenders as at such date a first priority right to provide any Incremental Facility Commitment by delivering to the Agent an Incremental Facility Initial Notice which shall include:

- (i) the Required Amount (including, as the case may be, the amount required to fund the DSRA (Incremental Facility));
- (ii) whether it elects to fund the DSRA (Incremental Facility) and the opening of an Authorised Investment DSRA (Incremental Facility) or to implement an Incremental DSRF;
- (iii) the revised Cash Shortfall Amount;
- (iv) the proposed Incremental Facility's (and, as the case may be, the proposed Incremental DSRF's amount) commitment date;
- (v) provided that the Noise and Environmental Curtailment Measures relating to the relevant Eligible Project have not been determined on the date on which the relevant Incremental Facility Initial Notice is delivered, the proposed equity support amount equal to the maximum amount of the mandatory prepayment that could apply pursuant to Clause 8.13 (*Noise curtailment studies (Incremental Facility)*) in relation to the relevant Eligible Project to be committed by the Sponsor pursuant to an additional Equity Support Agreement executed upon or following delivery of the relevant Incremental Facility Final Notice;
- (vi) confirmation that the purpose of the Incremental Facility complies with Clause 3.1.3 (and the details relating to the relevant Eligible Project);
- (vii) a satisfactory energy yield assessment (taking into account the portfolio effect) of the relevant Eligible Project by any Energy Yield Assessment Adviser;
- (viii) satisfactory due diligence reports on the relevant Eligible Project, covering technical, insurance, land agreements, administrative authorisations, operational contracts and corporate aspects of the company holding the Eligible Project;
- (ix) a satisfactory structure memorandum detailing the tax impacts of the relevant Eligible Project on the Group;
- (x) the number (commencing with "1") of the Incremental Facility Tranche;
- (xi) the proposed Margin applicable to the Incremental Facility Tranche (and, as the case may be, the proposed Incremental DSR Tranche) being requested; and
- (xii) any other relevant terms and conditions of the proposed Incremental Facility Tranche as determined by the Borrower and agreed by the Agent (acting on the instructions of the Supermajority Lenders).

**2.3.4** As soon as reasonably possible upon receipt by the Agent of any duly completed Incremental Facility Initial Notice, the Agent shall deliver the same to all Lenders and each Lender shall have the right (but not the obligation) to confirm, within 30 Business Days, its intention (or refusal) to participate in the requested Incremental Facility Tranche indicating the amount of the commitment (the “**Intended Incremental Facility Commitment**”) it wishes to hold and, if requested by the Borrower, the amount of the correlative commitment in an Incremental DSR Tranche. Any Lender which does not respond to any Incremental Facility Initial Notice by 5.00 p.m. (Paris time) on the 30th Business Day following such delivery shall be deemed to have refused to participate in the requested Incremental Facility.

If the aggregate amount of the Intended Incremental Facility Commitments proposed by the existing Lenders is higher than the Required Amount, the Intended Incremental Facility Commitment of each such Lender shall be reduced accordingly on a pro rata basis of their participation in the Refinancing Facility.

If none of the existing Lenders have agreed to provide Incremental Facility or if the aggregate amount of the Intended Incremental Facility Commitments which the existing Lenders have agreed to commit (the “**Committed Amount**”) is less than the Required Amount, the Borrower may propose to any other bank, financial institution or any other entity which complies with the requirements provided for in the definition of “Incremental Facility Lender” (and, as the case may be, “Incremental DSRF Lender) (a “**Potential Participant**”) to participate in that Incremental Facility for an amount equal to the difference between the Required Amount and the Committed Amount.

**2.3.5** If not all Lenders participate in the requested Incremental Facility Tranche, the Borrower shall obtain the prior confirmation of the Agent, acting upon instructions of the Supermajority Lenders before implementing the requested Incremental Facility Tranche, that the requested Incremental Facility Tranche meet the following conditions:

- (i) it will be made available in respect of an Eligible Project;
- (ii) the Borrower has delivered an updated Financial Model demonstrating that the DSCR of the latest Forecast (using the debt sizing ratios as set out in Schedule 14 (*Debt sizing conditions*)) are met and that the requested Incremental Facility Tranche does not impact negatively the risk profile of the existing Lenders;
- (iii) the scope of the security to be granted by the Borrower and the company holding the Eligible Project is similar (in scope and nature) to the security granted by the other SPVs;
- (iv) the company holding the Eligible Project will become a SPV and accede to the Intercreditor Agreement and the Cash Pooling Agreement;
- (v) the Borrower will hedge the Incremental Facility Tranche in compliance with the Hedging Strategy; and
- (vi) the sizing of the Incremental Facility Tranche has been made on the basis of the following assumptions:

- (a) revenues are sized on a 10-year P90 scenario (taking into account portfolio effect);
  - (b) revenues to comprise PPA revenues plus four years of revenues (with a maximum, in any event, of 20 years of revenues) beyond the PPA's end date of the relevant Power Plant (the tariff taken into account in such case being the average of the central and low solar and onshore wind scenarios as set out in the most recent Pöyry Wholesale Electricity Price Projections for France (solar and onshore wind capture price) available to the Borrower (but in any case no more than 6-months old);
  - (c) the merchant risk, appreciated at the level of the portfolio, is not materially increased as demonstrated by the electricity price breakeven scenario (defined as the lowest electricity price possible (non-inflated flat electricity price) to ensure that on each Repayment Date the sum of (x) the Cash Available for Debt Service and (y) the cash available on the Merchant Reserve Account is at least equal to the Debt Service Costs (i.e. DSCR no less than 1.00x in any Repayment Date)).
- 2.3.6** The Borrower may confirm that one or more Lenders and/or any other Potential Participant referred to in Clause 2.3.4 above has agreed to participate in an Incremental Facility and to commit Incremental Facility Commitments (and, if requested by the Borrower, Incremental DSRF Commitments) by delivering to the Agent an Incremental Facility Final Notice.
- 2.3.7** Each Incremental Facility Final Notice is irrevocable and will only be regarded as valid (unless otherwise agreed by the Supermajority Lenders) if:
- (i) the Borrower confirms, on the date on which the Incremental Facility Tranche becomes effective, that no Default has occurred and is continuing or would occur as a result of the Incremental Facility being committed;
  - (ii) it is signed by the Borrower and the relevant Incremental Facility Lender(s) (and, as the case may be, Incremental DSRF Lender) and shall specify (a) the Incremental Facility Date and the applicable Availability Period and any conditions precedent to the drawdown of the Incremental Facility Tranche, (b) the amount, the currency and the purpose of the Incremental Facility Commitments (and, (as the case may be, Incremental DSRF), (c) the choice between the commitment of an Incremental DSR Tranche and the funding of the DSRA (Incremental Facility), (d) the Final Maturity Date of the Incremental Facility Tranche (and, as the case may be, the Incremental DSR Tranche) and (e) the fees and Margin applicable to the Incremental Facility Tranche (and, as the case may be, the Incremental DSR Tranche).
- 2.3.8** By countersigning the Incremental Facility Final Notice as an Incremental Facility Lender (and, as the case may be, an Incremental DSRF Lender), each such entity agrees to commit the Incremental Facility Commitments (and, as the case may be, the Incremental DSRF Commitments) set out against its name and, in the case of an entity which is not already a Lender, to become a Lender and party to this Agreement and to the Intercreditor Agreement as a "Lender".

- 2.3.9** Upon receipt of a duly completed Incremental Facility Final Notice, the Agent and the Intercreditor and Security Agent shall sign and acknowledge receipt of that notice and, if appropriate, the accession of the relevant lenders to each of this Agreement and the Intercreditor Agreement and shall inform the Lenders of that receipt. The Agent shall only be obliged to sign an Incremental Facility Final Notice upon its completion of all “know your customer” or other checks relating to any person that it is required to carry out in relation to the accession of any entity as a Lender. The Agent and the Intercreditor and Security Agent are authorised to disclose details of the Incremental Facility Final Notice and in relation to any Incremental Facility Tranche and Incremental DSR Tranche to the Lenders.
- 2.3.10** Each Finance Party agrees and empowers the Agent and/or the Intercreditor and Security Agent, as the case may be, to (and the Borrower shall promptly upon reasonable request by the Agent or the Intercreditor and Security Agent) execute any necessary amendments to the Finance Documents (including the Security Documents) or enter into any additional Equity Support Agreement or Security Documents creating, in the latter case, lower ranking Security as may be required in order to, as the case may be, ensure that any Incremental Facility Tranche and Incremental DSR Tranche ranks *pari passu* with the other Facilities and that any Security granted in connection with the requested Incremental Facility Tranche is shared *pari passu* by the secured parties.
- 2.3.11** If all conditions set out in this Clause 2.3 (*Incremental Facility and Incremental DSRF*) are met, each Party (including the Lenders which have not agreed to provide the Incremental Facility Tranche requested by the Borrower):
- (i) agrees that Incremental Facility Commitments (and, as the case may be, the Incremental DSRF Commitments) may be made available to the Borrower and such Incremental Facility Tranche (and, as the case may be, Incremental DSR Tranche) shall rank in all respects *pari passu* with the other Facilities made available under this Agreement; and
  - (ii) authorises and instructs the Agent and the Intercreditor and Security Agent to countersign an Incremental Facility Final Notice to record the Incremental Facility Commitments (and, as the case may be, the Incremental DSRF Commitments) as set out in the relevant Incremental Facility Final Notice and accordingly the establishment of (or the increase in Incremental Facility Commitments in respect of) the Incremental Facility Tranche and the establishment of (or the increase in Incremental DSRF Commitments in respect of) the Incremental DSR Tranche.
- 2.3.12** The Incremental Facility Tranche (and, as the case may be, the Incremental DSR Tranche) committed pursuant to an Incremental Facility Final Notice shall become effective and a Facility under this Agreement, on the later of:
- (i) the date specified in the Incremental Facility Final Notice; and
  - (ii) the date on which the Agent and the Intercreditor and Security Agent countersign such Incremental Facility Final Notice. Each Incremental Facility shall be identified by a number indicating the order of confirmation (e.g. “1” for the first confirmation, “2” for the second confirmation, etc.).

- 2.3.13 No provision of this Clause 2.3 (*Incremental Facility and Incremental DSRF*) can be construed as an undertaking on the part of the Lenders to provide any Incremental Facility Commitments or Incremental DSRF Commitments before it becomes committed pursuant to this Clause 2.3 (*Incremental Facility and Incremental DSRF*) and the decision of a Lender to commit to any Incremental Facility Commitment (and, as the case may be, Incremental DSRF Commitments) will be in its sole discretion and subject to the approval of its credit committee, as the case may be.
- 2.3.14 Any Lender which agrees to commit to an Incremental Facility Commitment shall commit to an Incremental DSRF Commitment on a pro rata basis (unless the Borrower has requested, in the Incremental Facility Initial Notice, to fund the DSRA (Incremental Facility)).

## 2.4 Finance Parties' rights and obligations

- 2.4.1 The obligations of each Finance Party under the Finance Documents are several (*conjointes et non solidaires*). Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- 2.4.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower shall be a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with Clause 2.4.3 below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by the Borrower.
- 2.4.3 A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

## 3 Purpose

### 3.1 Purpose

- 3.1.1 The Borrower shall apply all amounts borrowed by it under the Refinancing Tranche:
- (i) to finance the Intercompany Loans to be used by each relevant member of the Group:
    - (a) to repay in full their Existing Facilities under each Existing Facilities Agreement;
    - (b) to pay any penalties, accrued interest, break costs, hedge termination costs and any other unwinding costs associated with the prepayment by the relevant member of the Group of their Existing Facilities under each Existing Facilities Agreement;
  - (ii) to repay in full its Existing Facilities under the relevant Existing Facilities Agreement and to pay any penalties, accrued interest, break costs, hedge

termination costs and any other unwinding costs associated with such prepayment;

- (iii) to partially repay the Shareholder Loans or make a Distribution up to the amounts as set out in the funds flow signed by the Borrower and delivered to the Agent as condition precedent to be fulfilled on the Closing Date; and
- (iv) without double counting, to pay the Transaction Costs due and payable on or about the Closing Date.

**3.1.2** The Borrower shall apply all amounts borrowed by it under the DSRF or the Incremental DSRF:

- (i) to finance Debt Service Costs to the extent the amounts standing to the credit of the Operating Account on a Repayment Date is wholly or partially insufficient to pay such Debt Service Costs; or
- (ii) to cure an Event of Default that has occurred or that would occur under Clause 26.1 (*Non-payment*).

**3.1.3** The Borrower shall apply all amounts borrowed by it under the Incremental Facility to refinance the Development Costs in respect of Eligible Projects and, as the case may be, with respect to any Permitted Acquisition of a company which owns an Eligible Project, in order to finance the purchase price of such Permitted Acquisition, and any surplus, if any, to make an exceptional distribution to the shareholders.

## **3.2 Monitoring**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

## **4 Conditions of Utilisations**

### **4.1 Conditions precedent**

#### **4.1.1 Conditions precedent to be fulfilled on the Signing Date**

No Lender will be obliged to execute this Agreement unless the Agent has, on or prior to the Signing Date, first received all of the documents and other evidence listed in Part I (*Conditions precedent to be fulfilled on the Signing Date*) of Schedule 2 (*Conditions Precedent*), which shall be in form and substance satisfactory to all Lenders. The Agent (acting on behalf of all Lenders) shall notify the Borrower and the Lenders promptly upon being so satisfied.

#### **4.1.2 Conditions precedent to be fulfilled on the first Utilisation Date of the Refinancing Tranche**

In addition to Clause 4.1.1 (*Conditions precedent to be fulfilled on the Signing Date*), no Lender will be obliged to make available the Refinancing Tranche Loan (or any part thereof) on or prior to the relevant Utilisation Date to the Borrower unless, on the date of the Utilisation Request at the latest, the Agent, acting for the account of the Lenders, has received all of the documents and other evidence listed in Part II (*Conditions precedent to be fulfilled on the first Utilisation Date of the Refinancing Tranche*) of Schedule 2 (*Conditions Precedent*), which shall be in form and substance satisfactory to all Lenders. The Agent (acting on behalf of all

Lenders) shall notify the Borrower and the Lenders promptly upon being so satisfied.

**4.1.3 Conditions precedent to be fulfilled on any Utilisation Date of the Incremental Facility**

In addition to Clause 4.1.1 (*Conditions precedent to be fulfilled on the Signing Date*), no Lender will be obliged to make available any Incremental Facility Loan (or any part thereof) on or prior to the relevant Utilisation Date to the Borrower unless, on the date of the Utilisation Request at the latest, the Agent, acting for the account of the Lenders, has received all of the documents and other evidence listed as condition precedent in the relevant Incremental Facility Final Notice, which shall be in form and substance satisfactory to all Incremental Facility Lenders. The Agent (acting on behalf of all Lenders) shall notify the Borrower and the Lenders promptly upon being so satisfied.

4.1.4 Other than to the extent that any Lender notifies the Agent in writing to the contrary before the Agent gives the notification described in Clause 4.1.1 (*Conditions precedent to be fulfilled on the Signing Date*) and 4.1.2 (*Conditions precedent to be fulfilled on the first Utilisation Date of the Refinancing Tranche*) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

**4.2 Not used**

**4.3 Further conditions precedent**

4.3.1 In respect of any Utilisation under the DSRF or the Incremental DSRF only, in addition to Clause 4.1.1 (*Conditions precedent to be fulfilled on the Signing Date*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:

- (i) the Refinancing Facility has been made available to the Borrower;
- (ii) on the date of the Utilisation Request, the Borrower demonstrates to the satisfaction of the Agent that the amounts that will stand to the credit of the Operating Account on a Repayment Date is or will be insufficient to meet the Debt Service Costs due or to be due on the next Repayment Date and sets out the reasons for such shortfall;
- (iii) no proceedings for *sauvegarde* (including, for the avoidance of doubt, *sauvegarde accélérée* and *sauvegarde financière accélérée*), *redressement judiciaire* or *liquidation judiciaire* have been instituted in relation to the Borrower and are continuing;
- (iv) if required by the Agent within 2 Business Days following receipt of the Utilisation Request, the Borrower demonstrates, on the basis of updated Forecasts that such Utilisation, together with all other DSR Loans then outstanding, will be repaid at the latest by the Final Maturity Date, provided always that if updated Forecasts are required by the Agent and provided that the Borrower delivers such updated Forecasts no later than 10 Business Days following the request of the Agent, the due date of unpaid amounts on the relevant Interest Payment Date and Repayment Date will

be postponed until the date on which the Agent notifies the Borrower that such updated Forecasts meet or do not meet the condition set forth in paragraph (iv) above;

- (v) no notification of acceleration (either in part or in full) of the Refinancing Facility has been issued by the Agent pursuant to Clause 26.17.1; and
- (vi) no Event of Default pursuant to Clause 26.1 (*Non-payment*) is outstanding which would not be cured by the Utilisation under the DSRF or the Incremental DSRF.

**4.3.2** In respect of any Utilisation under any Facility (other than the DSRF and the Incremental DSRF), in addition to Clause 4.1.1 (*Conditions precedent to be fulfilled on the Signing Date*) to Clause 4.1.3 (*Conditions precedent to be fulfilled on any Utilisation Date of the Incremental Facility*), the Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if:

- (i) on the proposed Utilisation Date, no Default is continuing or would result from the proposed Utilisation;
- (ii) on the proposed Utilisation Date, the Repeating Representations to be made on such date are true and accurate in all material respects; and
- (iii) on the date of the Utilisation Request, the Borrower delivers to the Agent satisfactory evidence that the fees, costs and expenses then due and payable by it pursuant to Clause 13 (*Fees*) and Clause 18 (*Costs and Expenses*) have been paid or will be paid on the proposed Utilisation Date with the proceeds of the proposed Utilisation.

#### **4.4 Conditions precedent for the sole benefit of the Lenders**

The conditions precedent provided for in Clause 4.1 (*Conditions precedent*) and Clause 4.3 (*Further conditions precedent*) are stipulated for the sole benefit of the Lenders.

#### **4.5 Maximum number of drawings**

- 4.5.1** The Borrower may only deliver one Utilisation Request under the Refinancing Tranche.
- 4.5.2** The Borrower may only deliver one Utilisation Request under each Incremental Facility Tranche.
- 4.5.3** The Borrower may only deliver four Utilisation Requests per year under the DSRF.
- 4.5.4** The Borrower may only deliver four Utilisation Requests per year under each Incremental DSR Tranche;

### **5 Utilisation**

#### **5.1 Delivery of a Utilisation Request**

The Borrower may utilise a Facility in relation to a Loan by delivery to the Agent of a duly completed Utilisation Request, substantially in the form set out in Schedule 3 (*Utilisation Request*):

- 5.1.1** in relation to the Refinancing Tranche, no later than 11.00 a.m. (Paris time) two Business Days before the Utilisation Date;

- 5.1.2 in relation to the Incremental Facility, no later than 11.00 a.m. (Paris time) three Business Days before the Utilisation Date;
- 5.1.3 in relation to the DSRF, no later than 11.00 a.m. (Paris time) three Business Days before the Utilisation Date; and
- 5.1.4 in relation to the Incremental DSRF, no later than 11.00 a.m. (Paris time) three Business Days before the Utilisation Date.

## **5.2 Completion of a Utilisation Request**

The Utilisation Request in relation to a Loan is irrevocable and will not be regarded as having been duly completed unless:

- 5.2.1 it identifies the Facility to be utilised;
- 5.2.2 the proposed Utilisation Date is a Business Day within the relevant Availability Period;
- 5.2.3 the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
- 5.2.4 it specifies that, unless otherwise agreed by the Agent, for the account of all the Lenders, the proceeds of the Utilisation must be credited:
  - (i) to the parties identified in the funds flow delivered to the Agent on the Signing Date; and
  - (ii) otherwise, to the Operating Account.

## **5.3 Currency and amount**

- 5.3.1 The currency specified in a Utilisation Request in relation to a Loan must be Euro.
- 5.3.2 The amount of a proposed Utilisation must be:
  - (i) with respect to the Refinancing Tranche Loan, an amount equal to the Available Facility;
  - (ii) with respect to any Incremental Facility Loan, a minimum of EUR 5,000,000,or, if less, then an amount equal to the relevant Available Facility.
- 5.3.3 Any Utilisation of the Debt Service Reserve Facility shall be made simultaneously with a Utilisation of the Incremental DSRF (if any), on a pro rata basis.
- 5.3.4 The amount of a proposed Utilisation of the DSRF (in aggregate with the amount of a proposed Utilisation of the Incremental DSRF, if any) on the Repayment Date falling two Repayment Dates before the Final Maturity Date, shall not exceed:
  - (i) 50 per cent. of the Available Facility under the DSRF (and, as the case may be, the Available Facility under the Incremental DSRF) on such date; *minus*
  - (ii) the amount of any outstanding DSR Loans (and, as the case may be, any outstanding Incremental DSR Loans).

## **5.4 Lenders' participation**

- 5.4.1 If the conditions set out in this Agreement have been met, each Lender shall make its participation in the relevant Loan available by the relevant Utilisation Date through its Facility Office.
- 5.4.2 The amount of each Lender's participation in a Loan will be equal to the proportion borne by its Available Commitment to the relevant Available Facility immediately prior to making such Loan.
- 5.4.3 The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan no later than 12.00 a.m. (Paris time) two Business Days before the Utilisation Date.

## **5.5 Cancellation of Commitment**

The Commitments, which, at that time, are unutilised, shall be immediately and automatically cancelled at the end of the relevant Availability Period.

## **5.6 Consolidation of Loans**

- 5.6.1 Each DSR Loan whose Interest Period ends on the same date as the Interest Period of another DSR Loan will be consolidated into, and treated as, a single DSR Loan as from the last day of such Interest Period.

## **6 Repayment**

### **6.1 Repayment of the Refinancing Tranche Loan**

- 6.1.1 The Borrower shall repay (by wire transfer) the outstanding Refinancing Tranche Loan in quarterly instalments on the First Repayment Date (Refinancing Tranche) and thereafter on each subsequent Repayment Date in accordance with the applicable Repayment Schedule (Refinancing Tranche) and in any event by the Final Maturity Date.
- 6.1.2 The Parties acknowledge that:
- (i) the Repayment Schedule (Refinancing Tranche) will be updated by the Agent (a) on or about the Closing Date and (b) on the Interest Payment Date occurring on or immediately following the occurrence of any prepayment event; and
  - (ii) amounts repaid or prepaid in respect of the Refinancing Tranche Loan shall not be available for redrawing.
- 6.1.3 Any amount applied towards the repayment of the Refinancing Tranche Loan shall be applied pro rata to the participation of each Lender in the Refinancing Tranche Loan.

### **6.2 Not used**

### **6.3 Not used**

### **6.4 Repayment of DSR Loans**

- 6.4.1 The Borrower shall repay any DSR Loan on each Repayment Date up to amounts available in application of the Cash Waterfall, it being specified that, if several DSR Loans are outstanding simultaneously, amounts available in the Cash Waterfall will

be applied to DSR Loan on the chronological order of Utilisation. In any event, the Borrower shall repay any DSR Loan on the date falling 24 Months after the Utilisation Date of such DSR Loan.

- 6.4.2 Amounts unpaid on any Interest Payment Date shall be added to the amounts payable on the next Interest Payment Date.
- 6.4.3 Any DSR Loan remaining outstanding on the Final Maturity Date shall be repaid on that date.
- 6.4.4 Amounts repaid or prepaid in respect of any DSR Loans shall be available for redrawing.
- 6.4.5 Any amount applied towards the repayment of any DSR Loan shall be applied pro rata to the participation of each Lender in that Loan.

## **6.5 Repayment of Incremental Facility Loans**

- 6.5.1 In respect of any Incremental Facility Tranche, the Borrower shall repay the related Incremental Facility Loan made available to it in accordance with the relevant Repayment Schedule (Incremental Facility) and in any event by the Final Maturity Date.
- 6.5.2 The Parties acknowledge that:
  - (i) the Repayment Schedule (Incremental Facility) will be updated by the Agent on the Interest Payment Date occurring on or immediately following the occurrence of any prepayment event; and
  - (ii) amounts repaid or prepaid in respect of any Incremental Facility Tranche shall not be available for redrawing.

## **6.6 Repayment of Incremental DSR Loans**

- 6.6.1 The Borrower shall repay any Incremental DSR Loan on each Repayment Date up to amounts available in application of the Cash Waterfall, it being specified that, if several Incremental DSR Loans are outstanding simultaneously, amounts available in the Cash Waterfall will be applied to Incremental DSR Loan on the chronological order of Utilisation. In any event, the Borrower shall repay any Incremental DSR Loan on the date falling 24 Months after the Utilisation Date of such Incremental DSR Loan.
- 6.6.2 Amounts unpaid on any Interest Payment Date shall be added to the amounts payable on the next Interest Payment Date.
- 6.6.3 Any Incremental DSR Loan remaining outstanding on the Final Maturity Date shall be repaid on that date.
- 6.6.4 Amounts repaid or prepaid in respect of any Incremental DSR Loans shall be available for redrawing.
- 6.6.5 Any amount applied towards the repayment of any Incremental DSR Loan shall be applied pro rata to the participation of each Lender in that Loan.

## **6.7 Repayment of DSR Loans and Incremental DSR Loans to be made pro rata**

Repayments of DSR Loans and Incremental DSR Loans shall be made pro rata among themselves.

## **7 Voluntary Prepayment and Cancellation**

### **7.1 Voluntary cancellation**

- 7.1.1 The Borrower may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel, with effect on an upcoming Interest Payment Date, without penalty the whole or any part (being a minimum amount of EUR 500,000 or, if lower, the amount of the Available Facility) of the Available Facility in respect of the Refinancing Tranche or any Incremental Facility Tranche provided that it can demonstrate to the satisfaction of the Agent that it has sufficient funds to pay any termination costs due under the Hedging Agreements resulting from such cancellation (if any).
- 7.1.2 The Borrower may, once a year, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel without penalty the whole or any part of the Available Facility (and related portion of the Total DSRF Commitments and Total Incremental DSRF Commitments) in respect of the Debt Service Reserve Facility and the Incremental DSRF (on a pro rata basis) provided that the aggregate of (i) the Available Facility in respect of the Debt Service Reserve Facility, (ii) the Available Facility in respect of the Incremental DSRF and (iii) the DSR Minimum Balance represents at all times until the Final Maturity Date six months of the projected Debt Service Costs with respect to the Facilities other than the Debt Service Reserve Facility and the Incremental DSRF.
- 7.1.3 Any cancellation of an Available Facility under this Clause 7.1 shall reduce the Commitments of the Lenders rateably under the relevant Facility.

### **7.2 Voluntary prepayment**

- 7.2.1 The Borrower may prepay without penalty (other than, as the case may be, Break Costs resulting from such prepayment), at any time, a Loan in whole or in part, provided that:
- (i) the Borrower has delivered to the Agent a prepayment notice specifying the amount to be so prepaid at least 5 Business Days in advance;
  - (ii) except with respect to the prepayment of a DSR Loan, no DSR Loan is outstanding;
  - (iii) with respect to any Facility, any partial prepayment is at least equal to EUR 500,000 in the aggregate and in whole multiples of EUR 100,000 or, if lower, the outstanding amount of the relevant Loan;
  - (iv) it has demonstrated to the satisfaction of the Agent that it has sufficient funds to pay any termination costs due under the Hedging Agreements resulting from such prepayment (if any) and pay all accrued interest and Break Costs (if any) concurrently with the prepayment; and
  - (v) in the case of a partial prepayment only, no Event of Default would occur as a result of such prepayment.
- 7.2.2 Any amount to be applied in voluntary prepayment of a Loan shall be applied, at the option of the Borrower, either:
- (i) in inverse order of maturity or rateably; or

- (ii) as the Borrower sees fit on a sculpted basis provided that the Borrower demonstrates to the Agent's satisfaction that such voluntary prepayment will not affect negatively the DSCR to be calculated (on the basis of the latest Forecast at the date such calculation is made) for the four Calculation Dates following such voluntary prepayment.

### **7.3 No cancellations of the DSRF or the Incremental DSRF**

For the avoidance of doubt, no Available Facility in respect of the DSRF or the Incremental DSRF shall be cancelled other than in application of Clause 8.14 (*Mandatory cancellation of the DSRF or the Incremental DSRF following a cancellation or prepayment of any other Facility*) or Clause 7.1.2 above.

## **8 Mandatory Prepayment and Cancellation**

### **8.1 Prepayment following Utilisation of the Refinancing Tranche**

To the extent that the amount set out in the Utilisation Request for the Refinancing Tranche Loan is greater than the amount required in accordance with the Financial Model for the purposes referred to in Clause 3.1 (*Purpose*), the Borrower shall, no later than on the date falling three Business Days after such Utilisation Date, apply an amount equal to such positive difference in prepayment of the Refinancing Tranche.

### **8.2 Illegality**

**8.2.1** If (A) it is or becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so, or (B) any member of the Group or a Shareholder is or becomes a Sanctioned Person:

- (i) that Lender shall (or, in the case of (B) above, any Lender may) promptly notify the Agent upon becoming aware of that event;
- (ii) upon the Agent notifying the Borrower (or, in the case of (B) above, if the relevant Lender so specifies in its notice), each Available Commitment of that Lender will be immediately cancelled; and
- (iii) to the extent that the Lender's participation has not been transferred pursuant to Clause 38.2 (*Replacement of a Lender*), the Borrower shall (or, in the case of (B) above, if the relevant Lender so specifies in its notice) repay that Lender's participation in the Loans on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participation repaid.

**8.2.2** Clause 8.2.1 shall not apply to any person if and to the extent that it is or would be unenforceable by or in respect of that person by reason of breach of any applicable Blocking Law and/or any similar blocking law or regulation.

### **8.3 Permitted SPV Disposal**

**8.3.1** Upon the occurrence of a Permitted SPV Disposal, the Borrower shall:

- (i) notify the Agent thereof as soon as reasonably practicable; and
- (ii) as soon as possible upon receipt of the proceeds of such Permitted SPV Disposal, apply in prepayment of the Facilities an amount equal to the amount required to ensure that the level of the DSCR for each Calculation Date following or after such Permitted SPV Disposal is not lower than the level of the DSCR under the Base Case for each Calculation Date until the Final Maturity Date of the Refinancing Facility as it appears in the latest Forecast (using the debt sizing ratios as set out in Schedule 14 (*Debt sizing conditions*)), as updated to take into account the impact of such Permitted SPV Disposal and to update the portfolio effect;

8.3.2 Any amount to be applied in prepayment of a Loan pursuant to this Clause 8.3 shall be applied on the relevant repayment instalments as necessary to ensure that the level of the DSCR for each Calculation Date following or after such Permitted SPV Disposal is not lower than the level of the DSCR as it appears in the latest Forecast (using the debt sizing ratios as set out in Schedule 14 (*Debt sizing conditions*)) for each Calculation Date until the Final Maturity Date of the Refinancing Facility, in each case on a pro rata and *pari passu* basis against each repayment instalment then remaining outstanding under the Refinancing Tranche and, if any, each Incremental Facility Tranche.

#### 8.4 Insurance proceeds

8.4.1 For the purposes of this Clause 8.4:

**“Excluded Insurance Proceeds”** means any proceeds of an insurance claim which the Borrower notifies the Agent:

- (i) are or are to be received in indemnification of a business interruption, or more generally received to compensate loss of revenues; or
- (ii) are, or are to be applied in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made, in accordance with the recommendation of the Lenders’ Technical Adviser, provided that the reinstatement or repair will not take longer than nine months (or such longer period as the Agent (acting upon the instructions of the Majority Lenders) may agree); and

**“Insurance Proceeds”** means the proceeds of any insurance claim under any insurance maintained by the Borrower or an SPV exceeding EUR 100,000 per event (it being agreed that an event affecting several Power Plants (such as storms) shall be treated as a single event for the purposes of determining whether such threshold is met) or EUR 500,000 in aggregate per year except for Excluded Insurance Proceeds and after deducting any Tax, costs and expenses in relation to that claim which are incurred by the Borrower or the SPVs, respectively.

8.4.2 The Borrower shall, subject always to Clause 9.8 (*Restrictions for tax impact or legal impediment*), prepay Loans (together with accrued interest on the amount prepaid, any Break Costs, if any) in the order of application contemplated by Clause 8.15 (*Application of mandatory prepayments*), up to the amounts of Insurance Proceeds on the Interest Payment Date falling immediately after such amounts are received.

## **8.5 Right of repayment and cancellation in relation to a single Lender**

### **8.5.1 If:**

- (i) any sum payable to any Lender by the Borrower is required to be increased under Clause 14.2.3 or under an equivalent provision of any Finance Document;
- (ii) any Lender claims indemnification from the Borrower under Clause 14.3 (*Tax indemnity*) or Clause 15.1 (*Increased Costs*); or
- (iii) any amount payable to any Lender by the Borrower under a Finance Document is not, or will not be (when the relevant corporate income tax is calculated) treated as a deductible charge or expense for French tax purposes for the Borrower by reason of that amount being (a) paid or accrued to a Lender incorporated, domiciled, established or acting through a Facility Office situated in a Non-Cooperative Jurisdiction, or (b) paid to an account opened in the name of or for the benefit of that Lender in a financial institution situated in a Non-Cooperative Jurisdiction,

the Borrower may, whilst the circumstance giving rise to the requirement for that increase, indemnification or non-deductibility for French tax purposes continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Agent notice of its intention to replace that Lender in accordance with Clause 38.2 (*Replacement of a Lender*).

**8.5.2** On receipt of a notice of cancellation referred to in Clause 8.5.1 above, the Commitment(s) of that Lender shall immediately be reduced to zero.

**8.5.3** On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under Clause 8.5.1 above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Loan.

## **8.6 Mandatory repayment and cancellation in relation to a single Lender**

If it becomes unlawful for the Borrower to perform any of its obligations to any Lender under Clause 14.2.3 or under an equivalent provision of any Finance Document:

**8.6.1** the Borrower shall promptly notify the Agent upon becoming aware of that event;

**8.6.2** upon the Agent notifying that Lender, its Commitment(s) will be immediately cancelled; and

**8.6.3** the Borrower shall repay that Lender's participation in the Loans on the last day of each Interest Period which ends after the Borrower has given notice under Clause 8.6.1 above or, if earlier, the date specified by that Lender in a notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

## **8.7 Right of cancellation in relation to a Defaulting Lender**

**8.7.1** If any Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent 15 Business Days' notice of cancellation of each Available Commitment of that Lender.

- 8.7.2 On the notice referred to in Clause 8.7.1 above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
- 8.7.3 The Agent shall as soon as practicable after receipt of a notice referred to in Clause 8.7.1 above, notify all the Lenders.

## **8.8 Lock-up Account**

Any amount credited into the Lock-up Account for a period of time comprising eight consecutive Calculation Dates which has not been transferred to the Distribution Account due to the fact that the DSCR has been less than 1.10x on such eight Calculation Dates in accordance with Clause 25.2.5 (*Lock-up Account*), shall be applied in prepayment of the Refinancing Facility on the Interest Payment Date following such eighth Calculation Date and in the order of application set out in Clause 8.15 (*Application of mandatory prepayments*).

## **8.9 Partial Lock-up Account**

Any Partial Lock-up Amount credited into the Partial Lock-up Account for a period of time comprising eight consecutive Calculation Dates, which has not been transferred to the Operating Account in accordance with Clause 25.2.6 (*Partial Lock-up Account*), shall be applied in prepayment of the Refinancing Facility on the Interest Payment Date following such eighth such Calculation Date in the order of application set out in Clause 8.15 (*Application of mandatory prepayments*).

## **8.10 Compensation events**

Subject always to Clause 9.8 (*Restrictions for tax impact or legal impediment*), in the event that the Borrower or an SPV has, pursuant to a Main Project Document or in any other respect from any third party (including the French State), received any liquidated damages or other indemnity paid as compensation of future or structural loss of revenue or of the expropriation or confiscation of assets, the Borrower shall apply all such amounts in prepayment of any outstanding Loans on the Interest Payment Date falling immediately after such amounts are received, in the order of application set out in Clause 8.15 (*Application of mandatory prepayments*).

## **8.11 Not used**

## **8.12 Noise and environmental curtailment (Refinancing Facility)**

### **8.12.1 Cash Sweep – Noise and environmental curtailment (Refinancing Facility)**

As from the first Interest Payment Date following the date on which the Noise and Environmental Curtailment Measures of the Power Plant Waiting for Noise or Environmental Curtailment Measures have been determined by the Borrower, and until the Interest Payment Date falling three years thereafter (the “**Cash Sweep End Date RF**”), the Borrower shall prepay any outstanding Refinancing Tranche Loans on each Interest Payment Date, in the order of application set out in Clause 8.15 (*Application of mandatory prepayments*), up to an amount equal to (subject to amounts available pursuant to the Cash Waterfall) the amount required to ensure that the level of the DSCR for each Calculation Date following such date until the Final Maturity Date of the Refinancing Facility (such amount to be calculated pursuant to the Base Case as at the Closing Date without change in the Assumptions save for the yield assumptions (taking into account the portfolio effect) affected by the relevant Noise and Environmental Curtailment Measures) is

at least equal to the level of the DSCR for each such Calculation Date as it appears in the latest Forecast (using the debt sizing ratios as set out in Schedule 14 (*Debt sizing conditions*)) (the “**Mandatory Prepayment Amount RF**”).

#### **8.12.2 Mandatory Prepayment – Noise and environmental curtailment (Refinancing Facility)**

If, on the Cash Sweep End Date RF, the amount applied to prepayment pursuant to Clause 8.12.1 is less than the Mandatory Prepayment Amount RF, the Borrower shall prepay any outstanding Refinancing Tranche Loans on the next Interest Payment Date up to an amount equal to the difference between (i) the Mandatory Prepayment Amount RF and (ii) the amount applied to prepayment pursuant to Clause 8.12.1, in the order of application set out in Clause 8.15 (*Application of mandatory prepayments*).

### **8.13 Noise and environmental curtailment studies (Incremental Facility)**

#### **8.13.1 Cash Sweep – Noise and environmental curtailment (Incremental Facility)**

With respect to each Power Plant financed under the Incremental Facility, which Noise and Environmental Curtailment Measures have not been determined by the Borrower before the relevant Utilisation under the Incremental Facility, as from the first Interest Payment Date following the earliest of:

- (i) the date on which the Noise and Environmental Curtailment Measures of such Power Plant have been determined by the Borrower following the commissioning of such Power Plant and on the basis of the relevant Noise and Environmental Curtailment Measures; and
- (ii) the date falling 24 Months after the Commissioning Date of such Power Plant,

and until the Interest Payment Date falling three years thereafter (the “**Cash Sweep End Date IT**”), the Borrower shall prepay any outstanding Incremental Facility Loans on each Interest Payment Date, in the order of application set out in Clause 8.15 (*Application of mandatory prepayments*), up to an amount equal to (subject to amounts available pursuant to the Cash Waterfall) the amount required to ensure that the level of the DSCR for each Calculation Date following such date until the Final Maturity Date of the Refinancing Facility (such amount to be calculated pursuant to the latest Forecast without change in the Assumptions save for the yield assumptions (taking into account portfolio effect) affected by the relevant Noise and Environmental Curtailment Measures) is at least equal to the level of the DSCR for each such Calculation Date as it appears in the latest Forecast (using the debt sizing ratios as set out in Schedule 14 (*Debt sizing conditions*)) (the “**Mandatory Prepayment Amount IT**”).

#### **8.13.2 Mandatory Prepayment – Noise and environmental curtailment (Incremental Facility)**

If, on the Cash Sweep End Date IT relating to a Power Plant financed under the Incremental Facility, the amount applied to prepayment pursuant to Clause 8.13.2 is less than the Mandatory Prepayment Amount IT, the Borrower shall prepay any outstanding Incremental Facility Loans on the next Interest Payment Date up to an amount equal to the difference between (i) the Mandatory Prepayment Amount IT

and (ii) the amount applied to prepayment pursuant to Clause 8.13.2, in the order of application set out in Clause 8.15 (*Application of mandatory prepayments*).

#### **8.14 Mandatory cancellation of the DSRF or the Incremental DSRF following a cancellation or prepayment of any other Facility**

**8.14.1** If, in accordance with this Agreement and for any reason whatsoever,

- (i) the Available Facility, in respect of any Facility other than the DSRF and the Incremental DSRF, is partially cancelled; or
- (ii) any Facility other than the DSRF and the Incremental DSRF is partially prepaid,

the Available Facility in respect of the DSRF and the Incremental DSRF shall be automatically cancelled on the date of such cancellation or prepayment of the other Facility on a pro rata basis in order to reduce the Available Facility under the DSRF and the Incremental DSRF to an amount equal to (for the aggregate of the Available Facility in respect of the DSRF and the Incremental DSRF):

- (c) six months of the projected Debt Service Costs with respect to the other Facilities (immediately after such cancellation or prepayment of the relevant other Facility(ies)) at any time until the Final Maturity Date; *minus*
- (d) the DSRA Minimum Balance.

**8.14.2** Any cancellation of the Available Facility in respect of the DSRF and the Incremental DSRF under this Clause 8.14 shall reduce the Commitments of the Lenders and the Incremental DSRF Lenders rateably under the DSRF and the Incremental DSRF, on a pro rata basis.

#### **8.15 Application of mandatory prepayments**

Save as otherwise provided in Clause 8.3 (*Permitted SPV Disposal*), any amount to be applied in prepayment of the Facilities on a mandatory basis shall be applied, at the option of the Borrower, in inverse order of maturity or rateably, in each case on a pro rata and *pari passu* basis against each repayment instalment then remaining outstanding under the Refinancing Tranche and each Incremental Facility Tranche.

### **9 Restrictions**

#### **9.1 Notices of cancellation or prepayment**

Any notice of cancellation or prepayment given by any Party shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

#### **9.2 Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid, any Break Costs, if any, any termination costs payable under an Hedging Agreement and, subject to other provisions of this Agreement, without premium or penalty.

**9.3 No reborrowing of the Refinancing Facility or the Incremental Facility**

The Borrower may not reborrow any part of the Refinancing Facility or the Incremental Facility, which is repaid or prepaid.

**9.4 Prepayment in accordance with this Agreement**

The Borrower shall not repay or prepay all or any part of a Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

**9.5 No reinstatement of Commitments**

No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

**9.6 Agent's receipt of notices**

If the Agent receives a notice of any proposed prepayment or cancellation of a Loan or a notice in respect of the occurrence of a prepayment event, it shall promptly forward a copy of that notice to the Lenders and the Hedging Banks.

**9.7 Effect of repayment and prepayment on Commitments**

If all or part of a Loan under a Facility is repaid or prepaid and is not available for redrawing, an amount of the Commitments (equal to the amount of the Loan which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this Clause 9.7 shall reduce the Commitments of the Lenders rateably under that Facility.

**9.8 Restrictions for tax impact or legal impediment**

In respect of any mandatory prepayment made pursuant to Clause 8.4 (*Insurance Proceeds*) and Clause 8.9 (*Compensation Event*), if any amount to be applied in prepayment pursuant to such Clauses is to be received by an SPV:

**9.8.1** the Borrower will only be obliged to comply with such prepayment obligation as soon as it is legally possible for the SPV to up-stream these amounts without any legal impediment to the Borrower or the SPV, it being understood that the Borrower shall use its reasonable endeavours to overcome such legal impediment; and

**9.8.2** where such payment has a material and negative tax impact either on the Borrower or on the SPV, in which case:

(i) the Borrower shall use its reasonable endeavours to overcome such tax impact; and

(ii) the prepayment obligation of the Borrower shall be postponed until the earlier of (a) the date of which the Parties have reasonably determined that the tax impact is eliminated or sufficiently mitigated and (b) the date falling 12 months following receipt of the relevant amounts by the SPV, in which case the amount to be applied in prepayment will be net of withholding tax (if any).

## **10 Interest**

### **10.1 Calculation of interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of:

10.1.1 the Margin; and

10.1.2 EURIBOR,

and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero.

### **10.2 Payment of interest**

10.2.1 The Borrower shall pay (by wire transfer) accrued interest on each Loan on each Interest Payment Date.

10.2.2 Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed under a year of 360 days.

### **10.3 Default interest**

10.3.1 If the Borrower fails to pay any amount payable by it under a Finance Document (other than any Hedging Agreement) on its due date, interest shall accrue to the fullest extent permitted by law and without notice (*mise en demeure*) on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a percentage rate per annum which is the aggregate of:

(i) the Margin (only if the unpaid amount is a principal of a Loan);

(ii) €STR, increased by 0.085 per cent. per annum; and

(iii) 1 per cent. per annum,

and if that percentage rate is less than zero, the rate of interest shall be deemed to be zero.

10.3.2 Any interest accruing under this Clause 10.3 shall be immediately payable by the Borrower on demand by the Agent.

10.3.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount only if, within the meaning of article 1343-2 of the French Code civil, such interest is due for a period of at least one year, but will remain immediately due and payable.

### **10.4 Notification of rates of interest**

The Agent shall promptly, and in any case no later than 15 Business Days from the date of such determination, notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

### **10.5 Effective global rate (*taux effectif global*)**

For the purpose of articles L.314-1 to L.314-5 and R.314-1 *et seq.* of the French *Code de la consommation* and article L.313-4 of the French *Code monétaire et financier*, the Parties acknowledge that (i) the global rate (*taux effectif global*), calculated on the Signing Date,

based on assumptions as to the period rate (*taux de période*) and the period term (*durée de période*) and on the assumption that the interest rate and all other fees, costs or expenses payable under this Agreement will be maintained at their original level throughout the term of this Agreement, is set out in a TEG Letter and (ii) that any TEG Letter forms part of this Agreement. The Borrower acknowledges receipt of that TEG Letter.

## **11 Interest Periods**

### **11.1 Applicable Interest Period under the Refinancing Tranche**

From the Utilisation Date under the Refinancing Tranche (included) until the Final Maturity Date (excluded), an Interest Period for the Refinancing Tranche will be a period of three calendar Months (starting on a Repayment Date (included) and ending on the next following Repayment Date (excluded)) except for:

11.1.1 the first Interest Period which shall start on the Utilisation Date under the Refinancing Tranche (included) and end on the First Repayment Date (Refinancing Tranche) (excluded); and

11.1.2 the last Interest Period which shall end on the Final Maturity Date (excluded).

### **11.2 Not used**

### **11.3 Applicable Interest Period under the Debt Service Reserve Facility**

From the first Utilisation Date under the DSRF (included) until the Final Maturity Date (excluded), an Interest Period for the DSRF will be a period of three calendar months (starting on a Repayment Date (included) and ending on the next following Repayment Date (excluded)) except for:

11.3.1 the first Interest Period relating to an Utilisation which shall start on the relevant Utilisation Date (included) and end on the Repayment Date immediately following that Utilisation (excluded); and

11.3.2 the last Interest Period which shall end on the Final Maturity Date (excluded).

### **11.4 Not used**

### **11.5 Applicable Interest Period under each Incremental Facility Tranche**

From the first Utilisation Date under any Incremental Facility Tranche (included) until the Final Maturity Date (excluded), an Interest Period for any Incremental Facility Tranche will be a period of three calendar Months (starting on a Repayment Date (included) and ending on the next following Repayment Date (excluded)) except for:

11.5.1 the first Interest Period relating to an Utilisation which shall start on the relevant Utilisation Date (included) and end on the Repayment Date immediately following that Utilisation (excluded); and

11.5.2 the last Interest Period which shall end on the Final Maturity Date (excluded).

### **11.6 Applicable Interest Period under each Incremental DSR Tranche**

From the first Utilisation Date under any Incremental DSR Tranche (included) until the Final Maturity Date (excluded), an Interest Period for any Incremental DSR Tranche will be

a period of three calendar Months (starting on a Repayment Date (included) and ending on the next following Repayment Date (excluded) except for:

11.6.1 the first Interest Period relating to an Utilisation which shall start on the relevant Utilisation Date (included) and end on the Repayment Date immediately following that Utilisation (excluded); and

11.6.2 the last Interest Period which shall end on the Final Maturity Date (excluded).

### **11.7 Last Interest Period with respect to repayment**

The last Interest Period with respect to any amount of principal repaid on a date other than on an Interest Payment Date shall start on, and include, the first day of the Interest Period during which this repayment occurs and shall end, and exclude, the date of such repayment.

### **11.8 Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar Month (if there is one) or the preceding Business Day (if there is none).

## **12 Changes to the Calculation of Interest**

### **12.1 Absence of quotations**

Subject to Clause 12.2 (*Market disruption*), if EURIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by 11.00 a.m. (Paris time) on the Quotation Day, the applicable EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

### **12.2 Market disruption**

12.2.1 If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:

- (i) the Margin; and
- (ii) the rate notified to the Agent by that Lender as soon as practicable, and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.

12.2.2 If:

- (i) the percentage rate per annum notified by a Lender pursuant to Clause 12.2.1(ii) above is less than the last available EURIBOR; or
- (ii) a Lender has not notified the Agent of a percentage rate per annum pursuant to Clause 12.2.1(ii) above,

the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of Clause 12.2.1(ii) above, to be the last available EURIBOR.

**12.2.3** In this Agreement, “**Market Disruption Event**” means:

- (i) at or about noon on the Quotation Day for the relevant Interest Period, the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine EURIBOR for Euro for the relevant Interest Period; or
- (ii) before close of business in Paris on the Quotation Day for the relevant Interest Period, the Agent receives notifications from at least two Lenders (whose participations in a Loan exceed 35 per cent of that Loan) that the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of EURIBOR.

### **12.3 Alternative basis of interest or funding**

**12.3.1** If a Market Disruption Event occurs and the Agent or the Borrower so require, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.

**12.3.2** Any alternative basis agreed pursuant to Clause 12.3.1 above shall, with the prior consent of all the Lenders under this Agreement and the Borrower, be binding on all Parties.

### **12.4 Break Costs**

**12.4.1** The Borrower shall, within three Business Days of demand by a relevant Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

**12.4.2** Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate, setting out in reasonable detail the calculation of and confirming the amount of its Break Costs for any Interest Period in which they accrue.

## **13 Fees**

### **13.1 Commitment fee**

**13.1.1** The Borrower shall pay to the Agent (for the account of each Lender) a commitment fee in Euros computed at the rate of **[Redacted for confidentiality reasons]** per cent of the Margin applied on each Lender’s Available Commitment under the DSRF, accruing from the Signing Date until the end of the relevant Availability Period.

**13.1.2** Each accrued commitment fee is payable in arrears on each Interest Payment Date and, in case of cancellation of any Facility, is payable on the cancelled amount at the time cancellation becomes effective.

**13.1.3** No commitment fee is payable to the Agent (for the account of a Lender) on any Available Commitment of that Lender for any day on which that Lender is a Defaulting Lender.

### 13.2 Upfront fee

The Borrower shall pay to the Agent (for the account of each Mandated Lead Arranger) an upfront fee in the amount and at the times agreed in the Upfront Fee Letter.

### 13.3 Agency fee

The Borrower shall pay to the Agent an agency fee in the amount and at the times agreed in the Agency Fee Letter.

### 13.4 Account Bank fee

The Borrower shall pay to the Account Bank an account bank fee in the amount and at the times agreed in the Account Bank Fee Letter.

## 14 Tax Gross-Up and Indemnities

### 14.1 Definitions

14.1.1 In this Agreement:

- (i) **“Protected Party”** means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.
- (ii) **“Qualifying Lender”** means a Lender which:
  - (a) fulfils the conditions to benefit from a withholding tax exemption on the interest payments to which it is entitled under a Finance Document under the terms of French domestic law; or
  - (b) is a Treaty Lender.
- (iii) **“Tax Credit”** means a credit against, relief or remission for, or repayment of any Tax.
- (iv) **“Tax Deduction”** means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.
- (v) **“Tax Payment”** means either the increase in a payment made by the Borrower to a Finance Party under Clause 14.2 (*Tax gross-up*) or a payment under Clause 14.3 (*Tax indemnity*).
- (vi) **“Treaty Lender”** means a Lender which:
  - (a) is treated as resident of a Treaty State for the purposes of the Treaty;
  - (b) does not carry on business in France through a permanent establishment with which that Lender’s participation in a Loan is effectively connected;
  - (c) is acting from a Facility Office situated in its jurisdiction of incorporation; and
  - (d) fulfils any other conditions, which must be fulfilled under the Treaty by residents of the Treaty State for such residents to obtain

exemption from Tax imposed on interest payments by France, subject to the completion of any necessary procedural formalities.

- (vii) **“Treaty State”** means a jurisdiction having a double taxation agreement with France (each such agreement, a **“Treaty”**), which makes provision for full exemption from Tax imposed by France on interest payments.

**14.1.2** Unless a contrary indication appears, in this Clause 14.1 a reference to **“determines”** or **“determined”** means a determination made in the absolute discretion of the person making the determination.

## **14.2 Tax gross-up**

**14.2.1** The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

**14.2.2** The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender, it shall notify the Borrower.

**14.2.3** If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due by the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

**14.2.4** A payment of interest shall not be increased under Clause 14.2.3 above by reason of a Tax Deduction on account of Tax imposed by France, if on the date on which the payment falls due:

- (i) the payment could have been made to the relevant Lender without a Tax Deduction if it had been a Qualifying Lender in respect of the relevant payment under a Finance Document, but on that date that Lender is not or has ceased to be a Qualifying Lender in respect of the relevant payment under a Finance Document other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration or application of) any law or double taxation agreement, or any published practice or concession of any relevant taxing authority; or
- (ii) the relevant Lender is a Treaty Lender and the Borrower is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under Clause 14.2.7 below,

provided that the exclusion for changes after the date a Lender became a Lender under this Agreement in paragraph (i) above shall not apply in respect of any Tax Deduction on account of Tax imposed by France on a payment made to a Lender if such Tax Deduction is imposed solely on account of this payment being made to an account opened in the name of or for the benefit of that Lender in a financial institution situated in a Non-Cooperative Jurisdiction.

**14.2.5** If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

14.2.6 Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

14.2.7 A Treaty Lender and the Borrower shall co-operate in completing any procedural formalities necessary for the Borrower to obtain authorisation to make that payment without a Tax Deduction.

### 14.3 Tax indemnity

14.3.1 The Borrower shall within five Business Days of demand by the Agent pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been directly or indirectly suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

14.3.2 Clause 14.3.1 above shall not apply:

- (i) with respect to any Tax assessed on a Finance Party:
  - (a) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
  - (b) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

- (ii) to the extent a loss, liability or cost:
  - (a) is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*);
  - (b) would have been compensated for by an increased payment under Clause 14.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in Clause 14.2.4 applied;
  - (c) is suffered for or on account of any Bank Levy; or
  - (d) relates to a FATCA Deduction required to be made by a Party.

14.3.3 A Protected Party making, or intending to make, a claim under Clause 14.3.1 above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.

14.3.4 A Protected Party shall, on receiving a payment from the Borrower under this Clause 14.3, notify the Agent.

### 14.4 Tax Credit

If the Borrower makes a Tax Payment and the relevant Finance Party determines that:

14.4.1 a Tax Credit is attributable to that Tax Payment; and

14.4.2 that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Borrower, which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

#### 14.5 Lender status confirmation

14.5.1 Each Lender which becomes a Party to this Agreement after the Signing Date shall indicate, in the Transfer Agreement or Incremental Facility Final Notice which it executes on becoming a Party, and for the benefit of the Agent and without liability to the Borrower, which of the following categories it falls in:

- (i) not a Qualifying Lender;
- (ii) a Qualifying Lender (other than a Treaty Lender); or
- (iii) a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this Clause 14.5.1, then such New Lender shall be treated for the purposes of this Agreement as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Borrower). For the avoidance of doubt, a Transfer Agreement or Incremental Facility Final Notice shall not be invalidated by any failure of a Lender to comply with this Clause 14.5.1.

14.5.2 Such New Lender shall also specify, in the Transfer Agreement which it executes upon becoming a Party, whether it is incorporated or acting through a Facility Office situated in a Non-Cooperative Jurisdiction. For the avoidance of doubt, a Transfer Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 14.5.2.

#### 14.6 Stamp taxes

The Borrower shall pay and, within five Business Days of demand, indemnify each relevant Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

#### 14.7 Value added tax

14.7.1 All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to Clause 14.7.2 below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

14.7.2 If VAT is or becomes chargeable on any supply made by any Finance Party (the “**Supplier**”) to any other Finance Party (the “**Recipient**”) under a Finance Document, and any Party other than the Recipient (the “**Relevant Party**”) is

required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

**14.7.3** Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

**14.7.4** In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

## **14.8 FATCA Information**

**14.8.1** Subject to Clause 14.8.3 below, each Party shall, within 10 Business Days of a reasonable request by another Party:

- (i) confirm to that other Party whether it is:
  - (a) a FATCA Exempt Party; or
  - (b) not a FATCA Exempt Party;
- (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
- (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

**14.8.2** If a Party confirms to another Party pursuant to Clause 14.8.1(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has

ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

**14.8.3** Clause 14.8.1 above shall not oblige any Finance Party to do anything, and Clause 14.8.1(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

- (i) any law or regulation;
- (ii) any fiduciary duty; or
- (iii) any duty of confidentiality.

**14.8.4** If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with Clause 14.8.1(i) or 14.8.1(ii) (including, for the avoidance of doubt, where Clause 14.8.3 applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

**14.8.5** Each Original Lender and each New Lender under Clause 27 (*Changes to the Lenders*) shall:

- (i) on the Signing Date (with regard to each Original Lender only);
- (ii) on the relevant Transfer Date (with regard to the relevant New Lender only); or
- (iii) on the date of a request from the Agent,

supply to the Agent:

- (a) a withholding certificate on Form W-8, Form W-9 or any other relevant form certifying its status as a FATCA Exempt Party; or
- (b) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish its status as a FATCA Exempt Party.

**14.8.6** The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to Clause 14.8.5 above to the Borrower.

**14.8.7** If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to Clause 14.8.5 above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.

**14.8.8** The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to Clause 14.8.5 or 14.8.7 above without further verification. The Agent shall not be liable for

any action taken by it under or in connection with Clause 14.8.5, 14.8.6 or 14.8.7 above.

- 14.8.9** If a Lender subsequently becomes aware that it has ceased to be a FATCA Exempt Party, that Lender shall immediately notify the Agent and the Agent shall notify the relevant Borrower and the other Finance Parties.

## **14.9 FATCA Deduction**

**14.9.1** Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

**14.9.2** Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower, the Agent and the other Finance Parties.

## **15 Increased Costs**

### **15.1 Increased Costs**

**15.1.1** The Borrower shall, within ten Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

- (i) the introduction of or any change in (or in the interpretation, administration or application by any governmental or regulatory authority or any courts of) any law or regulation after the Signing Date; or
- (ii) compliance with any law or regulation made after the Signing Date.

**15.1.2** In this Agreement:

**“Basel II”** means the “International Convergence of Capital Measurement and Capital Standards, a Revised Framework” published by the Basel Committee on Banking Supervision in June 2004, in the form existing on the Signing Date;

**“Basel III”** means:

- (i) the agreement on capital requirements, a leverage ratio and liquidity standards contained in “Basel III: A global regulatory framework for more resilient banks and banking systems”, “Basel III: International framework for liquidity risk measurement, standards and monitoring” and “Guidance for national authorities operating the countercyclical capital buffer” as published by the Basel Committee on Banking Supervision in December 2010, in the form existing on the Signing Date;
- (ii) the rules for global systemically important banks contained in “Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text” published by the Basel Committee on Banking Supervision in November 2011 in the form existing on the Signing Date;

- (iii) regulation (EU) no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) no. 648/2012;
- (iv) directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending directive 2002/87/EC and repealing directives 2006/48/EC and 2006/49/EC; and
- (v) any further guidance or standards published by the Basel Committee on Banking Supervision relating to “Basel III”;

“**Increased Costs**” means:

- (i) a reduction in the rate of return from any Facility or on a Finance Party’s (or its Affiliates’) overall capital;
- (ii) an additional or increased cost; or
- (iii) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document; and

“**CRD IV**” means:

- (i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
- (ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

## 15.2 Increased Cost claims

15.2.1 A Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased Costs*) shall promptly upon becoming aware of the same notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.

15.2.2 Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount and basis of calculation (in reasonable detail) of its Increased Costs.

## 15.3 Exceptions

15.3.1 Clause 15 (*Increased Costs*) does not apply to the extent any Increased Cost is:

- (i) attributable to a Tax Deduction required by law to be made by the Borrower;
- (ii) attributable to a FATCA Deduction required to be made by a Party;
- (iii) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 14.3.2);

- (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation;
- (v) attributable to the implementation or application of or compliance with Basel II (whether such implementation, application or compliance is by a government, regulator or Finance Party or any of its Affiliates); or
- (vi) attributable to the implementation or application of or compliance with any law or regulation which implements or applies Basel III or CRD IV (whether such implementation, application or compliance is by a government, regulator or Finance Party or any of its Affiliates) which are known and capable of being calculated on the Signing Date.

15.3.2 In this Clause 15.3, a reference to a “**Tax Deduction**” has the same meaning given to that term in Clause 14.1 (*Definitions*).

## 16 Other Indemnities

### 16.1 Currency indemnity

16.1.1 If any sum due from the Borrower under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:

- (i) making or filing a claim or proof against the Borrower;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within 10 Business Days of demand, indemnify to the extent permitted by law each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

16.1.2 The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

### 16.2 Other indemnities

The Borrower shall, within ten Business Days of demand, indemnify each relevant Finance Party against any cost, loss or liability duly documented (in particular with adequately detailed invoices) incurred by that Finance Party as a result of:

- 16.2.1 the occurrence of any Event of Default;
- 16.2.2 a failure by the Borrower to pay any amount due under a Finance Document on its due date, including, without limitation, any cost, loss or liability arising as a result of Clause 31 (*Sharing Among the Finance Parties*);
- 16.2.3 funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of

any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or

- 16.2.4 a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

### **16.3 Indemnity to the Agent**

The Borrower shall promptly indemnify the Agent against any cost, loss or liability duly documented (in particular with adequately detailed invoices) incurred by the Agent as a result of instructing lawyers, accountants, tax advisers, technical advisers, insurance advisers, surveyors or other professional advisers or experts as permitted under this Agreement in case these expenses have not been reimbursed by the Borrower as contemplated under Clause 18 (*Costs and expenses*).

## **17 Mitigation by the Lenders**

### **17.1 Mitigation**

17.1.1 Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to Clause 8.2 (*Illegality*), Clause 14 (*Tax Gross-up and Indemnities*), Clause 15 (*Increased Costs*) or Clause 16 (*Other Indemnities*) or in any amount payable under a Finance Document by the Borrower becoming not deductible from the Borrower's taxable income for French tax purposes by reason of that amount being (i) paid or accrued to a Finance Party incorporated, domiciled, established or acting through a Facility Office situated in a Non-Cooperative Jurisdiction or (ii) paid to an account opened in the name of or for the benefit of that Finance Party in a financial institution situated in a Non-Cooperative Jurisdiction including (but not limited to) transferring or assigning its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

17.1.2 Clause 17.1.1 above does not in any way limit the obligations of the Borrower under the Finance Documents.

### **17.2 Limitation of liability**

17.2.1 The Borrower shall promptly indemnify each relevant Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (*Mitigation*).

17.2.2 A Finance Party is not obliged to take any steps under Clause 17.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **18 Costs and Expenses**

### **18.1 Transaction expenses**

The Borrower shall promptly on demand pay the Agent, the Intercreditor and Security Agent and/or any Mandated Lead Arranger the amount of all reasonable external costs and expenses (including legal fees) duly documented (in particular with adequately detailed invoices) incurred by the Agent, the Intercreditor and Security Agent and/or any Mandated

Lead Arranger and/or their external counsels and previously agreed by the Borrower in connection with the negotiation, preparation, printing, perfection and execution of:

**18.1.1** this Agreement and any other documents referred to in this Agreement; and

**18.1.2** any other Finance Documents executed after the Signing Date.

## **18.2 Amendment costs and other costs**

If the Borrower requests an amendment, waiver or consent, the Borrower shall, within 10 Business Days of demand, reimburse the Agent and the Intercreditor and Security Agent for the amount of all reasonable legal fees and external expenses or external advisers' costs if necessary and duly documented (in particular with adequately detailed invoices) incurred by the Agent and the Intercreditor and Security Agent and previously agreed by the Borrower in responding to, evaluating, negotiating or complying with that request or requirement.

## **18.3 Enforcement and preservation costs**

The Borrower shall, within 10 Business Days of demand, pay to each relevant Finance Party the amount of all costs and expenses (including legal fees) duly documented (in particular with adequately detailed invoices) reasonably incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

## **19 Representations and Warranties**

### **19.1 General**

The Borrower represents and warrants the matters set out in this Clause 19 to each Finance Party on the Signing Date (except where expressly stated otherwise).

### **19.2 Status**

**19.2.1** It and each member of the Group is a company, duly incorporated and validly existing under the laws of France as a *société par actions simplifiée* and, in respect of each member of the Group, in the corporate form specified for each company in Part A of Schedule 5 (*Companies and Power Plants*).

**19.2.2** It and each member of the Group has the power to own its material assets and carry on its business as it is being conducted.

### **19.3 Binding obligations**

Subject to the Legal Reservations, the obligations expressed to be assumed by it and each member of the Group in each Transaction Document to which such person is a party are legal, valid, binding and enforceable.

### **19.4 Non-conflict with other obligations**

The entry into and performance by it and each member of the Group of, and the transactions contemplated by, the Transaction Documents do not and will not conflict with:

**19.4.1** any law or regulation applicable to it or to a member of the Group;

**19.4.2** its constitutional documents or those of a member of the Group; or

**19.4.3** any document, agreement or instrument or judgment, order or mandatory decision of any public authority binding upon it or any member of the Group, or any asset of such person, and the same will not prevent its execution and delivery, performance or compliance with the Transaction Documents or the Authorisations.

## **19.5 Power and authority**

**19.5.1** It and each member of the Group has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of the Transaction Documents to which each such person is a party as well as the transactions contemplated thereby.

**19.5.2** No limit on its powers or those of a member of the Group will be exceeded as a result of the borrowing, granting of Security or giving of guarantees contemplated by the Transaction Documents to which each such person is a party.

## **19.6 Authorisations**

**19.6.1** Save where specifically and explicitly disclosed in the Legal Reports as not having been obtained, effected, maintained and/or renewed by or not benefitting to the relevant member of the Group, it and each member of the Group:

- (i) has obtained, or effected, maintained and/or renewed all authorisations necessary for the conduct of each such person's business, trade and ordinary activities; and
- (ii) benefits where applicable from all Main Authorisations necessary for the operation and maintenance of each Power Plant and all such Authorisations are free from third-party challenges.

**19.6.2** All authorisations eventually necessary to enable it and each member of the Group to (i) lawfully enter into, exercise each such person's rights and comply with each such person's obligations under the Transaction Documents to which it is a party and (ii) make the Transaction Documents to which each such person is a party admissible in evidence in France, have been in both cases obtained and are in full force and effect.

**19.6.3** Neither itself nor any member of the Group is aware of any circumstances (including for the avoidance of doubt any claim) which could lead to any Authorisation:

- (i) ceasing to be in full force and effect;
- (ii) not being renewed when required;
- (iii) being invalid, illegal, ineffective, suspended or unenforceable for any reason whatsoever; or
- (iv) being made subject to any material condition which is not expected to be satisfied by it or any member of the Group.

19.6.4 It and each other member of the Group complies in all material respects with all requirements and specifications of the Authorisations.

## 19.7 Compliance with laws

It and each member of the Group complies in all material respects with all laws and regulations applicable to each such person and the Project.

## 19.8 Environmental compliance

19.8.1 Without prejudice to the generality of Clause 19.7 (*Compliance with laws*), all necessary Environmental Permits have been or will be, when necessary, obtained by it or each member of the Group where appropriate, it and each member of the Group is in compliance in all material respects with all Environmental Laws and the Project complies in all material respects with the Equator Principles.

19.8.2 All changes of installed capacity of the Power Plants compared to the installed capacity specified in the relevant Environmental Permits and Main Project Documents (as specifically and explicitly disclosed in the Legal Reports) were not substantial changes for the purposes of the relevant Environmental Permits and Main Projects Documents.

## 19.9 Land rights

Except for any such land rights which have been specifically and specifically and explicitly disclosed in the Legal Reports as not having been obtained, notarised or published:

19.9.1 all plots of land of over which each Power Plant is or will be built are duly leased by way of notarised long-term lease agreements under the Long-Term Leases granting rights *in rem* to the relevant SPV;

19.9.2 all land rights necessary for the construction, operation and dismantling of each Power Plant have been obtained and are opposable to the parties to the relevant Land Documents and, for those land rights which could legally be published, to third parties;

19.9.3 no access right or easements other than those granted pursuant to the Land Documents was or is necessary for the construction, operation or maintenance of the Power Plants;

19.9.4 the occupation by other tenants (e.g. farmers, other operators, etc.) of any plot of land over which rights were granted pursuant to the Land Documents will not impair the proper construction, operation, maintenance and dismantlement of the relevant Power Plant;

19.9.5 to the best knowledge of the Borrower and the relevant SPV, all landowners party to the Land Documents have good and marketable title over the plots of land leased or burdened pursuant to such Land Documents;

19.9.6 all relevant publication formalities have been carried-out in respect of the Land Documents.

19.9.7 there is no mortgage, encumbrance or lien over the plots of land on which rights are created under the Land Documents (apart from the mortgages granted further to the Existing Facilities which shall be released on the Closing Date); and

19.9.8 no expropriation has been ordered in relation any Power Plant.

## **19.10 Taxation and withholding taxes**

- 19.10.1** Neither the Borrower nor any member of the Group is overdue in the filing of any Tax returns. The Borrower and each member of the Group has duly and correctly filed any and all such Tax returns and all Taxes imposed upon each such person or any of their respective assets have been duly and punctually paid and discharged on their due date (or within any applicable grace period), except if the total amount of any such unpaid Taxes does not exceed EUR 50,000 for the Group in aggregate.
- 19.10.2** No claims or investigations are being made, conducted or are reasonably likely to be asserted against the Borrower or any member of the Group with respect to Taxes (except for Taxes disputed and/or for which adequate provision has been made in the relevant person(s)' annual accounts of financial year during which such claim has been made) which might result in a liability or a claim against it or any member of the Group, which would be reasonably likely to have a Material Adverse Effect.
- 19.10.3** The Borrower and each member of the Group is and has been at all times resident for Tax purposes only in France and neither it nor any SPV has or had at any time a permanent establishment outside France.
- 19.10.4** The Borrower and each member of the Group is subject to corporate income tax in France.

## **19.11 Tax integration**

None of the Borrower or any other member of the Group is member to a tax integration mechanism (including a tax consolidated group) and/or party to any tax integration agreement other than the Tax Consolidation Agreement and save as expressly permitted by the Finance Documents.

## **19.12 No filing or stamp taxes**

Under French law, it is not necessary that the Transaction Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents, except the registration of the Land Documents and the Pledge over Moveable Assets Agreement.

## **19.13 No Event of Default**

No Event of Default (other than an Event of Default already notified to the Agent) has occurred and is continuing or would reasonably be expected to result from the making of any Utilisation.

## **19.14 No Financial Indebtedness**

Neither it nor any member of the Group has any Financial Indebtedness outstanding other than the Permitted Indebtedness.

## **19.15 No misleading information**

- 19.15.1** Any factual information provided in writing by or at the request of any member of the Group to the Finance Parties or any of their advisers in connection with the Project, the Transaction Documents or the Authorisations was true, complete and

accurate in all material respects and did not omit any material fact or consideration as at the date it was provided or as at the date (if any) at which it is stated.

**19.15.2** The opinions, projections and forecasts in such written information and the Assumptions on which they are based were, to the extent provided by, or expressed to be those of, the Borrower or a member of the Group, prepared on the basis of recent historical information, expressed and made in good faith, arrived at after due and careful consideration and enquiry and genuinely represent such person's views as at the date they were given or made.

**19.15.3** The Assumptions used in the preparation of the Base Case and the Initial Operating Budget were made in good faith and genuinely represent the Borrower's and the members of the Group's views as at the Signing Date (or where applicable the relevant Forecast Date).

## **19.16 Insurances**

The Insurances required to be maintained by it and the SPVs pursuant to Clause 24.27 (*Insurances*) are, or will be in due time, in full force and effect (including payment of all premia) in the manner and to the extent required by the Finance Documents and the relevant Main Project Documents or Main Project Authorisations and neither it nor any member of the Group has done (or omitted to do) or knowingly permitted any other person to do (or omit to do so) any act or omission which has rendered or might render any of such Insurances void or voidable or reduce the relevant Insurance providers' liability thereunder to an amount less than the limit of liability expressly stated in the relevant policy.

## **19.17 Shares and membership**

**19.17.1** Its shares and those of the members of the Group are fully paid and are not subject to any option to purchase or similar rights. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any of its shares or loan capital (including any option or right of pre-emption or conversion) or those of the members of the Group.

**19.17.2** Appropriate corporate action has been taken by the Borrower and each member of the Group to approve the entry into of the pledge over its shares pursuant to the relevant Security Document and to ensure that the provisions of each such person's constitutional documents and those of the members of the Group will not restrict or inhibit any transfer of its shares or those of the members of the Group if the pledges over those shares are enforced.

## **19.18 Pari passu ranking**

**19.18.1** The Security granted pursuant to the Security Documents has or will have first ranking priority and is not subject to any prior ranking or *pari passu* ranking Security, except where, as the case may be, the Security Document expressly stipulates a different ranking.

**19.18.2** The payment obligations assumed by it and each member of the Group towards the Finance Parties pursuant to the Finance Documents rank at least *pari passu* with the claims of all such person's other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by the laws applying to companies generally.

### **19.19 No proceedings pending**

No litigation, investigation, arbitration or administrative proceedings of or before any court, arbitral body, agency or Competent Authority (including for the avoidance of doubt any Environmental Claims) have been started or threatened in writing against it, any other members of the Group or any Authorisations, except for the Pending Litigation.

### **19.20 Security**

**19.20.1** No Security or Quasi-Security exists over all or any of its present or future assets or those of the members of the Group, other than Permitted Security.

**19.20.2** Each Security Document creates, in favour of the relevant Finance Parties, legal, valid and enforceable Security over the assets expressed to be charged by such document and has the priority and ranking expressed to be created thereby.

### **19.21 No insolvency**

No corporate action, legal proceeding or other procedure or step described in Clause 26.7 (*Insolvency proceedings*) or creditors' process described in Clause 26.8 (*Creditors' process*) (or, where relevant, their equivalent in foreign jurisdiction), has been taken or, to its knowledge, threatened in writing in relation to a member of the Group; and none of the circumstances described in Clause 26.6 (*Insolvency*) applies to a member of the Group.

### **19.22 Good title to assets**

**19.22.1** Each SPV has or, as the case may be, benefits from, a good title to, or valid leases or licences of, or contractual and other rights to, or all appropriate Main Authorisations to use, all assets, land and any material rights ancillary thereto which are necessary for the operation and maintenance of the Power Plants in accordance with the Transaction Documents and the Main Authorisations.

### **19.23 Business activities**

**19.23.1** It is not engaged, as from the Closing Date, in business activities other than holding the shares in the other members of the Group or any other company which purpose is to develop wind or solar power plants.

**19.23.2** Each Intermediate Holdco is not engaged, as from the Closing Date, in business activities other than holding the shares in the relevant SPVs.

**19.23.3** Each SPV have no other business than the Project and have not undertaken any trading activity or business, which is not permitted by the Transaction Documents, or has no connection with the Power Plants.

### **19.24 Main Project Documents**

**19.24.1** The Borrower and the members of the Group comply with all their material obligations under the Main Project Documents and there is no material provision of the Main Project Documents which is invalid, illegal, ineffective, suspended or unenforceable for any reason whatsoever.

**19.24.2** There is no other agreement in connection with, or arrangements, which amend, supplement or materially affect, any Main Project Document, save as contemplated by the provisions of the Finance Documents or as agreed with the prior written consent of the Agent.

## **19.25 Financial statements**

**19.25.1** All financial statements (including unaudited quarterly financial statements) of the Borrower and each member of the Group made available to the Agent pursuant to the terms of the Finance Documents:

- (i) were prepared in accordance with GAAP consistently applied;
- (ii) represent a true and fair view of the financial condition and operations of the relevant person (consolidated where applicable) as at the end of and for the relevant period; and
- (iii) disclose all liabilities (contingent or otherwise), and the reserves, if any, for such liabilities and all unrealised or anticipated liabilities and losses arising from commitments entered into by that relevant person (whether or not such commitments have been disclosed in the relevant financial statements) in accordance with GAAP.

**19.25.2** Its Financial Year end, and the one of each member of the Group, is 31 December.

## **19.26 Centre of main interests**

For the purposes of the Council of the European Union Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings (the “**Regulation**”), its centre of main interests (as the term is used in article 3 1. of the Regulation or, for insolvency proceedings opened after 26 June 2017, Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (the “**Regulation (recast)**”), and the one of each member of the Group is not located in any jurisdiction other than France and it has no establishment (as that term is used in Article 2, point (h) of the Regulation or, for insolvency proceedings opened after 26 June 2017, in Article 2, point (10) of the Regulation (recast)) in any jurisdiction other than France.

## **19.27 Intellectual Property**

**19.27.1** The Borrower and the members of the Group have done all that is required to obtain, safeguard and maintain good title and rights to use with respect to the Intellectual Property required for the operation of the Power Plants in accordance with the Transaction Documents and the Main Authorisations, including complying with all contractual provisions and making all registrations which are required for that purpose.

**19.27.2** The administration and operation of the Power Plants in accordance with the Transaction Documents and the Main Authorisations will not, to the best of its knowledge, result in the infringement by the Borrower of the rights of any person with regard to Intellectual Property.

## **19.28 Bank Accounts**

**19.28.1** Neither it nor the members of the Group holds any bank account other than the Bank Accounts and the Existing Bank Accounts.

## **19.29 Sanctioned Persons**

**19.29.1** Neither it nor any other member of the Group nor any director, officer, agent or employee of any member of the Group is a Sanctioned Person.

**19.29.2** This Clause 19.29 shall not apply to any person if and to the extent that it is or would be unenforceable by or in respect of that person by reason of breach of any applicable Blocking Law and/or any similar blocking law or regulation.

### **19.30 Group Structure Chart**

**19.30.1** The Group Structure Chart is true, complete and accurate in all material respects.

**19.30.2** On the Signing Date, the SPVs own the Power Plants as indicated in Part D (*Power Plants*) of Schedule 5 (*Companies and Power Plants*).

**19.30.3** All necessary intragroup loans, transfers, share exchanges and other steps resulting in the final Group structure are set out in the Group Structure Chart or the Structure Memorandum delivered on or about the Closing Date.

### **19.31 Compliance with Anti-Corruption Regulations**

Without prejudice to the generality of Clause 19.7 (*Compliance with laws*), the Borrower complies, and to the best of its knowledge, the other members of the Group comply, with applicable Anti-Corruption Regulations.

### **19.32 No employees**

Neither the Borrower nor any member of the Group has any employee.

### **19.33 Repetition**

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing, on each Utilisation Date and each Interest Payment Date, and the representation made by the Borrower in Clause 19.15.3 is deemed to be made by the Borrower by reference to the facts and circumstances then existing on each update of the Assumptions in accordance with the Finance Documents.

## **20 Information Undertakings**

The undertakings in this Clause 20 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any commitment is in force, for the benefit of each Finance Party.

### **20.1 Financial statements**

**20.1.1** The Borrower shall supply to the Agent as soon as they are available, but in any event within 180 days after the end of each Financial Year, copies of:

- (i) the annual audited financial statements of the Borrower;
- (ii) the annual financial statements of each member of the Group or the annual audited financial statements of these companies if they are incorporated as *société par actions simplifiée*; and
- (iii) the annual audited financial statements of the Shareholders (except for Boralex GmbH) and, if made by such Shareholders, the annual consolidated financial statements of such Shareholders.

**20.1.2** As long as Boralex GmbH is a Shareholder, the Borrower shall supply to the Agent as soon as they are available, but in any event within 1 year after the end of each Financial Year, copies of the annual audited financial statements of Boralex GmbH.

**20.1.3** The Borrower shall supply to the Agent as soon as they are available, but in any event within 60 days after the end of each quarter, copies of unaudited quarterly financial statement of the Borrower, the SPVs.

## **20.2 Requirements as to financial statements**

**20.2.1** The Borrower shall ensure that each set of annual financial statements includes a balance sheet, profit and loss account.

**20.2.2** Each set of financial statements:

- (i) shall, when audited by the statutory auditors of the Borrower, include the corresponding statutory auditors' report;
- (ii) shall, if unaudited, be certified by a legal representative of the relevant person as giving a true and fair view of (in the case of annual financial statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up; and
- (iii) shall be prepared using GAAP, accounting practices and financial reference periods consistent with those already applied in the preparation of the financial statements for the relevant company, or usual in the profession unless, in relation to any set of financial statements, the Borrower and its auditors notify the Agent that there has been a change in GAAP or the accounting practices in which case there shall be delivered to the Agent a description of any change necessary for those financial statements to reflect GAAP or accounting practices upon which that company's most recently delivered financial statements were prepared and any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the most recently delivered financial statements were prepared.

## **20.3 Financial Ratio Certificate**

**20.3.1** The Borrower shall deliver to the Agent within:

- (i) 60 days following each Repayment Date (other than the Repayment Dates falling on each 5 January); and
- (ii) 90 days following the Repayment Dates falling on each 5 January;

a Financial Ratio Certificate setting out (in reasonable detail) computations as to compliance with:

- (a) Clause 23 (*Financial Covenant*) (including the level of the DSCR for the relevant Calculation Period) and a summary of the amount of the Cash Available for Debt Service as at such Calculation Date; and
- (b) Clause 24.15 (*Intercompany Loans*).

**20.3.2** Each Financial Ratio Certificate shall be signed by a legal representative of the Borrower and, in relation to each Financial Ratio Certificate delivered in connection with a Calculation Period ending on 31 December, audited by the auditors of the Borrower.

## **20.4 Operating Report**

The Borrower shall prepare and deliver an Operating Report in respect of each calendar semester as soon as practicable and, in any event, no later than 45 days after the start of any calendar semester.

## **20.5 Not used**

## **20.6 Operating Budgets**

The Borrower shall prepare and deliver the Initial Operating Budget and each Revised Operating Budget related to the Power Plants in accordance with Clause 22 (*Operating Budget*).

## **20.7 Transaction Documents and Main Authorisations**

The Borrower shall provide to the Agent:

**20.7.1** promptly upon execution, certified copies of all Main Project Documents and Main Authorisations entered into after the Signing Date;

**20.7.2** promptly upon receipt, a copy of any agreement or document which is proposed to be entered into to amend, waive or suspend any of the terms of any of the Main Project Documents save for:

- (i) purely administrative amendments;
- (ii) minor amendments which do not materially affect the interests of the Finance Parties; or
- (iii) any amendment which will enter into force (or which will have effects) as from the date on which the member of the Group party to such Main Project Document is no longer a member of the Group pursuant to this Agreement.

**20.7.3** promptly upon receipt, a copy of (i) any termination notice served under any Main Project Document and (ii) any suspension, material breach, material default or any other material claim notice served under any Main Project Document or in connection with any Main Authorisation; and

**20.7.4** promptly upon its occurrence, information on the occurrence of any other material event under any Transaction Document or in connection with a Main Authorisation.

## **20.8 Litigation**

The Borrower shall:

**20.8.1** notify the Agent, promptly upon becoming aware of them, of any litigation, arbitration, administrative proceedings, formal notice, investigation or Environmental Claim of any nature which is threatened in writing (provided that it is reasonably likely to have a Material Adverse Effect on a member of the Group), current or pending against it; and

**20.8.2** supply to the Agent a summary of the material details of such litigation, arbitration or administrative proceedings (provided that the Borrower is entitled to disclose such information) together with satisfactory remediation and or mitigation plans.

## **20.9 Notification of Default**

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

#### **20.10 Notification of the Noise and Environmental Curtailment Measures**

The Borrower shall notify the Agent, as soon as practicable, each Noise and Environmental Curtailment Measures determined by the relevant member of the Group with respect to the following Power Plants:

**20.10.1** the Power Plant Waiting for Noise or Environmental Curtailment Measures; and

**20.10.2** each Power Plant financed or refinanced through an Incremental Facility Loan (provided that the Noise and Environmental Curtailment Measures relating to such Power Plant have not been determined on the date on which the relevant Incremental Facility Initial Notice is delivered).

#### **20.11 “Know your customer” checks**

If, after the Signing Date, any Finance Party or any prospective new Lender (the “**Affected Party**”) is obliged to comply with “know your customer” or similar identification procedures (including as a result of a change in the status of the Borrower or a change in the status of the direct or indirect Shareholders of the Borrower) in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Affected Party supply, or procure the supply of (in a form and substance satisfactory to the Affected Party), such documentation and other evidence as are reasonably requested by the Affected Party in order for the Affected Party to comply with all necessary “know your customer” or other similar compliance checks, including money laundering related checks, required by its internal compliance policies in order to participate in the transactions contemplated in the Finance Documents.

#### **20.12 Authorisations**

The Borrower shall, promptly following a written demand from the Agent, supply a copy (to the extent available or could reasonably be obtained) of any Authorisation.

#### **20.13 Information: miscellaneous**

The Borrower shall supply the Agent (in sufficient copies for the Lenders, if the Agent or any Lender so requests) promptly with:

**20.13.1** notification of any event, incident or accident which may have a Material Adverse Effect;

**20.13.2** any proposed changes in the Project or in the Borrower’s business;

**20.13.3** notification of any changes to the Borrower’s legal representative, to its statutory auditors or to its share capital and its shareholders’ register;

**20.13.4** notification of contemplated change in the direct shareholding of the Borrower which would not result in a Change of Control of the Borrower, at least 20 calendar days before the contemplated change;

**20.13.5** notification of any amendments, variation, waiver, modification, termination, suspension or alteration (including waiving any right) to any provision made in accordance with Clause 24.21.2;

- 20.13.6 notification of any event triggering a mandatory prepayment event under Clause 8 (*Mandatory Prepayment*);
- 20.13.7 notification of any change to the tax integration groups constituted pursuant to the Tax Consolidation Agreement (including any exits, additions or termination) or any amendments to the Tax Consolidation Agreement;
- 20.13.8 notification of any change to the members to the Cash Pooling Agreement;
- 20.13.9 notification of any intended Permitted Merger or Permitted SPV Disposal, no later than 20 Business Days prior to its expected implementation date; and
- 20.13.10 any such other information regarding the Borrower, its assets, its financial conditions and operations (including any requested amplification or explanation of any item in the financial statements or other material provided by it under this Agreement), any Intercompany Loan and/or the Intercompany Loan Agreement, the Project or the Group or any other information as the Agent (acting upon request of any Lender) may reasonably request from time to time.

## **21 Forecasts**

The Assumptions will be updated by the Borrower and the Financial Model will be changed in accordance with the provisions of this Clause 21.

### **21.1 Procedure for determining Assumptions**

21.1.1 No later than:

- (i) on the Forecast Date referred to in Clause 21.2.1;
- (ii) prior to the Forecast Dates referred to in Clause 21.2.2, 21.2.3 or 21.2.4; or
- (iii) at the latest 3 Months after the Forecast Date referred to in Clause 21.2.5;
- (iv) 20 Business Days after each Forecast Date not referred to in paragraph (i) to (iii) above,

the Borrower will notify the Agent of any changes to the Assumptions to be updated in the Forecast to be delivered with respect to such Forecast Date, in accordance with Clause 21.2 (*Forecast Dates*).

21.1.2 The Borrower will make such proposals in good faith after careful consideration and enquiry and undertakes that such proposals will genuinely reflect views, which they believe in good faith to be reasonable in the circumstances, and will be consistent with the provisions of the Transaction Documents and the Authorisations in all material respects.

21.1.3 If the Borrower proposes any Assumption which is different from those used for the purposes of the previous Forecast Date, the Borrower shall provide to the Agent written reasons for its revisions to the Assumptions.

21.1.4 Within 15 Business Days of receipt of the Borrower's proposals for the Assumptions, the Agent (acting on the instructions of the Majority Lenders) shall notify the Borrower whether it agrees with such Borrower's proposals and, if it disagrees, the reasons for the disagreement. If no such disagreement is notified, then the proposed Assumptions shall be deemed to be approved by the Agent.

21.1.5 Any changes to the Assumptions shall take effect and be binding on the Parties as from:

- (i) with respect to changes relating to technical Assumptions for which the Agent (acting on behalf of the Majority Lenders) has reasonably requested the prior approval of the Lenders' Technical Adviser, the date on which such changes are approved by the Lenders' Technical Adviser; and
- (ii) with respect to changes relating to any other Assumptions, the date on which such changes are agreed or determined in accordance with this Clause 21.1 (*Procedure for determining Assumptions*) or Clause 21.4 (*Disputes in relation to Assumptions and Financial Model*).

## 21.2 Forecast Dates

The Assumptions will be updated if the Borrower and/or the Agent believe(s) that there is any material change to the Assumptions, following the occurrence of the following dates or events (the "**Forecast Dates**") in accordance with the procedure set out in Clause 21.1 (*Procedure for determining Assumptions*):

- 21.2.1 the date on which the first Hedging Transactions entered into under the Hedging Agreements in order to implement the Hedging Strategy are executed, to the extent that such date occurs after the Signing Date;
- 21.2.2 any Permitted SPV Disposal has occurred;
- 21.2.3 any Permitted Merger has occurred;
- 21.2.4 any Permitted Modification of the Tax Consolidation Groups has occurred;
- 21.2.5 a voluntary prepayment of the Refinancing Facility has occurred;
- 21.2.6 an Operating Budget has been provided by the Borrower to the Agent and shows more than 15 per cent deviation in Gross Revenues (excluding any revenues derived from capacity guarantees) or Operating Costs from the Initial Operating Budget;
- 21.2.7 a mandatory prepayment of the Refinancing Facility has occurred;
- 21.2.8 the DSRF and/or the Incremental DSRF has been utilised (except if the Borrower demonstrates to the satisfaction of the Facility Agent that such DSR Loan and/or Incremental DSR Loan will be repaid other than by way of a further DSR Loan and/or Incremental DSR Loan within three Months from its Utilisation Date);
- 21.2.9 the Incremental Facility has been utilised;
- 21.2.10 Part B of Schedule 12 (*Merchant Reserve Amount*) should be updated in accordance with Clause 24.33 (*Additional Merchant Reserve Amount*).

## 21.3 The Financial Model

- 21.3.1 If either the Agent or the Borrower wishes to make any changes to the Financial Model, it will notify the Borrower or the Agent, as the case may be, setting out the changes to be made and the detailed reasons why it considers such changes are required.

**21.3.2** Such a notice may only be given:

- (i) to correct any actual operational data known to be inaccurate;
- (ii) to correct any manifest error in the Financial Model;
- (iii) to incorporate any changes to the Assumptions agreed or determined under Clause 21.1 (*Procedure for determining Assumptions*).

**21.3.3** For the avoidance of doubt, neither the Borrower nor the Agent will make any revision to the Financial Model other than any revision agreed or determined in accordance with this Clause 21.3.

**21.3.4** Any changes to the Financial Model shall only take effect and be binding on the Parties to the extent that such changes are and, if so reasonably requested by the Agent acting on behalf of the Majority Lenders, approved by the Lenders' Model Auditor, and agreed between the Agent and the Borrower in accordance with this Clause 21.3 and shall take effect and be binding on the Parties on and from the date of such agreement.

## **21.4 Disputes in relation to Assumptions and Financial Model**

### **21.4.1 Disputes**

- (i) If there is a dispute about changes to the Assumptions or a Forecast, the Agent and the Borrower will negotiate in good faith (with, in the case of technical Assumptions and where considered necessary, the assistance of the Lenders' Technical Adviser) to try to resolve the dispute.
- (ii) If there is a dispute about changes to the Financial Model, the Agent and the Borrower will negotiate in good faith to try to resolve the dispute.
- (iii) If the Agent and the Borrower, acting reasonably and in good faith, cannot agree on the proposed changes to the Assumptions, or, as applicable, on any proposed changes to the Financial Model before the date falling 20 Business Days after a Forecast Date, then either the Borrower or the Agent may refer the dispute for determination by an Expert (as defined below) pursuant to Clause 21.4.2(i) below.

### **21.4.2 Submissions to the Expert**

- (i) The following provisions shall apply in respect of any dispute in relation to the Assumptions or Financial Model or any other matter, which any Finance Document expressly provides, is to be referred to the Expert pursuant to this Clause 21.4.
- (ii) The expert must be an independent person with appropriate expertise to determine the matter ("**Expert**") and shall be appointed by agreement between the Borrower and the Agent, being specified that in case of dispute in relation to a technical, operating or maintenance matter, such Expert shall be a recognised, reputable and independent technical consultant with project finance and wind energy and photovoltaic experience. Failing agreement within five Business Days of the nomination of a person to be the expert by either of them, the Expert shall be the person nominated (on application of either the Agent or the Borrower) by the president of the Commercial Court of Paris.

- (iii) The cost of referring a matter to the Expert will be met by the Borrower.
- (iv) The Agent and the Borrower shall use all reasonable endeavours to ensure that the appointment of the Expert is made on or before the date falling 15 Business Days before the Forecast Dates above.
- (v) The Expert will be given terms of reference including reasonable details of the respective cases put forward by the Agent and the Borrower.
- (vi) The Borrower and the Agent shall use all reasonable endeavours to procure that the Expert shall give its decision within 25 Business Days of appointment (such decision to state in reasonable detail the grounds for it).
- (vii) The Expert will not be bound to choose either the proposal made by the Borrower or that made by the Agent and will be free to make his own determination.
- (viii) The Expert's determination will be final and binding except in the case of manifest error. The Expert shall act exclusively as an expert in determining any matter and not as an arbitrator.

## **21.5 Delivery of Forecast and recalculation of the Financial Model**

### **21.5.1** No later than:

- (i) on the Forecast Date referred to in Clause 21.2.1;
- (ii) prior to the Forecast Dates referred to in Clause 21.2.2, 21.2.3, 21.2.4, or 21.2.5; or
- (iii) 20 Business Days after each Forecast Date not referred to in paragraph (i) to (iii) above,

and provided no dispute is ongoing pursuant to Clause 21.4 (*Disputes in relation to Assumptions and Financial Model*), the Borrower will prepare a Forecast and deliver such Forecast to the Agent in accordance with the provisions of this Clause 21.5 to Clause 21.8 (*Requirements as to preparation of Forecasts*).

**21.5.2** Any such Forecast will, in the absence of manifest error, be the applicable Forecast for the purpose of the Finance Documents on and as from the date on which it is prepared until it is superseded by another Forecast prepared in accordance with this Clause 21.5.

## **21.6 Preparation of Forecasts – General**

**21.6.1** Each Forecast will be prepared using the Financial Model and based on the Base Case and the Assumptions determined in accordance with Clause 21.1 (*Procedure for determining Assumptions*) and 21.2 (*Forecast Dates*).

**21.6.2** Each Forecast will assume income and expenditure on, in the case of forecast income and expenditure, a received or paid/due to be paid basis.

**21.6.3** Each Forecast will incorporate the latest Assumptions as per the process above for the future.

**21.6.4** Each Forecast will take into account the terms of the Transaction Documents and the Authorisations in preparing estimates of income and expenditure.

## 21.7 Contents of each Forecast

21.7.1 Each Forecast will show at least the following information and assumptions, updated, as the case may be:

- (i) details of the Assumptions on which the Forecast is based;
- (ii) the availability and yield assumptions;
- (iii) Gross Revenues (excluding any revenues derived from capacity guarantees);
- (iv) Operating Costs;
- (v) Cash Available for Debt Service;
- (vi) Cash Available for Distribution;
- (vii) amounts outstanding under the Finance Documents;
- (viii) the DSCR;
- (ix) the ratio of (a) Intercompany Loans to (b) amounts outstanding under the Facilities; and
- (x) if applicable, the Distributions the Borrower intends to make.

## 21.8 Requirements as to preparation of Forecasts

Each Forecast shall:

- 21.8.1 be prepared in good faith and after reasonable due diligence;
- 21.8.2 include the relevant Borrower's best estimate of projected receipts and expenditure; and
- 21.8.3 be based on assumptions, which are fair and reasonable at the time of the Forecast and do not omit anything, which would make it misleading in a material respect.

## 22 Operating Budget

### 22.1 Operating Budget

- 22.1.1 The Initial Operating Budget shall be included in the Base Case and shall be delivered to the Agent for approval as a condition precedent to the Signing Date.
- 22.1.2 Thereafter every year, no later than 60 Business Days after the start of any Financial Year (and for the first time in respect of the Financial Year 2020), the Borrower shall deliver to the Agent a revised draft operating budget in respect of the then-current calendar year (a "**Revised Operating Budget**") for approval by the Agent (acting on behalf of the Majority Lenders) in the form of the Operating Budget delivered to the Agent on the Signing Date pursuant to this Agreement.
- 22.1.3 Each Operating Budget shall comprise an operating budget (together with a commentary thereon explaining, *inter alia*, the variations from the latest Forecast) for the relevant 12-Month period setting out in reasonable details forecast cash flow, Gross Revenues (excluding any revenues derived from capacity guarantees), Operating Costs, any available information on forecasted grid outages,

curtailments or planned maintenance or other repairs or maintenance required over such 12-Month period, outside normal scheduled maintenance requirements or any other items pre-agreed by the Agent.

**22.1.4** Within 15 Business Days of receipt of any Revised Operating Budget, the Agent shall notify the Borrower whether it approves such Revised Operating Budget. The Agent will be deemed to have given its consent 15 Business Days of receipt of any Revised Operating Budget unless consent is expressly refused by the Agent within that time.

**22.1.5** If the Agent refuses to approve or disagrees with the Operating Budget, then:

- (i) the Agent shall enter into discussions with the Borrower on the grounds for such disapproval;
- (ii) the then existing Operating Budget shall continue in effect without any amendment (subject to any appropriate rebasing for inflation); and
- (iii) the Borrower shall within 10 Business Days of Agent's refusal or disagreement submit a further revised draft Operating Budget to the Agent for approval (acting on behalf of the Majority Lenders) in the manner contemplated by this Clause 22.1.

**22.1.6** Upon the Agent notifying, or not notifying, the Borrower under Clause 22.1.4 above that the relevant Revised Operating Budget has been approved, or not providing documented grounds or information supporting its disagreement to a proposed Revised Operating Budget, the relevant Revised Operating Budget shall become the "Operating Budget".

## **22.2 Disputes**

**22.2.1** The Agent and the Borrower shall negotiate in good faith any changes which are not approved in accordance with Clause 22.1 (*Operating Budget*). If the changes are agreed, such changes shall form part of the relevant Operating Budget from the date they are agreed (failing which, Clause 22.1.4, shall apply).

**22.2.2** If the Agent and the Borrower do not agree to the changes, then either party may refer the dispute to an Expert for determination pursuant to Clause 21.4.2 (*Submissions to the Expert*). The Expert shall be instructed by the parties to assess the budgets against the standard of a Reasonable and Prudent Operator of a project financed Power Plant, which is subject to, and seeking to comply with the Transaction Documents, all applicable Authorisations and law. Following the Expert's determination, the relevant Operating Budget shall be revised if and to the extent provided for by such determination and such changes (if any) shall form part of the relevant Operating Budget from the date of the Expert's determination.

## **22.3 Requirements as to preparation of Operating Budget**

Each requirement set out for the preparation of the Forecast referred to in Clause 21.8 (*Requirements as to preparation of Forecasts*) shall apply to the preparation of the relevant Operating Budget.

## **23 Financial Covenant**

### **23.1 Financial covenant**

The Borrower shall ensure that on any Calculation Date, the DSCR does not fall below 1.05x, subject to Clause 23.3 (*Equity Cure*).

### **23.2 Financial covenant calculations**

The financial covenant set out in Clause 23.1 (*Financial covenant*) shall be calculated and interpreted in accordance with GAAP and shall be calculated as of each Calculation Date and tested on each Calculation Date in accordance with the latest unaudited quarterly financial statements.

### **23.3 Equity Cure**

**23.3.1** No Event of Default under Clause 23.1 (*Financial covenant*) will occur if the Borrower elects to apply the net amounts received in cash by way of equity contribution (in the form of subordinated shareholder loans or share capital increase) from the Shareholders to remedy the breach in the amounts necessary to cure such Event of Default, provided that:

- (i) the Borrower may not make such election:
  - (a) in respect of more than six consecutive Calculation Dates; and
  - (b) more than 16 times over the life of the Facilities; and
- (ii) such breach shall be deemed cured if, when recalculated in respect of that relevant Calculation Period, the DSCR would be satisfied.

**23.3.2** Any election by the Borrower pursuant to Clause 23.3.1 above shall be made by notice to the Agent and the notice shall certify the aggregate amounts received by the Borrower by way of equity contributions, specify the Calculation Period in respect of which they are to be taken into account and shall be signed by a legal representative of the Borrower.

## **24 General Undertakings**

The undertakings in this Clause 24 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **24.1 Authorisations**

**24.1.1** The Borrower shall procure that each relevant member of the Group will promptly obtain, comply with and take all necessary steps to maintain in full force and effect, any Main Authorisation.

**24.1.2** The Borrower shall ensure that none of the relevant members of the Group:

- (i) permit(s) or agree(s) to the assignment or transfer of any Main Authorisation or any rights or benefits thereunder, without the prior written approval of the Agent; or
- (ii) permit(s) or agree(s) to a material amendment, variation, waiver, modification, cancellation, termination, suspension of any Main Authorisation.

**24.1.3** The Borrower shall procure that each decommissioning guarantee required to be issued pursuant to applicable law in respect to a Power Plant is notified to the *Préfet* immediately upon any investigation or question raised by the *Préfet* in this respect and that satisfactory evidence of the same is provided to the Agent within 20 Business Days thereof.

## **24.2 Compliance with laws**

The Borrower shall comply, and shall procure that each member of the Group complies in all material respects, with all applicable laws and regulations (including any Environmental Laws) applicable to such person.

## **24.3 Maintenance of ownership, no abandonment**

**24.3.1** The Borrower shall procure that each SPV maintains good title to its Power Plant, except for the Power Plants referred to in Clause 19.22 (*Good title to assets*) but only with respect to the information disclosed in such Clause.

**24.3.2** The Borrower shall not abandon, and shall procure that none of SPVs abandons, all or a material part of the Project or a Power Plant.

## **24.4 Taxation**

**24.4.1** The Borrower shall timely file, and shall procure that each members of the Group timely files, all Tax returns required to be filed by each such person and promptly pay and discharge all Taxes imposed upon each such person or its assets within the time period allowed (giving effect to any applicable extensions) without incurring penalties unless and only to the extent that:

- (i) such payment is being contested in good faith; and
- (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them, which have been disclosed in each such person's latest financial statements delivered to the Agent under Clause 20.1 (*Financial statements*).

**24.4.2** The Borrower shall not change, and shall procure that none of the other members of the Group changes, its residence for Tax purposes.

**24.4.3** The Borrower shall not have, and shall procure that none of the other members of the Group has, any permanent establishment outside France.

## **24.5 Tax integration**

**24.5.1** The Borrower:

- (i) shall not terminate, and shall procure that none of the other members of the Group leaves or that no person joins, the tax integration groups constituted pursuant to the Tax Consolidation Agreement unless:
  - (a) it results from a Permitted Modification of the Tax Consolidation Groups;
  - (b) it is necessary to implement a Permitted Merger or a Permitted SPV Disposal; or
  - (c) the Borrower demonstrates to the Agent, by delivering to it a satisfactory note from its tax adviser, that such addition, termination,

exit or amendment has a neutral or a positive impact on the tax payment obligations of the Borrower and the members of the Group (other than the mere effect that the amount of Tax due by the head of the tax group to the Tax authorities would increase or decrease);

- (ii) shall procure that no person joins the tax integration groups constituted pursuant to the Tax Consolidation Agreement without the Agent's prior approval unless:
  - (a) it results from a Permitted Modification of the Tax Consolidation Groups; or
  - (b) the Borrower demonstrates to the Agent that such termination or exit or amendment has a neutral or a positive impact on the tax payment obligations of the Borrower and the members of the Group (other than the mere effect that the amount of Tax due by the head of the tax group to the Tax authorities would increase or decrease).

**24.5.2** The Borrower shall not amend, and shall procure that none of the members of the Group amends, or consent to an amendment of the Tax Consolidation Agreement, unless:

- (i) such amendments result from a Permitted Modification of the Tax Consolidation Groups;
- (ii) such amendments are necessary to implement a Permitted Merger or a Permitted SPV Disposal;
- (iii) the Borrower demonstrates to the Agent by delivering to it a satisfactory note from its tax adviser that such amendment or termination has a neutral or a positive impact on the tax payment obligations of the Borrower and the members of the Group; or
- (iv) such amendments are required by the law or the tax doctrine.

## **24.6 Merger**

Neither the Borrower nor the members of the Group shall enter into any amalgamation, merger, demerger or corporate reconstruction with any person, save for:

**24.6.1** any Permitted Merger; or

**24.6.2** any corporate reorganisation between these persons only and carried out pursuant to conditions to be agreed in writing with the Agent prior to any such reorganisation.

## **24.7 Change of business**

**24.7.1** The Borrower shall procure that no material change is made to the nature of the business in which it and each member of the Group is engaged at the Signing Date.

**24.7.2** The Borrower shall, and shall procure that each member of the Group:

- (i) do(es) all things necessary to maintain its corporate existence;
- (ii) make(s) no material changes to its corporate form, corporate purpose (*objet social*) or articles of association in any material respect without the

prior written approval of the Agent (acting upon the instructions of the Majority Lenders).

**24.7.3** The Borrower shall take, and shall procure that each of the members of the Group takes, all necessary or desirable measures to ensure that each such person has the right and is duly qualified to conduct its business in France.

## **24.8 Acquisitions**

**24.8.1** The Borrower shall not acquire, and shall procure that none of the members of the Group acquires, a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) save for:

- (i) any Permitted Acquisition; or
- (ii) any Permitted Merger.

**24.8.2** The Borrower shall not incorporate or constitute, and shall procure that none of the other members of the Group incorporates or constitutes, a company or other legal person, save for any incorporation or constitution of a company:

- (i) which is a limited liability company intending to develop a solar farm or a wind farm; or
- (ii) which is necessary to implement a Permitted Merger.

## **24.9 Joint Ventures**

The Borrower shall not, and shall procure that none of the other members of the Group:

**24.9.1** enter(s) into, invest(s) in or acquire(s) (or agree(s) to acquire) any shares, stocks, securities or other interest in any Joint Venture, save for any Permitted Acquisition; or

**24.9.2** transfer(s) any assets or lend(s) to or guarantee(s) or give(s) an indemnity for or give(s) Security for the obligations of a Joint Venture or bidding consortium or maintain(s) the solvency of, or provide(s) working capital to, any Joint Venture or a bidding consortium (or agree(s) to do any of the foregoing).

## **24.10 Preservation of rights and assets**

The Borrower shall, and shall procure that each of the members of the Group:

**24.10.1** save for any Permitted Disposal, maintain(s) all of its moveable (tangible and intangible, if any) and immoveable assets necessary to implement and pursue the Project and for the conduct of its activity in good working order and good state of repair, except where such asset is obsolete, defective or is about to fail and replaced by any similar asset and ensure their compliance with applicable laws and regulations;

**24.10.2** comply or complies with the best practices of the industry in relation to the operation, maintenance and decommissioning of the Project; and

**24.10.3** not change, nor agree to changing, any physical facilities of the relevant Power Plant in any respect which could be materially adverse to such Power Plant's operations or reliability, except where such change is required by any applicable laws and regulations.

### **24.11 Pari passu ranking**

The Borrower shall ensure, and shall procure that each member of the Group ensures, that at all times any unsecured and unsubordinated claims of a Finance Party against each such person under the Finance Documents rank at least *pari passu* with the claims of all of each such person's other present and future unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies and other legal persons (as the case may be).

### **24.12 Negative pledge**

**24.12.1** Except as permitted under Clause 24.12.2 below, the Borrower shall not, and shall procure that none of the members of the Group shall, create or permit to subsist any Security or Quasi-Security over any of its assets, whether now owned or hereafter acquired.

**24.12.2** Clause 24.12.1 above does not apply to any Security or Quasi-Security which is Permitted Security.

### **24.13 Disposals**

**24.13.1** Except as permitted under Clause 24.13.2 below, the Borrower shall not enter into, and shall procure that none of the other members of the Group enters into, a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of:

- (i) any asset forming a material part of the Project (including, for the avoidance of doubt, (a) any shares of another member of the Group or (b) a Main Authorisation), without the Agent's prior written consent (acting reasonably and on the instructions of the Majority Lenders); and
- (ii) any assets on terms whereby they are or may be leased to or re-acquired by the person selling, leasing, transferring or otherwise disposing of such assets (except for worn, damaged or defective assets which have been replaced).

**24.13.2** Clause 24.13.1 above does not apply to any sale, lease, transfer or other disposal which is a Permitted Disposal.

### **24.14 Loans**

Except for any Financial Indebtedness identified in the Structure Memorandum, the Borrower shall not be, and shall procure that none of the members of the Group is, a creditor in respect of any Financial Indebtedness save for:

**24.14.1** the Intercompany Loans and any loans made available under the Cash Pooling Agreement; and

**24.14.2** shareholder loan made available to any subsidiary which is not a member of the Group in order to finance its Development Costs provided such shareholder loan is made out of amounts standing to the credit of the Distribution Account or new equity contributed to the Borrower for this purpose by the Shareholder by way of Shareholder Loans or through capital increases of the Borrower (subject to any new financial instruments issued by the Borrower in this context being pledged in favour of the Finance Parties) and provided further that the Borrower informs the

Agent of the same (together with reasonable details on these Development Costs) promptly after making available such shareholder loan.

## **24.15 Intercompany Loans**

**24.15.1** The Borrower shall ensure that:

- (i) the aggregate amounts in principal under all Intercompany Loans are at all times at least equal to 60 per cent of the amounts outstanding under the Facilities; and
- (ii) the amount in principal outstanding under each Intercompany Loan is at all times at least equal to at least EUR 100,000.

**24.15.2** The Borrower shall use reasonable endeavours to ensure that any excess cash available at the level of each other member of the Group, after payment by that company of its Operating Costs (including any Tax paid by the company in accordance with the Tax Consolidation Agreement) be used by that company in order to make, in the following order of priority:

- (i) a yearly dividend distribution to its shareholder (being, as the case may be, the Borrower or an Intermediate Holdco);
- (ii) as far as the companies which are borrowing entities under the Intercompany Loan Agreement are concerned, to the extent that a dividend distribution has already been made by the relevant company to its shareholder in respect of a given Financial Year, a payment of (a) any accrued interest, (b) principal due under the Intercompany Loan Agreement to which such company is a party; and
- (iii) cash pooling advances to the Borrower under the Cash Pooling Agreement.

## **24.16 Cash pooling arrangements**

As from the Closing Date, neither it nor the members of the Group shall be a party to any treasury or cash pooling arrangement other than the Cash Pooling Agreement.

## **24.17 No guarantees or indemnities**

The Borrower shall not incur or allow to, and shall procure that none of the other members of the Group incurs or allows to, remain outstanding any guarantee (other than any guarantee which is a Permitted Security or guarantee issued in accordance with the Main Project Documents), including an indemnity or other assurance against loss or any letter of credit, in respect of any obligation of any person.

## **24.18 Restrictions on Distribution**

**24.18.1** Save as permitted under Clause 24.18.6 below, the Borrower shall be entitled to transfer amounts from the Operating Account to the Distribution Account in amounts equal to the Cash Available for Distribution on the immediately preceding Calculation Date, but subject always to the provisions of the Intercreditor Agreement and in accordance with the Cash Waterfall, if the following cumulative conditions are met:

- (i) the First Repayment Date (Refinancing Tranche) has occurred;

- (ii) the DSCR calculated on the basis of the Financial Ratio Certificate (without taking into account equity contributions made pursuant to Clause 23.3 (*Equity Cure*)) show that such DSCR is not less than 1.10x on the last Calculation Date;
- (iii) no DSR Loan or Incremental DSR Loan is outstanding and the amount standing to the credit of the DSRA (Incremental Facility) is at least equal to the DSRA Minimum Balance;
- (iv) the cumulated amounts credited by the Borrower to the Merchant Reserve Account is at least equal to the Aggregated Merchant Reserve Amount applicable on such Calculation Date;
- (v) the cumulated amounts credited by the Borrower to the Additional Merchant Reserve Account is at least equal to the Aggregated Additional Merchant Reserve Amount applicable on such Calculation Date;
- (vi) the Insurance Reserve Account is funded up to the Insurance Reserve Amount (taking into account the amounts covered by any Insurance Reserve LCs issued in favour of the Agent);
- (vii) following the transfer to the Distribution Account, the aggregate of the balance standing to the credit of the Operating Account and the Bank Accounts of the other members of the Group is at least equal to an amount equal to three months of Operating Costs (calculated on the basis of the latest Operating Budget);
- (viii) the Power Plants which are subject to negative price hour risk (which are the Power Plants producing electricity sold at merchant tariff or pursuant to a feed-in premium contract (*contrat de complément de rémunération*)) have not experienced more than 250 hours of negative prices (in aggregate over the last 12 months of known and published electricity prices) calculated on the basis of the most recent monthly numbers published by the *Commission de regulation de l'énergie* (or by any official successor entity) on its website, as evidenced by the Borrower to the satisfaction of the Agent; and
- (ix) no Event of Default is continuing, and no Default would result from such transfer to the Distribution Account.

**24.18.2** The Borrower shall not declare or make any Distribution other than from amounts standing to the credit of its Distribution Account up to the amounts credited to the Distribution Account in accordance with the provisions of Clause 24.18.1 above.

**24.18.3** In the event that the DSCR as evidenced by the most recent Financial Ratio Certificate is equal to or lower than the level set forth in Clause 24.18.1, the Cash Available for Distribution which may not be distributed under Clause 24.18.1 will be credited to the Lock-up Account. Once the conditions under Clause 24.18.1 have been complied with on a Calculation Date, the Borrower may transfer the sums standing to the credit of the Lock-up Account to the Distribution Account as per the provisions of Clause 25.2.5 (*Lock-up Account*) below for distribution to the Shareholders.

**24.18.4** On each Calculation Date, if a Partial Lock-up Event has occurred and is continuing, the Cash Available for Distribution shall be reduced by an amount equal to:

$$(A / B) X C$$

where:

**A** means the aggregate Cash Available for Debt Service which is projected to be generated by the Affected Power Unit(s) from the date of the relevant Calculation Date until the Final Maturity Date (calculated with the Financial Model on the basis of the latest Forecast)

**B** means the aggregate Cash Available for Debt Service which is projected to be generated by all Power Plants from the date of the relevant Calculation Date until the Final Maturity Date (calculated with the Financial Model on the basis of the latest Forecast)

**C** means the Cash Available for Distribution,  
(the "**Partial Lock-up Amount**").

**24.18.5** Each Partial Lock-up Amount will be credited to the Partial Lock-up Account. Once the Partial Lock-up Event has been remedied, the Borrower may transfer the sums standing to the credit of the Partial Lock-up Account to the Operating Account as per the provisions of Clause 25.2.6(ii).

**24.18.6** This Clause 24.18 shall not restrict the ability of the Borrower to:

- (i) repay Shareholder Loans within 60 days after the Closing Date up to an amount equal to:
  - (a) the difference between (x) the amount of the Refinancing Tranche Loan made available to the Borrower and (y) the aggregate of the amounts required to prepay in full the Existing Facilities, to pay any penalties, accrued interest, break costs and any other unwinding or other costs associated with such prepayments and, without double counting, to pay the Transaction Costs due and payable on or about the Closing Date as set out in the funds flow signed by the Borrower and delivered to the Agent as condition precedent to be fulfilled on the Closing Date; *minus*
  - (b) any amount to be applied in prepayment of the Refinancing Tranche pursuant to Clause 8.1 (*Prepayment following first Utilisation of the Refinancing Tranche*);
- (ii) credit, within 60 days of the Closing Date, the Distribution Account with the balance of the existing debt service reserve accounts securing the Existing Facilities and the existing cash balance of any other bank accounts of the members of the Group on the Closing Date (provided that the aggregate of the balance standing to the credit of the Operating Account and the Bank Accounts of the members of the Group other than the Borrower is at least equal to EUR 3,000,000), and then repay Shareholder Loans with all or part of such amount standing to the credit of the Distribution Account.

## **24.19 Financial Indebtedness**

**24.19.1** Except as permitted under Clause 24.19.2 below:

- (i) the Borrower shall not incur or allow to remain outstanding any Financial Indebtedness;
- (ii) the Borrower shall procure that none of the members of the Group or any entity acquired through a Permitted Acquisition incurs or allows to remain outstanding any Financial Indebtedness.

**24.19.2** Clause 24.19.1 above does not apply to Financial Indebtedness which is Permitted Indebtedness.

## **24.20 Bank Accounts**

**24.20.1** The Borrower shall open and maintain its Borrower Bank Accounts with the Account Bank and shall promptly notify each of its debtors the bank account details of its Borrower Bank Accounts.

**24.20.2** The Borrower shall procure that:

- (i) each SPV maintains its SPV Bank Account, each Intermediate Holdco maintains its Intermediate Holdcos Bank Account;
- (ii) any and all amounts standing to the credit of an Existing Bank Account at any time are immediately transferred by the relevant member of the Group to the credit of its Bank Account; and
- (iii) it and the other members of the Group close the Existing Bank Accounts within nine months of the Signing Date and, on the date of such closure of the Existing Bank Accounts, it transfers the credit balance of its Existing Bank Accounts to the credit of its relevant Bank Account and promptly notifies the Agent thereof;

**24.20.3** The Borrower shall not open or maintain, and shall procure that no other member of the Group opens or maintains, any bank account or financial instrument account other than its relevant Bank Accounts and, until their closure in accordance with this Agreement, the Existing Bank Accounts.

**24.20.4** The Borrower shall operate, and shall procure that each member of the Group operates, its Bank Accounts and its Existing Bank Accounts in accordance with the Finance Documents and particularly with Clause 25 (*Bank Accounts*).

## **24.21 Main Project Documents**

**24.21.1** The Borrower shall comply with, and shall procure that each other member of the Group complies with, its material obligations under each Main Project Document to which it is a party, and uses its best effort to enforce its rights thereunder.

**24.21.2** Subject to Clause 24.21.4(ii) below, the Borrower shall not, and shall ensure that none of the other members of the Group amend(s), vary(ies), waive(s), modify(ies) or alter(s) (including waiving any right) or consent to amend, vary, waive, modify or alter any provision of any Main Project Document save for:

- (i) purely administrative amendments;

- (ii) minor amendments which do not materially affect the interests of the Finance Parties, or
- (iii) any amendment which will enter into force (or which will have effects) as from the date on which the member of the Group party to such Main Project Document is no longer a member of the Group pursuant to this Agreement.

**24.21.3** The Borrower shall not, and shall ensure that none of the other members of the Group cancel(s), terminate(s) or consent to cancel or terminate any provision of any Main Project Document save for:

- (i) the termination of the Main Project Document at its scheduled termination date;
- (ii) the cancellation or termination of a LTSA entered into with Vestas or Servion or an O&M Agreement entered into with an O&M Provider, provided that such contract is simultaneously replaced by a LTSA entered into or to be entered with Boralex SAS;
- (iii) the cancellation or termination of an Aggregation Contract if it is replaced by an Eligible Aggregation Contract; and
- (iv) the cancellation or termination of an Eligible Corporate PPA if it is replaced by an Eligible Aggregation Contract or a an Eligible Corporate PPA.

**24.21.4** The Borrower shall procure that each Eligible Aggregation Contract to be entered into by a SPV:

- (i) is in form and substance satisfactory for the Agent (acting upon the instructions of the Majority Lenders), having regard, *inter alia*, to the criteria set forth in the " Eligible Aggregation Contract" definition, it being understood that;
  - (a) the Lenders shall approve or reject (such rejection being accompanied by a written explanation of the grounds for rejection and provided always that, for the avoidance of doubt, any rejection which is not accompanied by a written explanation of the grounds for rejection shall be considered as an absence of response) any draft Eligible Aggregation Contract submitted by the Borrower prior to its execution no later than 10 Business Days following receipt of such draft together with a satisfactory review of such draft by the Lenders' Legal Adviser and Lenders' Technical Adviser; and
  - (b) in the absence of express consent or refusal addressed by the Agent to the Borrower within the 10 Business Days period referred to above, the consent of the Majority Lenders shall be deemed given within 3 Business Days following the date on which:
    - (I) the Borrower has contacted directly each Lender to enquire as to the reasons for lack of express consent or refusal: and
    - (II) no express consent or refusal (such refusal being accompanied by a written explanation of the grounds for refusal and provided always that, for the avoidance of doubt, any refusal which is not accompanied by a written

explanation of the grounds for refusal shall be considered as an absence of response) has been addressed by the Agent to the Borrower within such additional 3 Business Days period; and

- (ii) is subject to Security in favour of the Borrower in terms and substance equivalent to the Security referred to in paragraph (b) of the definition of "Global Security Agreement (SPVs)" no later than five Business Days following its execution date.

**24.21.5** The Borrower shall procure that each Eligible Corporate PPA to be entered into by a SPV:

- (i) is in form and substance satisfactory for the Agent (acting upon the instructions of the Majority Lenders), having regard, *inter alia*, to the criteria set forth in the "Eligible Corporate PPA" definition, it being understood that:
  - (a) the Lenders shall approve or reject (such rejection being accompanied by a written explanation of the grounds for rejection and provided always that, for the avoidance of doubt, any rejection which is not accompanied by a written explanation of the grounds for rejection shall be considered as an absence of response) any draft Eligible Corporate PPA submitted by the Borrower prior to its execution no later than 15 Business Days following receipt of such draft together with a satisfactory review of such draft by the Lenders' Legal Adviser and Lenders' Technical Adviser; and
  - (b) in the absence of express consent or refusal addressed by the Agent to the Borrower within the 15 Business Days period referred to above, the consent of the Majority Lenders shall be deemed given within 3 Business Days following the date on which:
    - (I) the Borrower has contacted directly each Lender to enquire as to the reasons for lack of express consent or refusal; and
    - (II) no express consent or refusal (such refusal being accompanied by a written explanation of the grounds for refusal and provided always that, for the avoidance of doubt, any refusal which is not accompanied by a written explanation of the grounds for refusal shall be considered as an absence of response) has been addressed by the Agent to the Borrower within such additional 3 Business Days period; and
- (ii) is subject to Security in favour of the Borrower in terms and substance equivalent to the Security referred to in paragraph (b) of the definition of "Global Security Agreement (SPVs)" no later than five Business Days following its execution date.

**24.21.6** The Borrower shall procure that any cash collateral amounts (*gages-espèce*) constituted by an Offtaker in relation to an Eligible Corporate PPA entered into with an SPV is credited on such SPV's SPV Bank Account.

24.21.7 The Borrower shall not, and shall ensure that none of the other members of the Group permit(s) or agree(s) to the assignment or transfer of the Main Project Documents to which they are a Party, or any rights, obligations or benefit thereunder, save for Permitted Disposals.

## 24.22 Operation and Maintenance

24.22.1 The Borrower shall procure that the Power Plants are operated, maintained and decommissioned in all material respects in accordance with the standards of a Reasonable and Prudent Operator, the manufacturer's specifications, the Main Authorisations, the Main Project Documents and applicable law.

24.22.2 The Borrower shall procure that:

- (i) a LTSA (or, as the case may be, an O&M Agreement is in place for each Power Plant at all times;
- (ii) the terms and conditions of any O&M Agreement or LTSA entered into after the Signing Date have been approved by the Agent (acting after having consulted the Lenders' Technical Adviser); and
- (iii) any O&M Agreement or LTSA entered into after the Signing Date is entered into with either Boralex SAS, the relevant turbine manufacturer, any service provider already acting as service provider in any Boralex Financing Group or with any other service provider approved by the Agent (acting after having consulted the Lenders' Technical Adviser).

## 24.23 Expenditures

The Borrower shall not incur any operating expenditure other than:

24.23.1 expenditure provided for in the most recent Operating Budget subject to a deviation of not more than 10 per cent. from the most recent Operating Budget;

24.23.2 those permitted by the Lenders or imposed by any regulation;

24.23.3 those required to repair any damages to a Power Plant that resulted in the payment of property damage insurance proceeds; or

24.23.4 required for the purpose of any emergency or safety measure.

## 24.24 New agreements

24.24.1 The Borrower shall not enter into, and shall procure that no other member of the Group enters into, any agreement, transaction or other arrangement except:

- (i) for the Transaction Documents;
- (ii) subject to Clause 24.24.2, for any agreements expressly permitted by the Finance Documents or expressly required under the Project Documents;
- (iii) subject to Clause 24.25.1, for any agreement provided that it does not result at any time in the most recent Operating Budget being exceeded by more than 10 per cent. in aggregate for all new document;
- (iv) with the prior written consent of the Agent (acting on the instructions of the Majority Lenders).

**24.24.2** The Borrower shall not enter into, and shall ensure that none of the other members of the Group enters into, any agreement, transaction or other arrangement with or for the benefit of any other person other than in the ordinary course of business, for full market value and on arm's length terms.

## **24.25 Access**

The Borrower shall procure that, subject to reasonable prior notice from the Agent or the Lenders' Technical Adviser, representatives of the Agent, the Lenders and the Lenders' Technical Adviser are, where that access is necessary in order for them to perform their duties, subject to the Borrowers' confidentiality obligations related to commercially sensitive information:

**24.25.1** given such reasonable access to the Site by the SPVs during normal work hours and to any information as the Agent and the Lenders' representatives and the Lenders' Technical Adviser would require to reasonably fulfil their respective roles; and

**24.25.2** entitled to inspect the Borrower's and each SPV's premises, assets, books and records.

## **24.26 Hedging Strategy**

**24.26.1** As from the Closing Date, the Borrower shall ensure that at any time interest rate Hedging Transactions are entered into, on terms and conditions satisfactory to the Agent, with the Hedging Banks for at least 80 per cent of the outstanding principal amount under the Refinancing Tranche Loan and any Incremental Facility Loans until the Final Maturity Date of the Refinancing Facility.

**24.26.2** Following any voluntary or mandatory prepayment, the Borrower in the conditions set forth in the Intercreditor Agreement and the relevant Hedging Agreement(s) shall close out within 10 Business Days a portion of the Hedging Transactions if the hedged notional amount exceeds 110 per cent of the outstanding amount under the Refinancing Tranche Loan and any Incremental Facility Loans.

**24.26.3** Always subject to Clauses 24.26.1 and 24.26.2, the Borrower shall have at all times the ability to either (i) enter into any additional Hedging Transaction with the Hedging Banks as long as it does not result in an Over-Hedging Event or (ii) to close out, on a pro rata basis between the Hedging Banks, a portion of the Hedging Transactions as long as the notional amount of the Hedging Transactions is at least 80 per cent.

## **24.27 Insurances**

### **24.27.1 General requirements**

The Borrower shall procure that each SPV:

- (i) effects and maintains, or causes to be effected and maintained, its Insurances in accordance with the insurance requirements set out in Part A (*Insurance programme*) of Schedule 6 (*Insurance*) and any other insurance as would be effected and maintained by a Reasonable and Prudent Operator of similar type and scale and use all reasonable endeavours to procure that nothing is done to reduce or avoid liability under the relevant insurance policies, taking into consideration: (a) market availability in

respect of risks, liabilities and amounts of insurance; (b) the Reasonable and Prudent Operator standard; and (c) the cost of such additional insurance in the context of the Project;

- (ii) names the Finance Parties as beneficiaries in each Insurance policy taken out (except in case of third party liability insurance) and, to the extent required by the Finance Parties, as additional insured (*assuré additionnel*);
- (iii) procures that every insurance broker who effects any Insurance delivers a letter to the Agent in the form set out in Part B (*Form of Insurance Broker's Letter of Undertaking*) of Schedule 6 (*Insurance*) or otherwise in form and substance acceptable to the Agent in relation to each of the Insurances;
- (iv) complies with the material requirements of insurers in relation to any Insurance; and
- (v) on the Closing Date and on each date on which each Insurance is taken out or renewed in accordance with the terms of this Agreement, procures that the amount of the deductible per event applicable to each such Insurance does not exceed an amount equal to the Base Deductible or, if applicable, the Flexed Deductible, where:

(a) **"Base Deductible"** means:

- (I) EUR 100,000; or
- (II) if the aggregate installed capacity of the Power Plants becomes, at any time, lower than 200 MW, an amount in EUR equal to (A) the amount recommended by the Lenders' Insurance Adviser in a special report delivered (with reliance) to the Agent no later than 10 Business Days from the Agent's request (provided such request is made no later than 30 days after the Agent became aware of such reduction in installed capacity of the Power Plants), or (B) to the extent such special report is unsatisfactory to the Agent, is inconclusive or is not delivered on time (with reliance) to the Agent, the equivalent in EUR of 100,000 Canadian dollars; and

(b) **"Flexed Deductible"** means an amount in EUR determined by the Borrower at any time up to a maximum amount of EUR 250,000 per event, provided always that the Borrower shall only be entitled to exercise its discretion and determine a Flexed Deductible which is higher than the then-applicable Base Deductible:

- (I) provided that no Change of Control of the Borrower has occurred;
- (II) on a yearly basis (i.e. prior to taking out or renewing the Insurances in accordance with this Agreement); and
- (III) if it has, at the latest 30 days before the increase of any insurance deductible becomes effective, procured the funding of the Insurance Reserve Account (and/or procured the issuance of Insurance Reserve LCs in favour of the Agent)

for an aggregate amount equal to the Insurance Reserve Amount,

and provided further that, if the aggregate of the amounts standing to the credit of the Insurance Reserve Account and the amount covered by any outstanding Insurance Reserve LCs exceed the Insurance Reserve Amount, then the Borrower shall be entitled to transfer amounts standing to the credit of the Insurance Reserve Account to the Operating Account in accordance with Clause 25.2.7(ii) (*Withdrawals from the Insurance Reserve Account*) and/or request the Agent to cancel any outstanding Insurance Reserve LCs (up to the aggregate amount needed to ensure continued compliance with the Borrower's commitments in respect of the Insurance Reserve Amount).

#### **24.27.2 Insurance Company**

In the event that an Insurance Company is downgraded below the minimum rating mentioned in the definition of "Insurance Company" (or any rating previously agreed by the Agent acting reasonably and on the instructions of the Majority Lenders), the Borrower and the Agent shall consult with each other in order to define a course of action and in any case the Borrower shall ensure that such insurance company is replaced by an insurance company being rated at least the minimum rating mentioned in the definition of "Insurance Company" on the next renewal date of the concerned insurance policy.

#### **24.27.3 Information**

- (i) The Borrower shall provide the Agent with:
  - (a) promptly upon receipt, copies of all Insurances effected in accordance with this Agreement (to the extent received by it or the relevant member of the Group from time to time);
  - (b) within 30 days after the inception or renewal date of an Insurance, a certificate in such form as is reasonably acceptable to the Agent, confirming that (I) such Insurances remain in force and (II) at the request of the Agent, evidence that all the premia due thereunder have been paid; and
  - (c) within 90 Business Days following the 31 December of each year, a certificate confirming that:
    - (I) all Insurances required to be in place under this Agreement as at the date of such certificate are in full force and effect;
    - (II) the Insurances incepted or renewed during the previous civil year remain in force; and
    - (III) the premia due thereunder have been paid.
- (ii) If a new Insurance is to be effected or if the Borrower or any relevant member of the Group proposes to either renew an Insurance with a modification of its scope (including changes to any endorsements or deductibles) or otherwise replace any Insurance, the Borrower shall notify

such proposal to the Agent together with the recommendation from the Lenders' Insurance Adviser at least one Month prior to such renewal or replacement or new Insurance being effected. Any proposal to renew with a modification on the scope of the Insurances or to replace any Insurance shall include details of any change to the cover, underwriting information on information and shall be approved in advance by the Agent, such consent not to be unreasonably withheld or delayed and, without prejudice to the Borrower's other obligations under this Clause 24.27, to be deemed to be given prior to the expiry of the existing Insurance (provided such replacement Insurance is on substantially the same terms as the Insurance it replaces and is otherwise in accordance with the requirements of this Agreement).

- (iii) Promptly on request, the Borrower shall provide the Agent with an insurance certificate and a report on claims for payment under the Insurance for individual damages of more than EUR 100,000.
- (iv) The Borrower shall:
  - (a) provide evidence, at the request of and to the satisfaction of the Agent, that each SPV is in compliance with the requirements of Schedule 6 (*Insurance*), and shall promptly notify the Agent if it, any SPV or any of their agents becomes aware that in any respect any of them have ceased or may cease to be in full compliance with such requirements;
  - (b) promptly upon it, any SPV becoming aware of any facts or circumstances which, if not disclosed to the relevant insurers, may adversely affect the nature or extent of the coverage to be provided under the Insurances, notify the Agent of such facts or circumstances;
  - (c) give at least one Month prior written notice to the Agent before the cancellation of any Insurance or any alteration thereto that has the effect of reducing the amount of indemnities eventually due thereunder if such cancellation or alteration results from a request of the Borrower and, in all other cases, promptly notify the Agent upon becoming aware of the same;
  - (d) promptly notify the Agent of any non-payment or breach of premium payment conditions and to notify the Agent of any non-renewal or refusal to insure the risks to be covered by any Insurance; and
  - (e) give to the Agent any other information that the Agent may reasonably request as to the Insurances effected or to be effected pursuant to Schedule 6 (*Insurance*).
- (v) The Borrower shall notify the Agent as soon as:
  - (a) it or an SPV becomes aware of any occurrence which could reasonably be expected to entitle it or an SPV to submit a claim relating to any of the Insurances for an amount in excess of EUR 100,000 (regardless of applicable deductibles) in respect of any single incident or in respect of any incident where the aggregate of

all claims under such Insurances in any Financial Year of the Borrower is (or could as a result of such a claim be reasonably expected to be) in excess of EUR 100,000 (regardless of applicable deductibles); and

- (b) an SPV makes a claim or receives Property Damage Insurance Proceeds for an amount in excess of EUR 100,000, and it shall, together with such notice, where the relevant insurance claim is for an amount in excess of EUR 200,000, provide the Agent with an explanatory note and the description of any contemplated measures in order to cure, remedy or mitigate the impact of such event on the Project.

#### **24.27.4 Payment of premia**

The Borrower shall procure to, and shall procure that each SPV procures to, pay all premia and other sums payable in respect of all Insurances in a timely manner and comply with all warranties or other requirements relating thereto in accordance with the terms of such Insurances and not to do anything that might invalidate a claim. Without prejudice to the foregoing, if the Borrower, an SPV does not pay a premium or any other amount due or claimed to be due in respect of any of the Insurances taken out by such person, the Lenders acting through the Agent shall be entitled (but not obliged) to make such payment on behalf of such person. The Borrower shall procure that the Lenders and the Agent are indemnified, on demand of the Agent, in respect of such payment and all their costs and expenses in connection therewith, including interest on such payment at the default interest rate defined in Clause 10.3 (*Default interest*) from the date of expenditure by the Lenders and/or the Agent up to the date they are reimbursed.

#### **24.27.5 Other Insurances**

Without prejudice to the other provisions of this Clause 24.27, the Borrower shall effect and maintain, and shall procure that each SPV effects and maintains, throughout the period of this Agreement any insurance which each such person is required to maintain by any applicable law.

#### **24.27.6 Unavailability of Insurance**

If the Insurances can no longer be obtained or renewed on reasonable commercial terms (including cost) in the commercial insurance market in accordance with the insurance requirements set out in Schedule 6 (*Insurance*) and any other insurance as would be effected and maintained by a Reasonable and Prudent Operator of similar type and scale, the Agent shall review any alternative proposal made by the Borrower to determine (acting upon the instructions of the Majority Lenders) whether such alternative proposal is acceptable to the Finance Parties.

### **24.28 Net equity**

- 24.28.1** If the net equity of any member of the Group other than the Borrower is or has become less than half of its share capital (*capital social*), the Borrower undertakes to, and shall procure that the relevant corporate body of the concerned member of the Group decides not to, dissolve the relevant member of the Group.

**24.28.2** The Borrower shall, immediately after the filing of a petition by any interested party to dissolve any other member of the Group on the grounds that the net equity of such member of the Group is or has become less than half of its share capital, set off or procure the set-off of a portion of the Intercompany Loans then outstanding, against the subscription price of a share capital increase by itself or the relevant member of the Group in an amount sufficient to restore the relevant member of the Group's net equity (*capitaux propres*) to a level at least equal to half its share capital (*capital social*), provided always that, in respect of the SPVs, such set-off does not result in a violation of the undertakings of the Borrower set forth in Clause 24.15 (*Intercompany Loans*).

## **24.29 Anti-Corruption Regulations**

**24.29.1** The Borrower shall not, and shall procure that no member of the Group shall, directly or indirectly, use the proceeds of the Facilities (or lend, contribute or otherwise make available such proceeds to any person) for any purpose which would breach of any applicable Anti-Corruption Regulations.

**24.29.2** The Borrower shall (and shall ensure that each SPV will):

- (i) conduct its businesses in compliance with applicable Anti-Corruption Regulations; and
- (ii) maintain policies and procedures designed to promote and achieve compliance with such laws and regulations.

## **24.30 Sanctions**

**24.30.1** The Borrower shall procure that

- (i) no person that is a Sanctioned Person will have any legal or beneficial interest in any funds repaid or remitted by the Borrower to any Finance Party in connection with the Facilities,
- (ii) it shall not, directly or indirectly, use any of the proceeds of the loan or lend, contribute or otherwise make available such proceeds to any person to finance or facilitate any activity or transaction with a Sanctioned Person or in a Sanctioned Country or in any other manner that would cause any party hereto to be in breach of any Sanctions, and

**24.30.2** it shall not use any revenue or benefit derived directly or indirectly from any activity or dealing with a Sanctioned Person or in a Sanctioned Country for the purpose of discharging amounts owing to any Finance Party in respect of the Facilities.

**24.30.3** The Borrower shall, and shall procure that each member of the Group will, promptly upon becoming aware of the same, supply to the Agent details of any claim, action, suit, proceedings or investigation with respect to Sanctions against it or each other member of the Group.

**24.30.4** The Borrower shall (and shall procure that each member of the Group will) comply with Sanctions and shall maintain in effect and enforce policies and procedures designed to ensure compliance with Sanctions.

**24.30.5** This Clause 24.29 shall not apply to any person if and to the extent that it is or would be unenforceable by or in respect of that person by reason of breach of any applicable Blocking Law and/or any similar blocking law or regulation.

### **24.31 Fight against money laundering and financing of terrorism**

**24.31.1** The Borrower undertakes to comply with all Fight Against Money Laundering and Financing of Terrorism Regulations.

**24.31.2** The Borrower shall not, and shall procure that no member of the Group shall, directly or indirectly, use (or lend, contribute or otherwise make available the proceeds of) the Facilities in a way that would contravene any Fight Against Money Laundering and Financing of Terrorism Regulations.

### **24.32 Existing Facilities**

The Borrower shall procure that all Existing Facilities incurred by the relevant members of the Group are repaid in full on the Closing Date.

### **24.33 Additional Merchant Reserve Amount**

**24.33.1** No later than three Months following the end of each Financial Year and for the first time in respect of the Financial Year ending on 31 December 2022, the Borrower shall procure that the most recent Pöyry Wholesale Electricity Price Projections for France (solar and onshore wind capture price), from the Merchant Risk Adviser, analysing and updating the power merchant capture price forecasts for the outstanding duration of Refinancing Facility (based on the Base Case scenario) is delivered to the Agent (the "**AMRA Report**").

**24.33.2** The Borrower shall deliver to the Agent, together with the AMRA Report, a revised Schedule 12 (*Merchant Reserve Amount*), Part B prepared on the basis of such AMRA Report with a view to ensure that the latest Forecast, when taking into account the revised Additional Merchant Reserve Amount determined pursuant to such revised Schedule 12 (*Merchant Reserve Amount*), Part B, together with the Merchant Reserve Amount, shows:

- (i) a DSCR computed on a statutory basis (for the purpose of this test, the CFADS include the release of the initial Merchant Reserve Amount) of 1.00x is met on each Repayment Date until the Repayment Date falling 3 years before the Cash Shortfall Date; and
- (ii) a DSCR computed on a statutory basis (for the purpose of this test, the CFADS include the release of the initial Merchant Reserve Amount) of 1.05x is met on each subsequent Repayment Date until the Final Maturity Date.

**24.33.3** Within 30 Business Days of receipt of any revised Additional Merchant Reserve Amount, the Agent shall notify the Borrower whether it approves such revised Additional Merchant Reserve Amount. The Agent will be deemed to have given its consent 30 Business Days of receipt of any revised Additional Merchant Reserve Amount unless consent is expressly refused by the Agent within that time.

**24.33.4** If the Agent refuses to approve or disagrees with the revised Additional Merchant Reserve Amount, then:

- (i) the Agent shall enter into discussions with the Borrower on the grounds for such disapproval;

- (ii) the then existing Additional Merchant Reserve Amount shall continue in effect without any amendment (subject to any appropriate rebasing for inflation); and
- (iii) the Borrower shall within 30 Business Days of Agent's refusal or disagreement submit a further revised Additional Merchant Reserve Amount to the Agent for approval (acting on behalf of the Majority Lenders) in the manner contemplated by this Clause 24.33.4.

**24.33.5** Upon the Agent notifying, or not notifying, the Borrower under Clause 24.33.3 above that the relevant revised Additional Merchant Reserve Amount has been approved, or not providing documented grounds or information supporting its disagreement to a proposed revised Additional Merchant Reserve Amount, the relevant revised Additional Merchant Reserve Amount shall become the "Additional Merchant Reserve Amount".

**24.33.6** The Agent and the Borrower shall negotiate in good faith any changes which are not approved in accordance with Clause 24.33. If the changes are agreed, such changes shall form part of the relevant Additional Merchant Reserve Amount from the date they are agreed.

**24.33.7** If the Agent and the Borrower do not agree to the changes, then either party may refer the dispute to an Expert for determination pursuant to Clause 21.4.2 (*Submissions to the Expert*). The Expert shall be instructed by the parties to assess the revised Additional Merchant Reserve Amount in view of the latest report of the Merchant Risk Adviser. Following the Expert's determination, the Additional Merchant Reserve Amount shall be revised if and to the extent provided for by such determination and such changes (if any) shall form part of the revised Additional Merchant Reserve Amount from the date of the Expert's determination.

#### **24.34 Not used**

#### **24.35 Noise and Environmental Curtailment Measures**

The Borrower shall procure that each Noise and Environmental Curtailment Measures with respect to the following Power Plants:

**24.35.1** the Power Plant Waiting for Noise or Environmental Curtailment Measures;

**24.35.2** each Power Plant financed or refinanced through an Incremental Facility Loan (provided that the Noise and Environmental Curtailment Measures relating to such Power Plant have not been determined on the date on which the relevant Incremental Facility Initial Notice is delivered),

is completed no later than 24 Months following the Commissioning Date of such Power Plants.

#### **24.36 Punch List Items**

The Borrower shall procure that the punch list items listed in Schedule 17 (*Punch List Items*) are satisfied no later than the date set out next to each such punch list item in Schedule 17 (*Punch List Items*).

#### **24.37 Not Used**

#### **24.38 Conditions subsequent**

- 24.38.1** The Borrower shall use its best efforts to procure that SPV SPA provides the Agent with fully executed copies of the initial grid access agreements (*contrats d'accès au réseau*) for Pernois 1 and Pernois 3, no later than the date falling one year after the Closing Date.
- 24.38.2** The Borrower shall do its best efforts to provide the Agent, no later than 6 months after the Closing Date, with a certified true copy of the notarized easement agreement providing for overhanging rights over plot of land ZB 38 and benefitting to wind turbine E8 of Power Plant SFR, duly executed by the relevant landowners of such plot of land.
- 24.38.3** The Borrower shall procure that the Lenders' Technical Adviser confirms, no later than 30 days after the Closing Date, the contents of schedule 2 (*Description des Équipements*) of the Pledge over Moveable Assets Agreement and, in case of discrepancies, the Borrower shall enter into (and shall procure that each SPV enters into) an amendment agreement to the Pledge over Moveable Assets Agreement in order to rectify any such discrepancies.

## **25 Bank Accounts**

### **25.1 General account provisions**

#### **25.1.1 Access to books and records**

The Borrower:

- (i) irrevocably grants to the Agent access to review the books and records of its Bank Accounts (to the extent necessary) and irrevocably waives any right of confidentiality or to banking secrecy (*secret bancaire*) which may exist in respect of such books and records to allow disclosure of such books and records to each of the Finance Parties (including any successor to the Account Bank) or any information relating to, or any event affecting, the Bank Accounts (including any attachment (*saisie*) or enforcement proceeding);
- (ii) irrevocably authorises and instructs the Account Bank to give to the Agent unrestricted access to review such books and records held by the Account Bank or to reveal to the Agent any such information or event; and
- (iii) shall procure that each members of the Group grants the same rights and authorisations and gives the same instructions to the Agent as those granted or given by it pursuant to paragraphs (i) and (ii) above.

#### **25.1.2 Operating procedures**

- (i) The Account Bank shall maintain each Bank Account in accordance with the general terms and conditions applicable to the Bank Accounts and the Account Bank's normal practices, provided that, if there is any conflict between any provision of the Finance Documents and any such mandate (or the general terms and conditions applicable to the Bank Accounts or the Account Bank's normal practices), the provisions of the Finance Documents shall prevail except where to comply with such provisions would be in breach of any applicable law.

- (ii) The Borrower must pay to the Account Bank transaction charges and other fees in the manner agreed between it and the Account Bank.
- (iii) The Account Bank needs not make available to the Borrower any sum which the Account Bank is expecting to receive for the account of the Borrower, until it has been able to establish that it has in fact received that sum.

### 25.1.3 Acknowledgement of security and waiver

The Account Bank acknowledges that:

- (i) each Borrower Bank Account (except the Distribution Account) shall be pledged in favour of the Finance Parties and each other Bank Account shall be pledged in favour of the Borrower; and
- (ii) except for the transaction charges and fees owing to it in relation to the operation of the Bank Accounts opened in its books, it is not entitled to, and undertakes not to, claim or exercise any lien, right of set-off, right to combine or consolidate accounts or sub-accounts or any other right, remedy or security over, against or with respect to any such Bank Account or monies standing to the credit of any such Bank Account or in the course of being credited to it without the consent of the Agent and the relevant Finance Parties, unless legally bound to do so.

### 25.1.4 Currency

- (i) Each Bank Account shall be denominated in euro; and
- (ii) if the Borrower, any member of the Group or the Account Bank receives any amount for crediting to a Bank Account in a currency other than euro, it must convert that amount into euro at the Account Bank's prevailing rate for comparable transactions and in accordance with the Account Bank's general operating conditions of the current account. The amount must be paid into the relevant Bank Account immediately after it is converted into euro.

## 25.2 Deposits and withdrawals from Bank Accounts

### 25.2.1 Operating Account

#### (i) Credits to the Operating Account

The Borrower will procure the payment into the Operating Account of:

- (a) the proceeds of any equity contributed to the Borrower;
- (b) the proceeds of any advance it receives under any Facility (subject to payments made pursuant to the funds flow delivered to the Agent as condition precedent to be fulfilled on the Signing Date);
- (c) Gross Revenues including all Insurance Proceeds payable to or received by the Borrower or received from the SPVs pursuant to Clause 25.2.10 (*Other members of the Group bank accounts*) other than Insurance Proceeds in respect of third party liability claims payable directly to the third party unless applied in reimbursement of the Borrower or an SPV and including interest, investment income,

profits and realised gains received by the Borrower in the relevant period;

- (d) amounts paid by a Hedging Bank under a Hedging Transaction;
- (e) any amount received by the Borrower from any of the members of the Group in connection with the repayment or the prepayment of the relevant Intercompany Loan or with the making of or repayment of advances under the Cash Pooling Agreement;
- (f) any amount debited from the Merchant Reserve Account in accordance with Clause 25.2.3(ii) (*Withdrawals from the Merchant Reserve Account*);
- (g) any amount debited from the Additional Merchant Reserve Account in accordance with Clause 25.2.4(ii) (*Withdrawals from the Additional Merchant Reserve Account*);
- (h) any amount debited from the Partial Lock-up Account in accordance with provisions of Clause 25.2.6(ii) (*Withdrawals from the Partial Lock-up Account*);
- (i) any amount debited from the DSRA (Incremental Facility) in accordance with provisions of Clause 25.2.9(ii) (*Withdrawals from the Partial Lock-up Account*); and
- (j) any other amounts to be transferred to the Borrower's Operating Account under this Agreement or which are received by the Borrower and are not payable into another Bank Account under this Agreement.

(ii) **Withdrawals from the Operating Account**

- (a) The Borrower shall only withdraw amounts from the Operating Account for the following purposes, in the following order of priority (the "**Cash Waterfall**"):
  - (I) **first**, to pay the Operating Costs, including, for the avoidance of doubt, to make an Intercompany Loan to a member of the Group or an advance to a member of the Group under the Cash Pooling Agreement for the purpose of paying Operating Costs due by that member of the Group (to the extent not otherwise paid by that company);
  - (II) **second**, to pay any costs (other than those mentioned below), expenses and fees (including agency fees) due and payable by it to the Finance Parties under the relevant Finance Documents;
  - (III) **third**, to pay any default interest due and payable by it to the Finance Parties (including the Hedging Banks) in accordance with the provisions of this Agreement or the relevant Hedging Agreement;
  - (IV) **fourth**, to pay any interest due and payable under the Facilities (including for the avoidance of doubt the DSRF and

the Incremental DSRF), as well as scheduled payments under the Hedging Agreements which have not been terminated or closed out and any amount of withholding tax or other Taxes due and payable in respect of these amounts;

- (V) **fifth**, to pay any scheduled principal instalment due and payable in respect of the Facilities (other than the DSRF and the Incremental DSRF), and any amount to be paid in relation to the termination of a Hedging Agreement (or any transaction thereunder) due and payable;
- (VI) **sixth**, to pay any other amount due and payable by it to the Finance Parties under the Finance Documents other than any amount under the DSRF and the Incremental DSRF;
- (VII) **seventh**, within the limit of the balance standing to the credit of the Operating Account, to repay any amount in principal due under the DSRF and the Incremental DSRF, if applicable;
- (VIII) **eighth**, to pay any amount required to be applied in mandatory prepayments under this Agreement (other than pursuant to Clause 8.12.1 (*Cash Sweep – Noise and environmental curtailment (Refinancing Facility)*) and Clause 8.13.1 (*Cash Sweep – Noise and environmental curtailment (Incremental Facility)*)), together with any Break Costs and any other amount due and payable in relation to the termination of a Hedging Agreement in relation to such mandatory prepayment;
- (IX) **ninth** – not used;
- (X) **tenth**, to fund the Merchant Reserve Account in accordance with the terms of this Agreement;
- (XI) **eleventh**, to fund the Additional Merchant Reserve Account in accordance with the terms of this Agreement;
- (XII) **twelfth**, to pay any amount required to be applied in mandatory prepayment pursuant to 8.12.1 (*Cash Sweep – Noise and environmental curtailment (Refinancing Facility)*) and 8.13.1 (*Cash Sweep – Noise and environmental curtailment (Incremental Facility)*)), together with any Break Costs and any other amount due and payable in relation to the termination of a Hedging Agreement in relation to such mandatory prepayment;
- (XIII) **thirteenth**, to fund the DSRA (Incremental Facility) in accordance with the terms of this Agreement;
- (XIV) **fourteenth**, to fund any voluntary prepayments and any Break Costs due and payable in relation to such voluntary prepayments and any other amount due and payable in

relation to the termination of a Hedging Agreement in relation to such voluntary prepayments;

(XV) **fifteenth**, to fund the Lock-up Account in accordance with the terms of this Agreement;

(XVI) **sixteenth**, to fund the Partial Lock-up Account in accordance with the terms of this Agreement;

(XVII) **seventeenth**, to fund the Insurance Reserve Account in accordance with the terms of this Agreement;

(XVIII) **eighteenth**, subject to compliance with the provisions of Clause 24.18 (*Restrictions on Distribution*), to transfer Cash Available for Distribution to the Distribution Account.

(b) The Cash Waterfall will not apply to:

(I) the distributions of funds by the Borrower to the Shareholders referred to in Clause 24.18.6; and

(II) any payments as referred to in the funds flow signed by the Borrower and delivered to the Agent as condition precedent to be fulfilled on the Closing Date.

#### 25.2.2 Distribution Account

(i) **Credits to the Distribution Account**

The Borrower may pay into the Distribution Account:

(a) any amount received from its Operating Account in accordance with provisions of Clause 25.2.1(ii) (*Withdrawals from the Operating Account*) or from its Lock-up Account in accordance with provisions of Clause 25.2.5(ii) (*Withdrawals from the Lock-up Account*); and

(b) the amounts referred to in Clause 24.18.6(ii).

(ii) **Withdrawals from the Distribution Account**

The Borrower may freely withdraw amounts standing to the credit of the Distribution Account at any time and apply those amounts in any manner it chooses, including to make shareholder loans to a subsidiary which is not a member of the Group.

#### 25.2.3 Merchant Reserve Account

(i) **Credits to the Merchant Reserve Account**

(a) The Borrower shall, on each Interest Payment Date, transfer from the Operating Account to the Merchant Reserve Account the lesser of:

(I) the difference between (x) the "Aggregated Merchant Reserve Amount" set out in Part A (*Merchant Reserve Amount*) of Schedule 12 (*Merchant Reserve Amount*) for such Interest Payment Date and (y) the aggregate of all amounts credited by the Borrower to the Merchant Reserve Account up to such Interest Payment Date (excluded); and

(II) the amount standing to the credit of the Operating Account after having made all payments of a higher priority pursuant to the Cash Waterfall.

(b) Except as otherwise provided for in the Security Documents, the Borrower shall procure the payment into the Merchant Reserve Account of the proceeds of the realisation, sale or revenues (*fruits et produits*) arising out of Authorised Investments made from amounts standing to the credit of the Merchant Reserve Account (excluding any interest, investment income, profits and realised gains, which shall be credited to the Operating Account pursuant to Clause 25.2.1(i)(c)).

(ii) **Withdrawals from the Merchant Reserve Account**

The Borrower shall be allowed to debit amounts standing to the credit of the Merchant Reserve Account:

(a) in the event of a shortfall in funds necessary for the purpose of meeting Debt Service Costs (without taking into consideration any Available Commitment under the DSRF or the Incremental DSRF or amounts available under the Additional Merchant Reserve Account) on a Repayment Date as from the Cash Shortfall Date up to a maximum amount equal to the sum of (I) the reserved cash amount corresponding to the relevant Repayment Date as indicated in Schedule 12 (*Merchant Reserve Amount*) Part A (as eventually updated in accordance with the terms of this Agreement) and (II) the reserved cash amounts corresponding to all previous Repayment Dates as indicated in Schedule 12 (*Merchant Reserve Amount*) that would not otherwise have been released, Part A (as eventually updated in accordance with the terms of this Agreement);

(b) if, on a Repayment Date:

(I) the DSCR is at least equal to the DSCR for such Repayment Date in the latest Forecast (using the merchant electricity price Assumption as it appeared in the Base Case as at the Closing Date);

(II) the cumulated amounts credited by the Borrower to the Merchant Reserve Account is at least equal to the Aggregated Merchant Reserve Amount applicable on such Repayment Date, to credit the Operating Account up to the amount equal to the difference between the Cash Shortfall Amount applicable to such Repayment Date and any amount debited from the Merchant Reserve Account on such Repayment Date to pay Debt Service Costs;

(III) the Additional Merchant Reserve Account does not need to be funded in accordance with Clause 24.33 (*Additional Merchant Reserve Amount*); and

(c) to purchase Authorised Investments to be credited into the Authorised Investments Merchant Reserve Account.

If an Eligible Corporate PPA is entered into between an SPV and any entity, with respect to a Power Plant whose PPA has been terminated at its scheduled maturity, the Parties shall negotiate in good faith a revision of the Merchant Reserve Amount to take into consideration of the existence of the revenues generated by such Eligible Corporate PPA.

(iii) **Authorised Investments**

The Borrower may not apply amounts standing to the credit of its Merchant Reserve Account in the acquisition of any investments other than Authorised Investments. Any Authorised Investments purchased or made by the Borrower out of proceeds of the Merchant Reserve Account shall be credited into the Authorised Investments Merchant Reserve Account.

**25.2.4 Additional Merchant Reserve Account**

(i) **Credits to the Additional Merchant Reserve Account**

(a) The Borrower shall, on each Interest Payment Date, transfer from the Operating Account to the Additional Merchant Reserve Account the lesser of:

(I) the difference between (x) the "Aggregated Merchant Reserve Amount" set out in Part B (*Additional Merchant Reserve Amount*) of Schedule 12 (*Merchant Reserve Amount*) for such Interest Payment Date and (y) the aggregate of all amounts credited by the Borrower to the Additional Merchant Reserve Account up to such Interest Payment Date (excluded); and

(II) the amount standing to the credit of the Operating Account having made all payments of a higher priority pursuant to the Cash Waterfall.

(b) Except as otherwise provided for in the Security Documents, the Borrower shall procure the payment into the Additional Merchant Reserve Account of the proceeds of the realisation, sale or revenues (*fruits et produits*) arising out of Authorised Investments made from amounts standing to the credit of the Additional Merchant Reserve Account (excluding any interest, investment income, profits and realised gains, which shall be credited to the Operating Account pursuant to Clause 25.2.1(i)(c)).

(ii) **Withdrawals from the Additional Merchant Reserve Account**

The Borrower shall be allowed to debit any amounts standing to the credit of the Additional Merchant Reserve Account:

(a) in the event of a shortfall in funds necessary for the purpose of meeting Debt Service Costs (without taking into consideration any Available Commitment under the DSRF or the Incremental DSRF) as from the Cash Shortfall Date up to a maximum amount equal to the sum of (I) the reserved cash amount corresponding to the relevant Repayment Date as indicated in Schedule 12 (*Merchant Reserve Amount*), Part B (as eventually updated in accordance with the terms

of this Agreement) and (II) the reserved cash amounts corresponding to all previous Repayment Dates as indicated in Schedule 12 (*Merchant Reserve Amount*) that would not have otherwise been released, Part B (as eventually updated in accordance with the terms of this Agreement);

(b) if, on the last Repayment Date of each Financial Year and provided that Schedule 12 (*Merchant Reserve Amount*), Part B has been updated for the first time in accordance with Clause 24.33 (*Additional Merchant Reserve Amount*) and such Schedule 12 (*Merchant Reserve Amount*), Part B (as updated) shows that no funding of the Additional Merchant Reserve Account will be required in future Repayment Dates:

(I) the DSCR is at least equal to the DSCR for such Repayment Date in the latest Forecast (using the merchant electricity price Assumption as it appeared in the Base Case as at the Closing Date);

(II) the cumulated amounts credited by the Borrower to the Additional Merchant Reserve Account is at least equal to the Aggregated Additional Merchant Reserve Amount applicable on such Repayment Date, to credit the Operating Account up to the amount equal to the difference between the Additional Cash Shortfall Amount applicable to such Repayment Date and any amount debited from the Additional Merchant Reserve Account on such Repayment Date to pay Debt Service Costs; and

(III) the Additional Merchant Reserve Account does not need to be funded on such Repayment Date or on in accordance with Clause 24.33 (*Additional Merchant Reserve Amount*);

(c) if, following a revision of the Additional Merchant Reserve Amount in accordance with Clause 24.33 (*Additional Merchant Reserve Amount*), the balance of the Additional Merchant Reserve Account is higher than the aggregate of each Additional Cash Shortfall Amount relating to Repayment Dates falling after such revision, to credit the Operating Account up to the amount equal to the difference between such balance and such aggregate Additional Cash Shortfall Amounts; and

(d) to purchase Authorised Investments to be credited into the Authorised Investments Additional Merchant Reserve Account.

(iii) **Authorised Investments**

The Borrower may not apply amounts standing to the credit of its Additional Merchant Reserve Account in the acquisition of any investments other than Authorised Investments. Any Authorised Investments purchased or made by the Borrower out of proceeds of the Additional Merchant Reserve Account shall be credited into the Authorised Investments Additional Merchant Reserve Account.

### 25.2.5 Lock-up Account

#### (i) Credits to the Lock-up Account

- (a) The Borrower shall procure the payment into the Lock-up Account of an amount equal to 100 per cent of the Cash Available for Distribution in accordance with Clause 24.18.3.
- (b) Except as otherwise provided for in the Security Documents, the Borrower shall procure the payment into the Lock-up Account of the proceeds of the realisation, sale or revenues (*fruits et produits*) arising out of Authorised Investments made from amounts standing to the credit of the Lock-up Account (excluding any interest, investment income, profits and realised gains, which shall be credited to the Operating Account pursuant to Clause 25.2.1(i)(c)).

#### (ii) Withdrawals from the Lock-up Account

On any given Calculation Date, the Borrower shall be allowed to transfer any amounts standing to the credit of the Lock-up Account:

- (a) to the credit of the Distribution Account to the extent that the Borrower complies with the provisions of Clause 24.18 (*Restrictions on Distribution*); or
- (b) as the case may be, towards the prepayment of the Facilities in accordance with Clause 8.8 (*Lock-up account*); or
- (c) to purchase Authorised Investments to be credited to the Authorised Investments Lock-up Account.

#### (iii) Authorised Investments

The Borrower may not apply amounts standing to the credit of its Lock-up Account in the acquisition of any investments other than Authorised Investments. Any Authorised Investments purchased or made by the Borrower out of proceeds of the Lock-up Account shall be credited into the Authorised Investments Lock-up Account.

### 25.2.6 Partial Lock-up Account

#### (i) Credits to the Partial Lock-up Account

- (a) The Borrower shall procure the payment into the Partial Lock-up Account of each Partial Lock-up Amount in accordance with Clause 24.18.5.
- (b) Except as otherwise provided for in the Security Documents, the Borrower shall procure the payment into the Partial Lock-up Account of the proceeds of the realisation, sale or revenues (*fruits et produits*) arising out of Authorised Investments made from amounts standing to the credit of the Partial Lock-up Account (excluding any interest, investment income, profits and realised gains, which shall be credited to the Operating Account pursuant to Clause 25.2.1(i)(c)).

#### (ii) Withdrawals from the Partial Lock-up Account

On any given Calculation Date, the Borrower shall be allowed to transfer a specific Partial Lock-up Amount standing to the credit of the Partial Lock-up Account:

- (a) to the credit of the Operating Account in accordance with Clause 24.18.5 to the extent the Partial Lock-up Event relating to such Partial Lock-up Amount is no longer continuing; or
- (b) as the case may be, towards the prepayment of the Facilities in accordance with Clause 8.9 (*Partial Lock-up Account*); or
- (c) to purchase Authorised Investments to be credited to the Authorised Investments Partial Lock-up Account.

(iii) **Authorised Investments**

The Borrower may not apply amounts standing to the credit of its Partial Lock-up Account in the acquisition of any investments other than Authorised Investments. Any Authorised Investments purchased or made by the Borrower out of proceeds of the Partial Lock-up Account shall be credited into the Authorised Investments Partial Lock-up Account.

**25.2.7 Insurance Reserve Account**

(i) **Credits to the Insurance Reserve Account**

- (a) The Borrower shall procure the payment into the Insurance Reserve Account of the Insurance Reserve Amount (up to the amount not covered by Insurance Reserve LCs) in accordance with Clause 24.27.1(v)(b)24.27.1(v)(b)(III), such amounts to originate (I) first, from Shareholder Loans or from amounts standing to the credit of the Distribution Account and (II) second, from excess cash generated by the Group and transferred to the Insurance Reserve Account in accordance with the Cash Waterfall.
- (b) Except as otherwise provided for in the Security Documents, the Borrower shall procure the payment into the Insurance Reserve Account of the proceeds of the realisation, sale or revenues (*fruits et produits*) arising out of Authorised Investments made from amounts standing to the credit of the Insurance Reserve Account (excluding any interest, investment income, profits and realised gains, which shall be credited to the Operating Account pursuant to Clause 25.2.1(i)(c)).

(ii) **Withdrawals from the Insurance Reserve Account**

The Borrower shall be allowed to transfer amounts standing to the credit of the Insurance Reserve Account:

- (a) to the credit of the Operating Account in accordance with the last paragraph of Clause 24.27.1(v); or
- (b) to the credit of the Operating Account to avoid or cure the occurrence of an Event of Default occurring or about to occur pursuant to Clause 26.1 (*Non-payment*) or Clause 26.2 (*Financial covenants*); or

- (c) to purchase Authorised Investments to be credited to the Authorised Investments Insurance Reserve Account.

(iii) **Authorised Investments**

The Borrower shall open the Investments Insurance Reserve Account in the books of the Account Bank by the Closing Date. The Borrower may not apply amounts standing to the credit of its Insurance Reserve Account in the acquisition of any investments other than Authorised Investments. Any Authorised Investments purchased or made by the Borrower out of proceeds of the Insurance Reserve Account shall be credited into the Authorised Investments Insurance Reserve Account.

**25.2.8 CRCA CnF Swap Account**

(i) **Credits to the CRCA CnF Swap Account**

The Borrower shall transfer to the credit of the CRCA CnF Swap Account all amounts required to timely meet its payment obligations under any Hedging Agreement entered into with Caisse Regionale de Crédit Agricole Mutuel Nord de France.

(ii) **Withdrawals from the CRCA CnF Swap Account**

The Borrower shall only be allowed to use amounts standing to the credit of the CRCA CnF Swap Account to:

- (a) pay amounts due by the Borrower under any Hedging Agreement entered into with Caisse Regionale de Crédit Agricole Mutuel Nord de France; and
- (b) transfer, to the credit of the Operating Account, (x) any amounts standing to the credit of the CRCA CnF Swap Account in excess of amounts due under any Hedging Agreement entered into with Caisse Regionale de Crédit Agricole Mutuel Nord de France or (y) any amounts eventually received from Caisse Regionale de Crédit Agricole Mutuel Nord de France pursuant to any Hedging Agreement.

**25.2.9 DSRA (Incremental Facility)**

For the avoidance of doubt, this Clause shall apply only if a DSRA (Incremental Facility) is implemented, and as long as it is implemented, in the context of an Incremental Facility pursuant to Clause 2.3.3.

(i) **Credits to the DSRA (Incremental Facility)**

- (a) The Borrower shall procure the payment into the DSRA (Incremental Facility) of the DSRA Minimum Balance:
  - (I) out of the proceeds of each Incremental Facility Tranches (DSRA) on each Utilisation Date of such Incremental Facility Tranches (DSRA) or, if the Borrower so elects, using the amount standing to the credit of the Distribution Account; and
  - (II) thereafter, using the amount standing to the credit of the Operating Account having made all payments of a higher priority pursuant to the Cash Waterfall

- (b) Except as otherwise provided for in the Security Documents, the Borrower shall procure the payment into the DSRA (Incremental Facility) of the proceeds of the realisation, sale or revenues (*fruits et produits*) arising out of Authorised Investments made from amounts standing to the credit of the DSRA (Incremental Facility) (excluding any interest, investment income, profits and realised gains, which shall be credited to the Operating Account pursuant to Clause 25.2.1(i)(c)).

(ii) **Withdrawals from the DSRA (Incremental Facility)**

The Borrower shall be allowed to debit amounts standing to the credit of the DSRA (Incremental Facility):

- (a) in the event of a shortfall in funds necessary for the purpose of meeting Debt Service Costs;
- (b) if on any Repayment Date, the balance of the DSRA (Incremental Facility) exceeds the DSRA Minimum Balance (taking into account the value of any Authorised Investments credited to the Authorised Investment Bank Account originating from the DSRA (Incremental Facility), as valued by the Agent in accordance with best market practices), to credit the Operating Account up to the amount equal to the difference between such balance and the DSRA Minimum Balance; or
- (c) to purchase Authorised Investments to be credited to the Authorised Investments DSRA (Incremental Facility).

(iii) **Authorised Investments**

The Borrower may not apply amounts standing to the credit of its DSRA (Incremental Facility) in the acquisition of any investments other than Authorised Investments. Any Authorised Investments purchased or made by the Borrower out of proceeds of the DSRA (Incremental Facility) shall be credited into the Authorised Investments DSRA (Incremental Facility).

**25.2.10 Other members of the Group bank accounts**

- (i) Without prejudice to the provisions of paragraph (ii) below, the Borrower shall procure that all amounts standing to the credit of an SPV Bank Account or an Intermediate Holdcos Bank Account are transferred to the Operating Account in accordance with the provisions of Clause 24.15.2 and, as the case may be, pursuant to the Cash Pooling Agreement.
- (ii) Subject always to the other provisions of the Finance Documents, the members of the Group other than the Borrower shall be allowed to pay, out of amounts then standing to the credit of their Bank Account, Operating Costs when they fall due.

**25.3 Undertakings from the Account Bank and the Borrower**

**25.3.1** The Borrower agrees that:

- (i) none of the Borrower or the SPVs shall be entitled to request that any withdrawal be made from any of its Bank Accounts if such withdrawal would

cause such Bank Account to become overdrawn and, to the extent that any withdrawal would, if made in full, cause any of its Bank Accounts to become overdrawn, such withdrawal shall not be made provided that, if such withdrawal was nonetheless made, the Borrower shall notify the Agent as soon as any Bank Account goes into overdraft; and

- (ii) it shall notify the Agent immediately and in any event within five Business Days of such event, if it becomes aware of any action taken by any third party to attach any Bank Account (*saisie de compte bancaire*).

**25.3.2** The Account Bank agrees that it must notify the Agent as soon as it receives instructions from any authorised person to close any Borrower Bank Account, unless the Agent has notified the Account Bank in writing that it has consented to such Borrower Bank Account being closed.

## **25.4 The Account Bank**

**25.4.1** Except in accordance with the legal and regulatory obligations applicable to it, the Account Bank shall not be liable for controlling or inquiring the nature or the source of the monies it receives for crediting to the Borrower Bank Accounts, nor for controlling or inquiring the destination or the purpose of withdrawals made from the Borrower Bank Accounts; in particular and irrespective of the generality of the foregoing provision, the Account Bank (i) will not have to inquire or verify if a transaction entered into on the Borrower Bank Accounts conforms to or is consistent with any of the obligations or undertakings undertaken by any of the parties to the Finance Documents or to any other agreement, and (ii) shall consider as valid, authentic and binding any document notice or instructions and the signature thereon, which may be addressed or notified to them.

**25.4.2** The Parties hereby expressly clarify and agree that the Account Bank shall have no obligations, duties, liabilities or responsibilities to any person in respect hereof except those expressly set out herein. The duties of the Account Bank hereunder shall be of a mechanical and administrative nature and nothing in this Agreement, express or implied, is intended to, or shall be construed so as to impose upon the Account Bank any obligation except as expressly set forth herein.

**25.4.3** The Account Bank is not responsible or liable to the Borrower for any non-payment of any liability of the Borrower that could be paid out of monies standing to the credit of a Bank Account.

**25.4.4** The Borrower must indemnify the Account Bank against any cost, loss or liability incurred by it when acting in its capacity of account bank (including (i) all amounts due to it pursuant to the relevant account tariff provisions and (ii) in respect of the consequences of any *saisie de compte bancaire*) in each case pursuant to and in accordance with this Agreement, except to the extent that the loss or liability is caused by the Account Bank's gross negligence or wilful misconduct. When claiming amounts under this Clause 25.4, the Account Bank shall provide reasonable and documented details to the Borrower of any such claimed amount.

### **25.4.5 Rights and discretions of the Account Bank**

- (i) The Account Bank may rely on:

- (a) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (b) any statement made by a director, authorised signatory or employee of any person regarding any matters, which may reasonably be assumed to be within his knowledge or within his power to verify.
- (ii) The Account Bank may act in relation to this Agreement through its personnel and agents.
- (iii) The Account Bank shall not have to enquire as to the existence or continuance of a Default.
- (iv) Notwithstanding any other provision of this Agreement to the contrary but without prejudice to the provisions of Clause 25.1.1 (*Access to books and records*), the Account Bank shall not be obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any regulation or a breach of a fiduciary duty or duty of confidentiality.

#### **25.4.6 Exclusion of liability**

Subject always to any mandatory provisions applicable to the Account Bank to the contrary:

- (i) without limiting paragraph (ii) below, the Account Bank shall not be liable for any action taken by it under, or in connection with, this Agreement, unless directly caused by its gross negligence or wilful misconduct;
- (ii) no Party (other than the Account Bank) shall take any proceedings against any officer, employee or agent of the Account Bank in respect of any claim it might have against the Account Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Agreement;
- (iii) the Account Bank shall not be liable for any delay (or any related consequences) in crediting an account with an amount required under this Agreement to be paid by the Account Bank acting upon the instructions of the Borrower, any other member of the Group or the Agent (as relevant), from a Borrower Bank Account if the Account Bank has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Account Bank for that purpose; and
- (iv) nothing in this Agreement shall oblige the Account Bank to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Account Bank that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Account Bank.

#### **25.4.7 Borrower’s indemnity to the Account Bank**

Subject always to any applicable mandatory provisions, the Borrower shall indemnify the Account Bank, within 10 Business Days of demand, against any cost, loss or liability incurred by the Account Bank in acting in this capacity (including in respect of the consequences of any *saisie de compte bancaire*), in each case

otherwise than by reason of its gross negligence or wilful misconduct unless it has already been reimbursed by the Borrower pursuant to this Agreement.

#### **25.4.8 Resignation and Replacement of the Account Bank**

##### **(i) Resignation of the Account Bank**

- (a) The Account Bank may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (with the consent of the Borrower) may appoint a successor Account Bank.
- (b) If the Majority Lenders have not appointed a successor Account Bank within 90 days following the date on which the retiring Account Bank gave its resignation notice pursuant to paragraph (i) above, the Account Bank may (after consultation with the Borrower) appoint a successor Account Bank.
  - (I) The retiring Account Bank shall make available to its successor such documents and records and provide such assistance as its successor may reasonably request for the purposes of performing its functions as Account Bank under the Finance Documents.
  - (II) The resignation notice of the Account Bank shall only take effect upon the satisfaction of the following conditions precedent:
    - (A) the appointment of a successor in accordance with the provisions of this Clause 25.4.8;
    - (B) the release (*mainlevée*) by the Intercreditor and Security Agent of the Global Security Agreement (Borrower) (in respect of the Borrower Bank Accounts pledged thereunder), to which the Finance Parties hereby give their consent in advance, and the entry into immediately thereafter of bank account pledge agreements between the Borrower, the Intercreditor and Security Agent (acting on behalf of the Finance Parties) and the successor Account Bank on terms at least substantially similar to, and creating pledges over the relevant Borrower Bank Accounts at least equivalent to the Security created by the Global Security Agreement (Borrower); and
  - (III) the execution of an amendment agreement to this Agreement implementing the changes made necessary by the resignation of the Account Bank.
- (c) Upon the appointment of a successor, the retiring Account Bank shall be discharged from any further obligation in respect of the Finance Documents. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

(ii) **Replacement of the Account Bank by the Borrower at the initiative of the Lenders**

- (a) After consultation with the Borrower, the Majority Lenders may ask for the Borrower to, by giving a 30-day notice to the Account Bank, replace the Account Bank by appointing a successor Account Bank.
- (b) The appointment of the successor Account Bank shall take effect on the date specified in the notice from the Borrower to the retiring Account Bank. As from this date, the retiring Account Bank shall be discharged from any further obligation in respect of the Finance Documents and, on that date:
  - (I) the retiring Account Bank shall (at the expense of the Lenders) make available to the successor Account Bank such documents and records and provide such assistance as the successor Account Bank may reasonably request for the purposes of performing its functions as Account Bank under the Finance Documents;
  - (II) the Intercreditor and Security Agent shall release (*mainlevée*) the Global Security Agreement (Borrower) (in respect of the Borrower Bank Accounts pledged thereunder), to which the Finance Parties hereby give their consent in advance, and immediately thereafter enter into bank account pledge agreements with the Borrower and the successor Account Bank on terms at least substantially similar to, and creating pledges over the relevant Borrower Bank Accounts at least equivalent to the Security created by the Global Security Agreement (Borrower); and
  - (III) the Parties shall enter into an amendment agreement to this Agreement in order to implement the changes made necessary by the appointment of the successor Account Bank and Clause 18.2 (*Amendment costs and other costs*) shall apply, save that no waiver fee shall be due by the Borrower to the Agent.
- (c) Any successor Account Bank and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

## **26 Events of Default**

Subject to the limitation set forth in Clause 26.17 (*Limitation with respect to Affected Power Units*), each of the events and circumstances set out in this Clause 26 (save for Clause 26.18 (*Acceleration*)) is an Event of Default for the purposes of this Agreement.

### **26.1 Non-payment**

**26.1.1** The Borrower or a member of the Group does not pay on the due date any amount payable by it pursuant to any Finance Document to which it is a party at the place at and in the currency in which it is expressed to be payable unless its failure to

pay is caused by an administrative or technical error, and payment is made within three Business Days of its due date.

- 26.1.2 For the avoidance of doubt, no Event of Default would occur under this Clause 26.1 in respect of unpaid amounts on a given Interest Payment Date or Repayment Date where such Interest Payment Date or Repayment Date has been postponed pursuant to the provisions of Clause 4.3.1(iv) and until their effective due date.

## 26.2 Financial covenants

Any requirement of Clause 23 (*Financial Covenant*) is not satisfied unless cured in accordance with Clause 23.3 (*Equity Cure*) within:

- 26.2.1 60 days following each Repayment Date (other than the Repayment Dates falling on each 5 January); and
- 26.2.2 90 days following the Repayment Dates falling on each 5 January.

## 26.3 Other obligations

- 26.3.1 Without prejudice to the other provisions of this Clause 26, the Borrower or a Shareholder fails to comply with any of its obligations under the Finance Documents to which it is a party other than those referred to in Clause 26.1 (*Non-payment*) or Clause 26.2 (*Financial covenants*).
- 26.3.2 No Event of Default under Clause 26.3.1 above will occur if such failure to comply is capable of remedy and is remedied within 20 Business Days of the earlier of (i) the Agent giving notice to the Borrower or (ii) the Borrower becoming aware of the failure to comply.

## 26.4 Misrepresentation

- 26.4.1 Any representation or statement made, deemed to be made or repeated in a Finance Document to which it is a party (or in any document delivered by or on behalf of the Borrower under or in connection with any Finance Document) by the Borrower or a Shareholder is or proves to have been false, incorrect or misleading in any material respect when made or repeated.
- 26.4.2 Save for any misrepresentation under Clause 19.29 (*Sanctioned Persons*), no Event of Default under Clause 26.4.1 above will occur: if the incorrect or misleading representation made by the Borrower is capable of remedy and is remedied within 20 Business Days of the earlier of (i) the Agent giving notice to the Borrower and the person which has made the representation and (ii) such person or the Borrower becoming aware of the representation being incorrect or misleading, provided always that if a longer cure period would apply to the Event of Default resulting from the occurrence of the facts underlying such representation pursuant to the terms of this Agreement, such longer cure period shall apply.

## 26.5 Cross-default

- 26.5.1 Any Financial Indebtedness (other than under the Finance Documents) of a member of the Group:
- (i) is not paid when due or within any applicable grace period; or
  - (ii) 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).

**26.5.2** No Event of Default will occur under this Clause 26.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clause 26.5.1 above is less than EUR 300,000 (or its equivalent in any other currency or currencies) in respect of the Borrower or EUR 100,000 (or its equivalent in any other currency or currencies) in respect of the other members of the Group.

## **26.6 Insolvency**

**26.6.1** Subject to Clause 26.6.2 below, any member of the Group or Material Project Party (other than Senvion) is unable or admits inability to pay its debts as they fall due (including *cessation des paiements* within the meaning of the French *Code de commerce*), or is deemed or declared to be unable to pay its debts under applicable law, threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, becomes insolvent for the purpose of any other applicable insolvency law, or a moratorium (including a moratorium under a *conciliation* procedure in accordance with articles L.611-4 to L.611-15 of the French *Code de commerce*) is declared in respect of any indebtedness of such member of the Group or Material Project Party, provided that, in the case of a Material Project Party or a member of the Group (in each case other than the Borrower or a SPV), such event or events have a Material Adverse Effect.

**26.6.2** No Event of Default under this Clause 26.6 will occur in relation to any Material Project Party (other than a member of the Group) if a remediation plan acceptable to the Majority Lenders (acting reasonably) has been agreed within 60 Business Days of the knowledge by the Borrower or another member of the Group of occurrence of any event described in Clause 26.6.1 above.

## **26.7 Insolvency proceedings**

**26.7.1** Subject to Clause 26.7.2 below, any corporate action, legal proceedings or other step or procedure is taken in relation to:

- (i) the suspension of payments, the opening of proceedings for *sauvegarde* (including, for the avoidance of doubt, *sauvegarde accélérée* and *sauvegarde financière accélérée*), *redressement judiciaire* or *liquidation judiciaire* or *réorganisation* (in the context of a *mandat ad hoc* or of a *conciliation* or otherwise) of a member of the Group or Material Project Party (other than Senvion);
- (ii) a composition, compromise, assignment or arrangement with any creditor of a member of the Group or Material Project Party (other than Senvion);
- (iii) the appointment of a liquidator receiver (*mandataire liquidateur*) (other than in respect of a solvent liquidation of any SPV), administrator, administrative receiver (*administrateur judiciaire*), provisional administrator, *mandataire ad hoc*, *conciliateur* or other similar officer in respect of a member of the Group or Material Project Party (other than Senvion) or any of its assets;
- (iv) the enforcement of any Security (other than a Security granted under a Security Document) over any asset of any member of the Group or Material Project Party (other than Senvion), subject to Clause 26.7.3 below;

- (v) a judgment opening proceedings for *sauvegarde* (including, for the avoidance of doubt, *sauvegarde accélérée* and *sauvegarde financière accélérée*), *redressement judiciaire*, or ordering a *cession totale de l'entreprise* or *liquidation judiciaire* is entered into in relation to a member of the Group or Material Project Party (other than Senvion) under articles L.620-1 to L.670-8 of the French Code de commerce;
- (vi) a member of the Group or Material Project Party (other than Senvion) applying for *mandat ad hoc* or *conciliation* in accordance with articles L.611-3 to L.611-15 of the French Code de commerce; or
- (vii) any analogous procedure or step is taken in any jurisdiction.

**26.7.2** No Event of Default under this Clause 26.7 will occur in relation to any Material Project Party other than a member of the Group if a remediation plan acceptable to the Majority Lenders (acting reasonably) has been agreed within 60 Business Days of the knowledge by the Borrower or another member of the Group of occurrence of any event described in Clause 26.7.1 above.

**26.7.3** Clause 26.7.1 above shall not apply in respect of any petition for *redressement judiciaire* or *liquidation judiciaire* in the case of a Material Project Party or a member of the Group (in each case other than the Borrower) which is frivolous or vexatious and is discharged, stayed or dismissed within 120 days of commencement.

## **26.8 Creditors' process**

Any of the enforcement proceedings (*procédures civiles d'exécution*) provided for in the French Code des Procédures Civiles d'Exécution, or any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a member of the Group having an aggregate value exceeding EUR 200,000 in respect of any such member of the Group or EUR 700,000 in respect of the Group in the aggregate, in each instance where such proceedings are not discharged within 60 Business Days.

## **26.9 Unlawfulness and invalidity**

**26.9.1** All or any part of any Finance Document, to which a member of the Group is a party is not, or ceases to be, legal, valid, binding or enforceable or is null, has lapsed, is early terminated, is terminated, is rescinded, is cancelled, otherwise becomes void before its scheduled expiry date or is unenforceable, unless such event was not caused by a member of the Group, is capable of remedy and is so remedied within 20 Business Days of its occurrence.

**26.9.2** Subject to Legal Reservations, any material obligation of any member of the Group under the Finance Documents or the Main Project Documents becomes unlawful, unless such event was not caused by a member of the Group, is capable of remedy and is so remedied within 20 Business Days of its occurrence.

**26.9.3** Any Security created pursuant to a Security Document or any subordination created under the Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

**26.9.4** In the case of any Security created pursuant to a Security Document ceasing to be in full force and effect, Clause 26.9.3 above shall not apply if such Security is replaced with similar Security to the satisfaction of the Majority Lenders within 20 Business Days of the earlier of (i) the Agent giving notice to the Borrower and (ii) the Borrower becoming aware of the same.

## **26.10 Cessation of business**

**26.10.1** Any member of the Group ceases, or takes clear steps to cease, to carry on all or a material part of their respective business, save where expressly authorised to do so in writing by the Agent (acting reasonably and on the instructions of the Majority Lenders).

**26.10.2** Except for any Permitted SPV Disposal, any member of the Group voluntarily or involuntarily sells, leases, transfers or otherwise disposes of its assets or any other asset forming a material part of the Project.

## **26.11 Expropriation**

The authority or ability of any member of the Group to conduct its business or to perform its material obligations under the Transaction Documents or the Authorisations is limited in any material respect or is wholly or substantially curtailed by the requisition, expropriation or nationalisation, intervention, restriction or other action or omission by or on behalf of any governmental, regulatory or other authority to any such member of the Group, or any of such person's assets.

## **26.12 Main Project Documents**

**26.12.1** Subject to any cure period as may be set out in the relevant Main Project Document, any member of the Group fails to comply with any major obligation under a Main Project Document.

**26.12.2** Any Main Project Document is terminated (unless it has been replaced to the satisfaction of the Agent acting upon the instructions of the Majority Lenders), save for:

- (i) the termination of a Main Project Document at its scheduled termination date;
- (ii) the termination of a LTSA entered into with Vestas or Senvion, provided that such LTSA is simultaneously replaced by a LTSA entered into with Boralex SAS;
- (iii) the cancellation or termination of an Aggregation Contract if it is replaced by an Eligible Aggregation Contract; and
- (iv) the cancellation or termination of an Eligible Corporate PPA if it is replaced by an Eligible Aggregation Contract or a an Eligible Corporate PPA.

**26.12.3** Any Main Project Document ceases to be legal, valid, binding or enforceable (unless it has been replaced to the satisfaction of the Agent acting upon the instructions of the Majority Lenders).

**26.12.4** No Event of Default under Clauses 26.12.1 to 26.12.3 above will occur if a remediation plan acceptable to the Majority Lenders (acting reasonably) has been agreed within 60 Business Days of the occurrence of any event described above.

### **26.13 Not used**

### **26.14 Litigation**

Save for the Pending Litigation, any litigation, arbitration, administrative, governmental, regulatory or other investigation, proceeding or dispute, whose outcome is reasonably likely to have a Material Adverse Effect, is commenced in relation to the Transaction Documents or the transactions contemplated therein, the Main Authorisations or against any member of the Group or any such person's assets.

### **26.15 Change of control**

**26.15.1** A Change of Control of the Borrower has occurred.

**26.15.2** A Shareholder assigns the shares of the Borrower to a person:

- (i) which is not an Authorised Investor; or
- (ii) which does not comply with the requirements of clause 4.1.2 of the Global Security Agreement (Shareholders) and clause 21.6 (*Change of Shareholder*) of the Intercreditor Agreement; or
- (iii) while a Major Event of Default has occurred and is continuing.

**26.15.3** A Change of Control of the LTSA Provider has occurred.

### **26.16 Not Used**

### **26.17 Limitation with respect to Affected Power Units**

An event or circumstance relating to an SPV specified in Clause 26.3 (*Other obligations*), Clause 26.4 (*Misrepresentation*) to 26.9 (*Unlawfulness and invalidity*), Clause 26.10.1, Clause 26.11 (*Expropriation*), Clause 26.12 (*Main Project Documents*) and 26.14 (*Litigation*) shall not constitute an Event of Default unless the aggregate Cash Available for Debt Service contributed by the Affected Power Unit(s) affected by such Event of Default exceeds 15 per cent of the aggregate Cash Available for Debt Service of all Power Plants as of the date on which such event or circumstance occurs, provided always that, notwithstanding the foregoing:

**26.17.1** the Borrower shall immediately inform the Agent of the occurrence of any such event; and

**26.17.2** this Clause 26.17 shall apply in respect of an Event of Default triggered under Clause 26.4 (*Misrepresentation*) in relation to a representation or statement made on the Signing Date only if such representation has been made in good faith and the Borrower has no knowledge (having made reasonable enquiries) on the fact that this representation would constitute a misrepresentation on the Signing Date.

### **26.18 Acceleration**

**26.18.1** Subject always to Clause 26.18.2 below, on and at any time after the occurrence of an Event of Default which is continuing, the Agent may, without *mise en demeure*, notice or any other judicial or extra-judicial step (but subject to the mandatory provisions of articles L.620-1 to L.670-8 of the French *Code de commerce*), and shall, if so directed by the Majority Lenders, by notice to the Borrower:

- (i) cancel any Available Commitment with respect to any Facility, whereupon they shall immediately be cancelled; and/or

- (ii) declare that all or part of the Loans of any Facility, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents, be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (iii) exercise or direct the Intercreditor and Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

**26.18.2** On and at any time after the occurrence of an Event of Default resulting from the early termination of a PPA (other than at its scheduled maturity), the Agent may only exercise the rights set out in Clause 26.18.1 above up to an amount equal to the sum of:

(x)

$$(A / B) \times C$$

where:

**A** means the aggregate Cash Available for Debt Service which are projected to be generated by the Power Plant(s) which are affected by such Event of Default from the date of its occurrence until the Final Maturity Date (calculated on the basis of the latest Forecast)

**B** means the aggregate Cash Available for Debt Service which are projected to be generated by all Power Plants from the date on which such Event of Default occurred until the Final Maturity Date (calculated on the basis of the latest Forecast)

**C** means outstanding principal amount of the Refinancing Facility and the DSRF

*plus*

(y) all amounts due and payable under the Hedging Agreements (including termination amounts) following the partial termination or close-out of any transaction under any Hedging Agreement following the occurrence of a partial acceleration made in accordance with this Clause 26.18.2,

increased by all interests together with accrued interest, and all other amounts accrued or outstanding default interest, fees, expenses and any other amount due in respect of the Finance Documents.

## **27 Changes to the Lenders**

### **27.1 Transfers by the Lenders**

**27.1.1** Subject to this Clause 27, a Lender (the “**Existing Lender**”) may transfer any of its rights (including such as relate to that Existing Lender’s participation in each Loan) and/or obligations, to another bank, insurance company, financial institution or to a trust, fund (including for the avoidance of doubt any securitisation vehicle, the management company of which acts through an office registered in an OECD member state) or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”) but, in respect of Available Commitment under any Facility, only to the extent such New Lender is duly licensed or otherwise entitled to carry out a banking business (*opérations de crédit*) in France.

27.1.2 The consent of the Finance Parties is hereby given to a transfer by an Existing Lender to a New Lender.

## 27.2 Conditions of transfer

27.2.1 The consent of the Borrower is required for a transfer by an Existing Lender under any Facility, provided that the Borrower hereby consents to:

- (i) a transfer to an Original Lender or an Affiliate of an Original Lender or a fund related to an Original Lender; or
- (ii) a transfer made to a bank or credit institution which has (a) a minimum rating equal to or higher than BBB+ issued by S&P (or equivalent) and (b) a substantial experience in the renewable energy sector; or
- (iii) a transfer made to a bank or a credit institution at the time when an Event of Default has occurred and is continuing.

27.2.2 The Finance Parties hereby agree that any transfer by an Existing Lender to a New Lender should be pro rata among the Facilities.

27.2.3 Notwithstanding any other provision of this Agreement:

- (i) no Lender shall be entitled to assign or transfer any participation in or commitment under any Facility to any entity whose primary purpose is to buy distressed assets to enforce security (including any hedge fund, vulture fund or similar entity); and
- (ii) no transfer, sub-participation may be effected to a New Lender incorporated or acting through a Facility Office situated in a Non-Cooperative Jurisdiction, without the prior consent of the Borrower.

27.2.4 The consent of the Borrower to a transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent 10 Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower within that time.

27.2.5 Each New Lender, by executing the relevant Transfer Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

27.2.6 If:

- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
- (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 14 (*Tax Gross-Up and Indemnities*) or Clause 15 (*Increased costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clause 14 (*Tax Gross-Up and Indemnities*) or

Clause 15 (*Increased costs*) to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This Clause 27.2.6 shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of any Facility.

### **27.3 Transfer fee**

The New Lender shall, on the date upon which a transfer takes effect, pay to the Agent (for its own account) a fee of EUR 4,000.

### **27.4 Limitation of responsibility of Existing Lenders**

**27.4.1** Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
- (ii) the financial condition of the Borrower, the Shareholders or any other person;
- (iii) the performance and observance by the Borrower or other person of its obligations under the Transaction Documents or any other documents;
- (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document; or
- (v) the existence of any transferred rights or receivables or their accessories, and any representations or warranties implied by law are excluded.

**27.4.2** Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or other document; and
- (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities and any other person whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

**27.4.3** Nothing in any Finance Document obliges an Existing Lender to:

- (i) accept a re-transfer from a New Lender of any of the rights and/or obligations transferred under this Clause 27; or
- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower or another person of its obligations under the Finance Documents or otherwise.

## 27.5 Procedure for Transfer

- 27.5.1 Subject to the conditions set out in Clause 27.2 (*Conditions of transfer*) and subject to any applicable laws and regulations regarding procedures for specific transfer, a transfer is effected when the Agent executes an otherwise duly completed Transfer Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 27.5.2 below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Agreement. For the avoidance of doubt and without prejudice to the obligation to execute a Transfer Agreement, the Existing Lender and the New Lender may agree to use a separate transfer agreement governed by any applicable laws and regulations (including, without limitation, under the provisions set out in article L.214-167 *et seq.* of the French Financial and Monetary Code applicable to a transfer made to a securitisation vehicle) in order to transfer rights under this Agreement.
- 27.5.2 The Agent shall only be obliged to execute a Transfer Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- 27.5.3 Subject to Clause 27.8 (*Pro rata interest settlement*), as from the Transfer Date:
- (i) to the extent that in the Transfer Agreement the Existing Lender seeks to transfer its rights and obligations under the Finance Documents, the Existing Lender shall be discharged to the extent provided for in the Transfer Agreement from further obligations towards the Borrower, any other person and the other Finance Parties under the Finance Documents and the Borrower and the other Finance Parties hereby consent to such discharge;
  - (ii) the rights and obligations of the Existing Lender with respect to the Borrower, together with the Existing Lender’s rights and benefits under all Security granted pursuant to the Security Documents by the Borrower, shall be transferred to the New Lender to the extent provided for in the Transfer Agreement;
  - (iii) the Agent, the Mandated Lead Arrangers, the Intercreditor and Security Agent, the New Lender and the other Lenders shall have the same rights and obligations between themselves as they would have had had the New Lender been an Original Lender with the rights and/or obligations to which it is entitled and subject as a result of the transfer and to that extent the Agent, the Intercreditor and Security Agent, the Mandated Lead Arrangers and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) the New Lender shall become a Party as a “**Lender**”.
- 27.5.4 If any New Lender fails to pay any transfer fee payable by it under Clause 27.3 (*Transfer fee*) on the due date, the Agent may, at any time, deduct an amount equal to such fee from any monies held from time to time for the account of such New Lender.

## 27.6 Information to the Borrower

The Agent shall, as soon as reasonably practicable after a transfer has occurred in accordance with this Clause 27, inform the Borrower of such transfer and send a copy of the Transfer Agreement (except in this case, if the transfer occurs when there is no Available Commitment outstanding).

## 27.7 Security over Lenders' rights

27.7.1 In addition to the other rights provided to Lenders under this Clause 27, each Lender may, without consulting with or obtaining consent from the Borrower, at any time transfer, charge, pledge or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender, including:

- (i) any charge, transfer or other Security to secure obligations to a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) including any transfer of rights to a special purpose vehicle where Security over securities issued by such special purpose vehicle is to be created in favour of a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank); and
- (ii) any transfer, charge, pledge or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as Security for those obligations or securities.

27.7.2 Without prejudice to the other provisions of this Clause 27, no such transfer, charge, pledge or Security created pursuant to Clause 27.7.1 above shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant transfer, charge, pledge or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

27.7.3 Neither:

- (i) any condition or restriction set out in any Finance Document on a Lender's ability to transfer any of its rights or transfer any of its rights and obligations (including those conditions and restrictions set out in Clause 27.1 (*Transfers by the Lenders*), Clause 27.2 (*Conditions of transfer*) and Clause 39 (*Confidentiality*)); nor
- (ii) Clause 27.3 (*Transfer fee*),

shall apply:

- (a) to the creation of Security pursuant to Clause 27.7.1 above;
- (b) in case of enforcement of such a transfer, charge, pledge or Security by the relevant beneficiary; or
- (c) to any transfer made by a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) to a third party in

connection with the enforcement of Security of (x) rights under the Finance Documents or (y) the securities issued by a special purpose vehicle.

**27.7.4** Any Lender may disclose such Confidential Information as that Lender shall consider appropriate to a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) to (or through) whom it creates Security pursuant to Clause 27.7.1 above, and any federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) may disclose such Confidential Information to a third party to whom it transfers (or may potentially transfer) rights under the Finance Documents or the securities issued by the special purpose vehicle in connection with the enforcement of such Security.

**27.7.5** Upon the enforcement of any transfer, charge, pledge or Security created pursuant to Clause 27.7.1 above, in each case subject to a notification to the Agent, the beneficiary of such enforcement of transfer, charge, pledge or Security (the “**Beneficiary**”) shall be deemed to become a Party as Lender in respect of the Lender’s rights only. The Agent, the Mandated Lead Arrangers, the Beneficiary and the Lenders shall acquire the same rights and assume the same obligations under Clause 31 (*Sharing Among the Finance Parties*) between themselves as they would have acquired and assumed had the Beneficiary been an Original Lender.

## **27.8 Pro rata interest settlement**

If the Agent has notified the Lenders that it is able to distribute interest payments on a “**pro rata basis**” to Existing Lenders and New Lenders, then in respect of any transfer pursuant to Clause 27.5 (*Procedure for Transfer*) or any transfer the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period:

**27.8.1** any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (“**Accrued Amounts**”) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which fall at six-Monthly intervals after the first day of that Interest Period); and

**27.8.2** the rights transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:

- (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and
- (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 27.8, have been payable to it on that date, but after deduction of the Accrued Amounts.

## **28 Changes to the Group**

The Borrower shall not transfer, and shall ensure that none of the other members of the Group transfers, any of its rights and/or obligations under the Finance Documents.

## **29 Role of the Agent and the Mandated Lead Arrangers and the Reference Banks**

### **29.1 Appointment of the Agent**

**29.1.1** Each of the Mandated Lead Arrangers and the Lenders appoints the Agent to act as its Agent under and in connection with the Finance Documents.

**29.1.2** Each of the Mandated Lead Arrangers and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **29.2 Instructions**

**29.2.1** The Agent shall:

- (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
  - (a) all Lenders if the relevant Finance Document stipulates that the matter is an all Lender decision; and
  - (b) in all other cases, the Majority Lenders; and
- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.

**29.2.2** The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates that the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

**29.2.3** Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.

**29.2.4** The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.

**29.2.5** In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.

**29.2.6** The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

### **29.3 Duties of the Agent**

- 29.3.1** The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- 29.3.2** Subject to Clause 29.3.3 below, the Agent shall promptly forward to a Party the original or a copy of any document, which is delivered to the Agent for that Party by any other Party.
- 29.3.3** Without prejudice of Clause 27.6 (*Information to the Borrower*), Clause 29.3.2 above shall not apply to any Transfer Agreement.
- 29.3.4** Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 29.3.5** If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- 29.3.6** If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or any Mandated Lead Arranger) under this Agreement, it shall promptly notify the other Finance Parties.
- 29.3.7** The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### **29.4 Role of the Mandated Lead Arrangers**

Except as specifically provided in the Finance Documents, the Mandated Lead Arrangers have no obligation of any kind to any other Party under or in connection with any Finance Document.

### **29.5 No fiduciary duties**

- 29.5.1** Nothing in any Finance Document constitutes the Agent or any Mandated Lead Arranger as trustees or fiduciaries of any other person.
- 29.5.2** None of the Agent, the Intercreditor and Security Agent or any Mandated Lead Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

### **29.6 Business with the Group**

The Agent, the Intercreditor and Security Agent and any Mandated Lead Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

### **29.7 Rights and discretions**

- 29.7.1** The Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

- (ii) assume that:
  - (a) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
  - (b) unless it has received notice of revocation, that those instructions have not been revoked; and
- (iii) rely on a certificate from any person:
  - (a) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (b) to the effect that such person approves any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (i) above, may assume the truth and accuracy of that certificate.

**29.7.2** The Agent may assume (unless it has received notice to the contrary in its capacity as Agent for the Lenders) that:

- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 26.1 (*Non-payment*));
- (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
- (iii) any notice or request made by the Borrower hereunder is made on behalf of and with the consent and knowledge of itself and each member of the Group.

**29.7.3** The Agent may engage any lawyers, accountants, tax advisers, technical advisers, insurance advisers, surveyors or other experts or professional advisers, whose services will be paid, if provided for under the Finance Documents, by the Borrower.

**29.7.4** Without prejudice to the generality of Clause 29.7.3 above or Clause 29.7.5 below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.

**29.7.5** The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, technical advisers, insurance advisers, surveyors or other experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs and losses to any person any diminution in value or any liability whatsoever arising as a result of its so relying.

**29.7.6** The Agent may act in relation to the Finance Documents through its officers, employees and agents.

**29.7.7** Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

- 29.7.8** Without prejudice to the generality of Clause 29.7.7 above, the Agent:
- (i) may disclose; and
  - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,  
the identity of a Defaulting Lender to the Sponsor and to the other Finance Parties.
- 29.7.9** Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent, the Account Bank nor any Mandated Lead Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- 29.7.10** Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
- 29.7.11** The Agent shall not disclose to any Finance Party or to the Borrower any details of the rate notified to the Agent by any Lender or the identity of any such Lender for the purposes of Clause 12.2.1(ii) without the prior consent of the relevant Lender.

## **29.8 Responsibility for documentation**

Neither the Agent nor any Mandated Lead Arranger is responsible or liable for:

- 29.8.1** the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, any Mandated Lead Arranger, a member of the Group or any other person in or in connection with any Finance Document or the transactions contemplated therein or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- 29.8.2** the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- 29.8.3** any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

## **29.9 No duty to monitor**

The Agent shall not be bound to enquire:

- 29.9.1** whether or not any Default has occurred;
- 29.9.2** as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- 29.9.3** whether any other event specified in any Finance Document has occurred.

## **29.10 Exclusion of liability**

**29.10.1** Without limiting Clause 29.10.2 below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of gross negligence or wilful misconduct; or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever, but not including any claim based on the fraud of the Agent) arising as a result of:
  - (a) any act, event or circumstance not reasonably within its control; or
  - (b) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

**29.10.2** No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent may rely on this Clause 29.10.2.

**29.10.3** The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by it if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.

**29.10.4** Nothing in this Agreement shall oblige the Agent or any Mandated Lead Arranger to carry out any:

- (i) “know your customer” or other checks in relation to any person; or

- (ii) checks on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Agent and each Mandated Lead Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or a Mandated Lead Arranger.

- 29.10.5** Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

#### **29.11 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of its gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless it has already been reimbursed by the Borrower pursuant to a Finance Document).

#### **29.12 Resignation of the Agent**

- 29.12.1** The Agent may resign and appoint one of its Affiliates acting through an office in France as successor by giving notice to the Lenders and the Borrower.
- 29.12.2** Alternatively, the Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent, which shall not be incorporated or acting through an office situated in a Non-Cooperative Jurisdiction.
- 29.12.3** If the Majority Lenders have not appointed a successor Agent in accordance with Clause 29.12.2 above within 20 days after notice of resignation was given, the Agent (after consultation with the Borrower) may appoint a successor Agent acting through an office in France.
- 29.12.4** The retiring Agent shall, at its own cost, make available to its successor such documents and records and provide such assistance as its successor may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- 29.12.5** The resignation notice of the Agent shall only take effect upon the appointment of a successor.
- 29.12.6** Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and of this Clause 29 (and any agency fees for the account of the retiring Agent shall cease to accrue from an

(and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

**29.12.7** The Agent shall resign in accordance with Clause 29.12.2 above (and, to the extent applicable, shall assist in appointing a successor Agent pursuant to Clause 29.12.3 above) if on or after the date which is three Months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents:

- (i) the Agent fails to respond to a request under Clause 14.8 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (ii) the information supplied by the Agent pursuant to Clause 14.8 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

### **29.13 Replacement of the Agent**

**29.13.1** The Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders), replace the Agent by appointing a successor Agent (acting through an office in France).

**29.13.2** The Borrower may, on no less than 30 days' prior notice to the Agent, replace the Agent by requiring the Lenders to appoint a replacement Agent if any amount payable under a Finance Document by the Borrower becomes not deductible from its taxable income for French tax purposes by reason of that amount (i) being paid or accrued to an Agent incorporated or acting through an office situated in a Non-Cooperative Jurisdiction or (ii) paid to an account opened in the name of that Agent in a financial institution situated in a Non-Cooperative Jurisdiction. In this case, the Agent shall resign and a replacement Agent shall be appointed by the Majority Lenders (after consultation with the Borrower) within 30 days after notice of replacement was given.

**29.13.3** The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

**29.13.4** The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the

Finance Documents but shall remain entitled to the benefit of this Clause 29 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).

**29.13.5** Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

#### **29.14 Unicity**

Notwithstanding Clause 29.12 (*Resignation of the Agent*) and Clause 29.13 (*Replacement of the Agent*), and in accordance with the terms of the Intercreditor Agreement, the roles of Agent and Intercreditor and Security Agent should be, at any time, fulfilled by the same entity.

#### **29.15 Confidentiality**

**29.15.1** If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

**29.15.2** Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any Mandated Lead Arranger is obliged to disclose to any other person (i) any Confidential Information or (ii) any other information if the disclosure would or might, in its reasonable opinion, constitute a breach of any law or a breach of a fiduciary duty.

#### **29.16 Relationship with the Lenders**

**29.16.1** Subject to Clause 27.8 (*Pro rata interest settlement*), the Agent may treat each person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:

- (i) entitled to or liable for any payment due under any Finance Document on that day; and
- (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

**29.16.2** Each Lender shall supply the Agent with any information that the Intercreditor and Security Agent may reasonably specify (through the Agent) as being necessary or desirable to enable the Intercreditor and Security Agent to perform its functions as Intercreditor and Security Agent. Each Lender shall deal with the Intercreditor and Security Agent exclusively through the Agent and shall not deal directly with the Intercreditor and Security Agent.

**29.16.3** Any Lender may, by notice to the Agent, appoint a person to receive on its behalf all notices, communications, information and documents to be made or dispatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 34.5 (*Electronic communication*))

electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 34.2 (*Addresses*) and Clause 34.5.1(iii) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

#### **29.17 Credit appraisal by the Lenders**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Mandated Lead Arrangers that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document, including, but not limited to:

- 29.17.1** the financial condition, status and nature of each member of the Group;
- 29.17.2** the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or any Security granted pursuant to the Security Documents;
- 29.17.3** whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- 29.17.4** the adequacy, accuracy or completeness of the Reports and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, Security, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- 29.17.5** the right or title of any person in or to, or the value or sufficiency of any part of the assets subject to Security under the Security Documents, the priority of any of the Security created pursuant to the Security Documents or the existence of any Security affecting the assets subject to Security under the Security Documents.

#### **29.18 Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents, the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents, that Party shall be regarded as having received any amount so deducted.

#### **29.19 Role of Reference Banks**

- 29.19.1** No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.

**29.19.2** No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.

**29.19.3** No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 29.19.

## **30 Conduct of Business by the Finance Parties**

**30.1** No provision of this Agreement will:

**30.1.1** interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

**30.1.2** oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

**30.1.3** oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

**30.2** Any Lender is entitled to exercise any of its rights and discretion under the Finance Documents through any agent (including any entity appointed to act as servicer on its behalf).

## **31 Sharing Among the Finance Parties**

### **31.1 Payments to Finance Parties**

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from the Borrower other than in accordance with Clause 32 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Finance Documents, then such Recovering Finance Party shall be deemed to have been substituted (within the meaning of article 1994 of the French *Code civil*) for the Agent for purposes of receiving or recovering a Sharing Payment (as defined below) and:

**31.1.1** the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Agent;

**31.1.2** the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 32 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

**31.1.3** the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 32.6 (*Partial payments*).

### **31.2 Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 32.6 (*Partial payments*) towards the obligations of the Borrower to the Sharing Finance Parties.

### **31.3 Recovering Finance Party’s rights**

On a distribution by the Agent under Clause 31.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

### **31.4 Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

**31.4.1** each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and

**31.4.2** as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

### **31.5 Exceptions**

**31.5.1** This Clause 31 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 31, have a valid and enforceable claim against the Borrower.

**31.5.2** A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

- (i) it notified the other Finance Party of the legal or arbitration proceedings; and
- (ii) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice, and did not take separate legal or arbitration proceedings.

## **32 Payment Mechanics**

### **32.1 Payments to the Agent**

**32.1.1** On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by that Party as being

customary at the time for settlement of transactions in the relevant currency in the place of payment.

- 32.1.2** Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre in such Participating Member State or Paris, as specified by the Agent) other than a Non-Cooperative Jurisdiction, with such bank as the Agent, in each case, specifies.

## **32.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 32.3 (*Distributions to the Borrower*) and Clause 32.4 (*Clawback*), be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or Paris, as specified by that Party) other than a Non-Cooperative Jurisdiction.

## **32.3 Distributions to the Borrower**

The Agent may (with the consent of the Borrower or in accordance with Clause 33 (*Set-Off*)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

## **32.4 Clawback**

- 32.4.1** Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

- 32.4.2** If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall, on demand, refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

## **32.5 Impaired Agent**

- 32.5.1** If, at any time, the Agent becomes an Impaired Agent, the Borrower or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 32.1 (*Payments to the Agent*) may instead either pay that amount direct to the required recipient or pay that amount to an interest-bearing account held with the Account Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Borrower or the Lender making the payment and designated as a holding account (*compte indivis*) for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents. In each case, such payments must be made on the due date for payment under the Finance Documents.

- 32.5.2** All interest accrued on the amount standing to the credit of the holding account shall be for the benefit of the beneficiaries of that holding account pro rata to their respective entitlements.
- 32.5.3** A Party which has made a payment in accordance with this Clause 32.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the holding account.
- 32.5.4** Promptly upon the appointment of a successor Agent in accordance with Clause 29.13 (*Replacement of the Agent*), each Party which has made a payment to a holding account in accordance with this Clause 32.5 shall give all requisite instructions to the bank with whom the holding account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution in accordance with Clause 32.2 (*Distributions by the Agent*).

### **32.6 Partial payments**

**32.6.1** If the Agent receives a payment for application against amounts due in respect of any Finance Document that is insufficient to discharge all the amounts then due and payable by the Borrower under this Finance Document, the Agent shall apply that payment towards the obligations of the Borrower under those Finance Documents in the order set forth in the Cash Waterfall.

**32.6.2** Clause 32.6.1 above will override any appropriation made by the Borrower.

### **32.7 Set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### **32.8 Business Days**

Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

### **32.9 Currency of account**

**32.9.1** Subject to Clauses 32.9.2 to 32.9.5 below, Euro is the currency of account and payment for any sum due from the Borrower under any Finance Document.

**32.9.2** A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated, pursuant to this Agreement on its due date.

**32.9.3** Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest accrued.

**32.9.4** Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

**32.9.5** Any amount expressed to be payable in a currency other than Euro shall be paid in that other currency.

### **32.10 Disruption to Payment Systems etc.**

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

**32.10.1** the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of any Facility as the Agent may deem necessary in the circumstances;

**32.10.2** the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in Clause 32.10.1 above if, in its opinion, it is not practicable to do so in the circumstances, and, in any event, shall have no obligation to agree to such changes;

**32.10.3** the Agent may consult with the Finance Parties in relation to any changes mentioned in Clause 32.10.1 above, but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

**32.10.4** any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents, notwithstanding the provisions of Clause 38 (*Amendments and Waivers*);

**32.10.5** the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence, gross negligence or any other category of liability whatsoever, but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 32.10; and

**32.10.6** the Agent shall notify the Finance Parties of all changes agreed pursuant to Clause 32.10.5 above.

### **33 Set-Off**

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **34 Notices**

#### **34.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax, letter or e-mail.

## 34.2 Addresses

The address, e-mail address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

### 34.2.1 in the case of the Borrower:

#### **BORALEX ENERGIE FRANCE**

Address: to BORALEX SAS  
8, rue Anatole France  
59000 Lille

Attention: Directeur Financier  
Telephone: +33 3 28 36 54 95  
E-mail: alexandre.gowett@boralex.com / thomas.brunnin@boralex.com /  
benoit.magrin@boralex.com

### 34.2.2 in the case of the Agent and the Intercreditor and Security Agent:

#### **CRÉDIT INDUSTRIEL ET COMMERCIAL**

Address: 4, rue Gaillon, 75452 Paris Cedex 09, France  
Attention: Matthieu SONTHONNAX and Stéphanie DE ROUX  
Telephone: +33 1 53 48 70 80 / +33 1 53 48 23 70  
E-mail: matthieu.sonthonnax@cic.fr / stephanie.deroux@cic.fr

### 34.2.3 in the case of the Account Bank:

#### **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

For Operational / Servicing matters (Back-Office)

Address: 12, Place des Etats-Unis, CS 70052, 92547 Montrouge Cedex  
Attention: Amaury BUZELIN  
Telephone: 01 57 87 10 86 / 01 41 89 19 83  
E-mail: Bo\_lbo@ca-cib.com / Amaury.buzelin@ca-cib.com

For Credit matters

Address: 12, Place des Etats-Unis, CS 70052, 92547 Montrouge Cedex  
Attention: Frédéric De Cortanze / Frédéric Laurent  
Telephone: +33157873079 / +33141898852  
E-mail: frederic.decortanze@ca-cib.com / frederic.laurent@ca-cib.com

**34.2.4** in the case of the Original Lenders:

**AUXIFIP**

Address: 12, place des Etats Unis - CS 30002 - 92548 MONTROUGE cedex  
Attention: DGRE/OCML/Gestion des contrats  
Telephone: 01 43 23 65 65  
Fax number: 02 37 18 75 35  
E-mail: gestiondescontrats@ca-lf.com cc : olivier.masseran@ca-lf.com & camille.mader@ca-lf.com

**LA BANQUE POSTALE**

Head Office:

Address: 115 rue de Sèvres 75275 PARIS cedex 06 FRANCE  
Attention: Banque de Financement et d'Investissement  
Direction des Financements d'Actifs et de Projets

For Operational/ Servicing matters:

Address: 115 rue de Sèvres 75275 PARIS cedex 06 FRANCE  
Attention: Quentin DERVAUX / Feriel AIT MOHAMED  
Telephone: 01 57 75 54 97 / 01 57 75 42 26  
E-mail: quentin.dervaux@labanquepostale.fr /  
feriel.aitmohamed@labanquepostale.fr /  
bp-siege-lbp-mo-bfi-fin@labanquepostale.fr

For Credit Matters:

Address: CPX114 - 115 rue de Sèvres 75275 PARIS cedex 06 FRANCE  
Attention: Sandrine VERGNAUD / Adrien BESSE / Yannick CHAFFAUD /  
Mélanie LAMBIN GOBERT  
Telephone: 01 57 75 45 23 / 01 57 75 40 42 / 01 41 90 36 81 / 01 46 62 83 23  
E-mail: sandrine.vergnaud@labanquepostale.fr  
adrien.besse@labanquepostale.fr  
yannick.chaffaud@labanquepostale.fr  
melanie.lambin-gobert@labanquepostale.fr

**BPIFRANCE FINANCEMENT**

Address: 32 Boulevard Carnot CS80030 59045 LILLE CEDEX  
Attention: Nathalie QUESTROY / Laurent TIXIER  
Telephone: 03.20.81.94.73/ 06.70.74.69.53 / 03 20 81 94 44 / 06 89 58 65 79

E-mail: EE-SIEE-NORDOUEST@bpifrance.fr /  
nathalie.questroy@bpifrance.fr / laurent.tixier@bpifrance.fr

**CAIXABANK S.A., SUCCURSALE EN FRANCE**

Address: Gonzalo Jiménez de Quesada, 2, 2<sup>o</sup> planta 41092 SEVILLA, SPAIN  
Attention: Berta Egaña / Antoni Jofre / Javier Calco  
Telephone: (+)34 902 75 74 63  
E-mail: bgegana@caixabank.com / soporte.ffee@caixabank.com /  
seguimiento.contratos.ffee@caixabank.com /  
ajofre@caixabank.com

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

For Operational / Servicing matters (Back-Office)

Address: 12, Place des Etats-Unis, CS 70052, 92547 Montrouge Cedex  
Attention: Amaury BUZELIN  
Telephone: 01 57 87 10 86 / 01 41 89 19 83  
E-mail: Bo\_lbo@ca-cib.com / Amaury.buzelin@ca-cib.com

For Credit matters

Address: 12, Place des Etats-Unis, CS 70052, 92547 Montrouge Cedex  
Attention: Frédéric De Cortanze / Frédéric Laurent  
Telephone: +33157873079 / +33141898852  
E-mail: frederic.decortanze@ca-cib.com / frederic.laurent@ca-cib.com

**CRÉDIT INDUSTRIEL ET COMMERCIAL**

Address: 4, rue Gaillon, 75452 Paris Cedex 09, France  
Attention: Matthieu SONTTHONNAX and Stéphanie DE ROUX  
Telephone: +33 1 53 48 70 80 / +33 1 53 48 23 70  
E-mail: matthieu.sonthonnax@cic.fr / stephanie.deroux@cic.fr

**34.2.5** in the case of the Mandated Lead Arrangers:

**AUXIFIP**

Address: 12, place des Etats Unis - CS 30002 - 92548 MONTROUGE cedex  
Attention: DGRE/OCML/Gestion des contrats  
Telephone: 01 43 23 65 65

Fax number: 02 37 18 75 35

E-mail: gestiondescontrats@ca-lf.com cc : olivier.masseran@ca-lf.com &  
camille.mader@ca-lf.com

### **LA BANQUE POSTALE**

Head Office:

Address: 115 rue de Sèvres 75275 PARIS cedex 06 FRANCE

Attention: Banque de Financement et d'Investissement

Direction des Financements d'Actifs et de Projets

For Operational/ Servicing matters:

Address: 115 rue de Sèvres 75275 PARIS cedex 06 FRANCE

Attention: Quentin DERVAUX / Feriel AIT MOHAMED

Telephone: 01 57 75 54 97 / 01 57 75 42 26

E-mail: quentin.dervaux@labanquepostale.fr /  
feriel.aitmohamed@labanquepostale.fr /  
bp-siege-lbp-mo-bfi-fin@labanquepostale.fr

For Credit Matters:

Address: CPX114 - 115 rue de Sèvres 75275 PARIS cedex 06 FRANCE

Attention: Sandrine VERGNAUD / Adrien BESSE / Yannick CHAFFAUD /  
Mélanie LAMBIN GOBERT

Telephone: 01 57 75 45 23 / 01 57 75 40 42 / 01 41 90 36 81 / 01 46 62 83 23

E-mail: sandrine.vergnaud@labanquepostale.fr  
adrien.besse@labanquepostale.fr  
yannick.chaffaud@labanquepostale.fr  
melanie.lambin-gobert@labanquepostale.fr

### **BPIFRANCE FINANCEMENT**

Address: 32 Boulevard Carnot CS80030 59045 LILLE CEDEX

Attention: Nathalie QUESTROY / Laurent TIXIER

Telephone: 03.20.81.94.73/ 06.70.74.69.53 / 03 20 81 94 44 / 06 89 58 65 79

E-mail: EE-SIEE-NORDOUEST@bpifrance.fr /  
nathalie.questroy@bpifrance.fr / laurent.tixier@bpifrance.fr

### **CAIXABANK S.A., SUCCURSALE EN FRANCE**

Address: Gonzalo Jiménez de Quesada, 2, 2º planta 41092 SEVILLA, SPAIN

Attention: Berta Egaña / Antoni Jofre / Javier Calco

Telephone: +34 902 75 74 63

E-mail: bgegana@caixabank.com / soporte.ffee@caixabank.com /  
seguimiento.contratos.ffee@caixabank.com /  
ajofre@caixabank.com

### **CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

Operational / Servicing matters (Back-Office)

Address: 12, Place des Etats-Unis, CS 70052, 92547 Montrouge Cedex

Attention: Amaury BUZELIN

Telephone: 01 57 87 10 86 / 01 41 89 19 83

E-mail: Bo\_lbo@ca-cib.com / Amaury.buzelin@ca-cib.com

For Credit matters

Address: 12, Place des Etats-Unis, CS 70052, 92547 Montrouge Cedex

Attention: Frédéric De Cortanze / Frédéric Laurent

Telephone: +33157873079 / +33141898852

E-mail: frederic.decortanze@ca-cib.com / frederic.laurent@ca-cib.com

### **CRÉDIT INDUSTRIEL ET COMMERCIAL**

Address: 4, rue Gaillon, 75452 Paris Cedex 09, France

Attention: Matthieu SONTTHONNAX and Stéphanie DE ROUX

Telephone: +33 1 53 48 70 80 / +33 1 53 48 23 70

E-mail: matthieu.sonthonnax@cic.fr / stephanie.deroux@cic.fr

or any substitute address, fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

## **34.3 Delivery**

**34.3.1** Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (i) if by way of fax, when received in legible form;
- (ii) if by way of e-mail, when an acknowledgment of receipt has been received;  
or
- (iii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 34.2 (*Addresses*), if addressed to that department or officer.

**34.3.2** Any communication or document to be made or delivered to the Agent or the Intercreditor and Security Agent will be effective only when actually received by the

Agent or Intercreditor and Security Agent and then only if it is expressly marked for the attention of the department or officer identified with its signature below (or any substitute department or officer as it shall specify for this purpose).

**34.3.3** All notices from or to the Borrower shall be sent through the Agent.

**34.3.4** Any communication or document which becomes effective, in accordance with Clauses 34.3.1 and 34.3.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **34.4 Notification of address and fax number**

Promptly upon changing its address or fax number, the Agent shall notify the other Parties.

#### **34.5 Electronic communication**

**34.5.1** Any communication to be made between the Agent and a Party under or in connection with the Finance Documents may be made by electronic means other than e-mails, if the Agent and the relevant Party:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (ii) notify each other in writing of their information required to enable the sending and receipt of information by that means; and
- (iii) notify each other of any change to their address or any other such information supplied by them by no less than five Business Days' notice.

**34.5.2** Any electronic communication made between the Agent and a Party will be effective only when actually received in readable form and, in the case of any electronic communication made by a Party to the Agent, only if it is addressed in such a manner as the Agent shall specify for this purpose.

**34.5.3** Any communication to be made between the Agent and a Party in connection with operational matters should be made by fax, with a copy of the communication by electronic mail.

#### **34.6 English language**

**34.6.1** Any notice given under or in connection with any Finance Document must be in English or French.

**34.6.2** All other documents provided under or in connection with any Finance Document must be:

- (i) in English; or
- (ii) if not in English, and if so required by a Lender, accompanied by certified English translation, and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

#### **34.7 Use of websites**

**34.7.1** Except as provided below, the Borrower may deliver (through the Agent) any information under this Agreement to a Lender via an electronic website if:

- (i) the Agent and the Lenders agree;

- (ii) the Agent designates an electronic website for this purpose;
- (iii) both the Borrower and the Agent are aware of the address and any relevant password specifications of the electronic website;
- (iv) the website is used for communication between the Agent and the Lenders only;
- (v) the information can only be posted on the website by the Agent; and
- (vi) the information posted is in a format agreed between the Borrower and the Agent.

**34.7.2** The Agent must supply each relevant Lender with the address and password for the website.

**34.7.3** The cost of the website shall be borne by the Borrower, subject to such cost being agreed by the Borrower beforehand.

**34.7.4** Notwithstanding the above, upon request from the Agent, the Borrower must supply to the Agent in paper form a copy of any information posted on the website.

## **35 Calculation and Certificates**

### **35.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

### **35.2 Certificates and determinations**

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

## **36 Partial Invalidity**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **37 Remedies, Waivers and Hardship**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and, subject to Clause 37.1 (*No hardship*), not exclusive of any rights or remedies provided by law.

### 37.1 No hardship

Each Party hereby acknowledges that the provisions of article 1195 of the French *Code civil* shall not apply to it with respect to its obligations under the Finance Documents and that it shall not be entitled to make any claim under article 1195 of the French *Code civil*.

## 38 Amendments and Waivers

### 38.1 Required consents

The Parties agree that clause 17 (*Voting and Decision making*) of the Intercreditor Agreement shall have effect in respect of voting and decision-making among the Parties.

### 38.2 Replacement of a Lender

38.2.1 If:

- (i) any Lender becomes a Non-Consenting Lender (as defined in Clause 38.2.2 below); or
- (ii) the Borrower becomes obliged to repay any amount in accordance with Clause 8.2 (*Illegality*), Clause 14.2 (*Tax gross-up*), Clause 14.3 (*Tax indemnity*) or Clause 15.2 (*Increased Cost claims*),

then the Borrower may, on not less than five Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under the Finance Documents (subject to Clause 38.2.3(i) below) to:

- (a) a Lender which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 27 (*Change to the Lenders*); or
- (b) another bank, financial institution, trust, fund or other entity selected by the Borrower, provided that such bank, financial institution, trust, fund or other entity would be a permitted transferee under Clause 27 (*Change to the Lenders*),

in either case, for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Facilities and all accrued commission, interest, fees, Break Costs and other amounts payable in relation thereto under the Finance Documents (other than any Hedging Agreements).

38.2.2 In the event that the Borrower or the Agent (at the request of the Borrower) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents which requires the consent of all Lenders, then any Lender who does not and continues not to consent or agree to such waiver or amendment for 20 Business Days after the initial request for consent was communicated to all Lenders shall be deemed a "**Non-Consenting Lender**" if 85 per cent of the Lenders have consented or agreed to such waiver or amendment.

**38.2.3** The replacement of a Lender pursuant to this Clause 38.2 shall be subject to the following conditions:

- (i) the Borrower may arrange for the transfer to a third party of the Non-Consenting Lender's Hedging Agreements or of any Hedging Agreements of such Non-Consenting Lender's Affiliate entered into with the Borrower, provided that such transfer:
  - (a) takes place simultaneously with the replacement of the Non-Consenting Lender pursuant to paragraph (iv) below;
  - (b) is to another credit institution (including any bank) which has a long-term credit rating for unsecured debt of at least A- issued by S&P (or equivalent); and
  - (c) takes place no later than 60 days after the date on which that Lender is deemed a Non-Consenting Lender;
- (ii) the Borrower shall be responsible for all reasonable costs, fees and expenses properly incurred (including in connection with the transfer, or close-out, of any transactions under any Hedging Agreements associated with, or arising as a result of, the replacement of a Lender pursuant to this Clause 38.2) in connection with such replacement;
- (iii) the Borrower shall have no right to replace the Agent, the Intercreditor and Security Agent or the Account Bank;
- (iv) no Finance Party shall have any obligation to the Borrower to find a replacement Lender or a replacement Hedging Bank;
- (v) such replacement must take place no later than 60 days after the date on which that Lender is deemed a Non-Consenting Lender;
- (vi) in no event shall any Lender replaced under this Clause 38.2 be required to pay or surrender to a replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
- (vii) no Lender or Hedging Bank shall be obliged to transfer its rights and obligations pursuant to Clause 38.2.1 above unless (a) the transfer is made on commercial terms which are acceptable to the Lenders or the Hedging Bank as relevant acting reasonably on the basis of the then prevailing market conditions and (b) it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.

**38.2.4** A Lender shall perform the checks described in Clause 38.2.3(vii) above as soon as reasonably practicable following delivery of the notice referred to in Clause 38.2.1 above and shall promptly notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

### **38.3 Disenfranchisement of Defaulting Lenders**

**38.3.1** For so long as a Defaulting Lender has any Available Commitment, in ascertaining:

- (i) the Majority Lenders; or

- (ii) whether:
  - (a) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facilities; or
  - (b) the agreement of any specified group of Lenders,has been obtained to approve any request for a consent, waiver, amendment or other vote of Lenders under the Finance Documents,

that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments under a Facility and, to the extent that that reduction results in that Defaulting Lender's Total Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

**38.3.2** For the purposes of this Clause 38.3, the Agent may assume that the following Lenders are Defaulting Lenders:

- (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraph (a), (b) or (c) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

#### **38.4 Replacement of a Defaulting Lender**

**38.4.1** The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 20 Business Days' prior written notice to the Agent and such Lender:

- (i) replace such Lender by requiring such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement; or
- (ii) require such Lender to (and, to the extent permitted by law, such Lender shall) transfer pursuant to Clause 27 (*Changes to the Lenders*) all (and not part only) of its rights and obligations in respect of the Facilities,

to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Borrower, which confirms its willingness to assume and does assume all the obligations, or all the relevant obligations, of the transferring Lender in accordance with Clause 27 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (a) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents; or

- (b) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Sponsor and which does not exceed the amount described in paragraph (i) above.

**38.4.2** Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause 38.4 shall be subject to the following conditions:

- (i) the Borrower shall have no right to replace the Agent or Intercreditor and Security Agent;
- (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
- (iii) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
- (iv) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to Clause 38.4.1 above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.

**38.4.3** The Defaulting Lender shall perform the checks described in Clause 38.4.2(iv) above as soon as reasonably practicable following delivery of a notice referred to in Clause 38.4.1 above and shall notify the Agent and the Sponsor when it is satisfied that it has complied with those checks.

## **38.5 Replacement of Screen Rate**

Subject to the provisions of the Intercreditor Agreement, if a Screen Rate Replacement Event has occurred in relation to any Screen Rate, any amendment or waiver which relates to:

**38.5.1** providing for the use of a Replacement Benchmark in place of that Screen Rate; and

**38.5.2**

- (i) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
- (ii) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
- (iii) implementing market conventions applicable to that Replacement Benchmark;
- (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
- (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally

designated, nominated or recommended by any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrower.

### **39 Confidentiality**

Clause 23 (*Confidentiality*) of the Intercreditor Agreement shall apply to this Agreement.

### **40 Confidentiality of Reference Bank Quotations**

#### **40.1 Confidentiality and disclosure**

**40.1.1** The Agent agrees to keep each Reference Bank Quotation confidential and not to disclose it to anyone, save to the extent permitted by Clauses 40.1.2, 40.1.3 and 40.1.4 below.

**40.1.2** The Agent may, without prejudice to the provisions of article L.511-33 of the French *Code monétaire et financier*, disclose any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Reference Bank.

**40.1.3** The Agent may, without prejudice to the provisions of article L.511-33 of the French *Code monétaire et financier*, disclose any Reference Bank Quotation, to:

- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and representatives if any person to whom that Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information, except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
- (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information, except that there shall be no requirement to so inform if, in the opinion of the Agent, it is not practicable to do so in the circumstances;
- (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or

other investigations, proceedings or disputes if the person to whom that Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information, except that there shall be no requirement to so inform if, in the opinion of the Agent, it is not practicable to do so in the circumstances; and

(iv) any person with the consent of the relevant Reference Bank.

**40.1.4** The Agent's obligations in this Clause 40 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 10.4 (*Notification of rates of interest*), provided that the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

## **40.2 Related obligations**

**40.2.1** The Agent acknowledges that each Reference Bank Quotation is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation, including securities law relating to insider dealing and market abuse, and the Agent undertakes not to use any Reference Bank Quotation for any unlawful purpose.

**40.2.2** The Agent agrees (to the extent permitted by law and regulation) to inform the relevant Reference Bank:

- (i) of the circumstances of any disclosure made pursuant to Clause 40.1.3(ii), except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (ii) upon becoming aware that any information has been disclosed in breach of this Clause 40.

## **41 Protection of personal data**

**41.1** Each Party undertakes to comply in its capacity as data controller of its own data collection area with the regulation in force applicable to the general data protection insofar as it applies to it under the Finance Documents, in particular with the provisions of the Law No. 78-17 dated 6 January 1978 as amended and the General Data Protection Regulation (EU) 2016/679 relating to the protection of individuals with respect to the treatment of personal data and the use of such data replacing the Directive 95/46/EC (the "**Applicable Personal Data Protection Regulation**").

**41.2** The personal data gathered under the Finance Documents and their performance are mandatory for the processing and management of the contemplated transaction and in particular for its computer processing carried out under the responsibility of each of the Finance Party.

**41.3** The Parties hereby expressly agree that personal data may be used for the purposes of:

**41.3.1** the knowledge of the Borrower or, if the case may be, any other party(ies) and in respect of know your customer policies and procedures and the signatory(ies) of this Agreement;

**41.3.2** the execution, management of claims and litigation, electronic signature, detection and evaluation of risk, security and prevention of fraud and corruption, fight against

money laundering and financing of terrorism, and, in general, compliance with the legal and regulatory provisions to which each Party is subject;

**41.3.3** collecting or assigning debts as well as managing payment incidents; and

**41.3.4** commercial canvassing, carrying out sales promotions and advertising campaigns, opinion polls, satisfaction surveys and statistical studies.

#### **41.4 Natural persons**

**41.4.1** Each Finance Party may need to collect different categories of personal data relating to natural persons (in particular the legal representatives and agents (*mandataires*) of the relevant companies), including civil status, identity, identification data, economic and financial information, connection data, directly from the concerned persons, or indirectly from public or private entities, financiers and/or partners, or via public and private sources and in the latter case in their capacity as data controllers for purposes exclusively related to management and performance of this Agreement and to the compliance with their legal and regulatory obligations.

**41.4.2** The natural persons to which the relevant personal data relate consent to the foregoing. The Borrower will notify the relevant natural persons within the Boralex group of the provisions of this Clause 41 (*Protection of personal data*).

**41.4.3** The signatories of the Finance Documents and any relevant natural person agree that the aforementioned data could be communicated under the conditions described above and, for this purpose, release each of the Finance Party from professional secrecy.

**41.5** The personal data collected herein are intended for each of the Finance Party may also be communicated to financiers, partners, or third parties involved in the performance of the concerned services, and as applicable, to the General Investment Commission, the European Investment Fund (Fonds Européen d'Investissement) and/or the European Commission.

**41.6** The personal data may also be communicated and used by any administrative, judicial or supervisory authority, in the context of an administrative or judicial procedure, at their request.

**41.7** The data processing described in this Clause 41 above is likely to involve transfers of personal data to non-member countries of the European Economic Area, for which the laws with regard to the protection of personal data are different from those of the European Union. In this case, a precise and strict framework, in accordance with the models adopted by the European Commission, as well as the suitable security measures, ensure the protection of the personal data transferred.

**41.8** Each Finance Party will retain personal data in accordance with the Applicable Personal Data Protection Regulation.

**41.9** In accordance with the Applicable Personal Data Protection Regulation, the persons whose personal data are collected have a right of access, rectification, deletion, portability, restriction and opposition, for legitimate reasons, to information concerning them.

**41.10** These rights may be exercised by sending a letter to the Finance Party to the following addresses:

- 41.10.1** regarding AUXIFIP: AUXIFIP – 12 place des États-Unis - 92120 MONTRouGE, with postage to be reimbursed on request, or by email to the following address: DPOcalf@ ca-lf.com;
- 41.10.2** regarding Bpifrance Financement: Délégué à la protection des données, au 27-31 avenue du Général Leclerc, 94170 Maisons-Alfort Cedex, France;
- 41.10.3** regarding La Banque Postale: La Banque Postale – Service Customer Relationship – 115, Rue de Sèvres – 75275 Paris Cedex 06;;
- 41.10.4** regarding Crédit Industriel et Commercial: on [www.cic.fr](http://www.cic.fr) or in writing to Monsieur Le Délégué à La Protection des Données, 63 Chemin Antoine Pardon, 69814 Tassin Cedex;
- 41.10.5** regarding CaixaBank: in writing to Apartado Postal 209 – 46080 Valencia (Spain) or by means of the following website: [www.caixabank.com/ejerciciodederechos](http://www.caixabank.com/ejerciciodederechos). Likewise, they may contact with the CaixaBank's data protection officer at [www.caixabank.com/delegadoprotecciondedatos](http://www.caixabank.com/delegadoprotecciondedatos);
- 41.10.6** regarding Crédit Agricole Corporate and investment Bank: Crédit Agricole Corporate and Investment Bank - 12 place des États-Unis - 92120 MONTRouGE;
- 41.10.7** regarding any entity that has become a Party to this Agreement pursuant to the provisions of Clause 27 (*Changes to the Lenders*) on the address or website identified for this purpose in the relevant Transfer Certificate.
- 41.11** Such person may submit claim to the Commission Nationale de l'Informatique et des Libertés ([www.cnil.fr](http://www.cnil.fr)) and/or to the Spanish Data Protection Agency ([www.agpd.es](http://www.agpd.es)).
- 41.12** The information on the treatment Policy of personal data by the Finance Party is available on:
- 41.12.1** regarding Bpifrance Financement: [www.bpifrance.fr](http://www.bpifrance.fr);
- 41.12.2** regarding AUXIFIP:
- (i) [www.ca-leasingfactoring.com/politique\\_de\\_protection\\_des\\_donnees\\_a\\_caractere\\_personnel](http://www.ca-leasingfactoring.com/politique_de_protection_des_donnees_a_caractere_personnel);
- 41.12.3** regarding La Banque Postale:
- (i) [https://www.labanquepostale.fr/particulier/Outils/aide/mentions\\_legales\\_donneespersonnelles.html](https://www.labanquepostale.fr/particulier/Outils/aide/mentions_legales_donneespersonnelles.html);
- 41.12.4** regarding Crédit Industriel et Commercial:
- (i) [www.cic.fr/fr/particuliers/protection-des-donnees-personnelles/politique-de-protection-des-donnees-personnelles.html](http://www.cic.fr/fr/particuliers/protection-des-donnees-personnelles/politique-de-protection-des-donnees-personnelles.html); and
- (ii) [www.cic.fr/fr/protection-des-donnees-personnelles/politique-de-protection-des-donnees-personnelles-personnes-morales.html](http://www.cic.fr/fr/protection-des-donnees-personnelles/politique-de-protection-des-donnees-personnelles-personnes-morales.html);
- 41.12.5** regarding CaixaBank: [www.caixabank.com/informacionprivacidad](http://www.caixabank.com/informacionprivacidad);
- 41.12.6** regarding Crédit Agricole Corporate and Investment Bank: [www.cacib.com/personal-data-protection-notice](http://www.cacib.com/personal-data-protection-notice); and

41.12.7 regarding any entity that has become a Party to this Agreement pursuant to the Clause 27 (*Changes to the Lenders*) on the website identified for this purpose in the relevant Transfer Certificate.

41.13 In case of information disclosure to the General Investment Commission (*Commissariat Général de l'Investissement*), the European Investment Fund (*Fonds Européen d'Investissement*) and/or the European Commission (*Commission Européenne*), personal data will be retained by these institutions no later than 31 December 2034. The persons whose personal data are collected have a right to access to rectification, deletion of this personal data from the European Investment Fund (*Fonds Européen d'Investissement*) or the European Commission (*Commission Européenne*) which can be exercised by sending a letter to the following address:

- (i) the General Investment Commission (*Commissariat Général de l'Investissement*) or the European Investment Fund (*Fonds Européen d'Investissement*), Debt Services – Portfolio Guarantees, 37 B avenue J.F. Kennedy, L-2968 Luxembourg, Grand Duchy of Luxembourg;
- (ii) and the European Commission (*Commission Européenne*), Directorate General Economic and Financial Affairs Head of Unit L2 – EIF Programme Management, L-2920 Luxembourg, Grand Duchy of Luxembourg.

## 42 Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by French law.

## 43 Jurisdiction

The commercial court of Paris (*tribunal de commerce de Paris*) has exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement).

**[Schedules redacted for confidentiality reasons.]**

## **SIGNATURE PAGES**

Signed in Paris, on 25 November 2019, in nine (9) original copies.

Pursuant to the provisions of article 1375 al. 1 of the French *Code civil*, (i) only one original copy of this Agreement will be executed for each Mandated Lead Arranger which is also an Original Lender (the original copy being held by the Mandated Lead Arranger) and (ii) only one original copy of this Agreement will be executed for the Agent and the Intercreditor and Security Agent (the original copy being held by the Agent).

### **THE BORROWER**

#### **BORALEX ENERGIE FRANCE**

as Borrower

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By: Alexandre Gowett *or* Guy d'Aoust *or* Benoit Magrin *or* Sophie Delasnerie  
Title: Authorised signatory

**THE MANDATED LEAD ARRANGERS**

**AUXIFIP**

as Mandated Lead Arranger

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By: Christine Delamarre  
Title: Authorised signatory

**LA BANQUE POSTALE**

as Mandated Lead Arranger

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By: Yannick Chaffaud *or* Mélanie Lambin Gobert  
Title: Authorised signatory

**BPIFRANCE FINANCEMENT**

as Mandated Lead Arranger

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By: Nathalie Questroy  
Title: Authorised signatory

**CAIXABANK, S.A.**

as Mandated Lead Arranger

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By: Victor Granero Valero  
Title: Authorised signatory

By: Jordi Fuster Fornos  
Title: Authorised signatory

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

as Mandated Lead Arranger

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By: Pauline GEOFFROY  
Title: Authorised signatory

---

By: Raphaëlle ADRIEN  
Title: Authorised signatory

**CRÉDIT INDUSTRIEL ET COMMERCIAL**

as Mandated Lead Arranger

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By: Stéphanie DE ROUX  
Title: Authorised signatory

---

By: Claire CONNAULT  
Title: Authorised signatory

## **THE ORIGINAL LENDERS**

### **AUXIFIP**

as Original Lender

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By: Christine Delamarre  
Title: Authorised signatory

### **LA BANQUE POSTALE**

as Original Lender

---

By: Yannick Chaffaud *or* Mélanie Lambin Gobert  
Title: Authorised signatory

### **BPIFRANCE FINANCEMENT**

as Original Lender

---

By: Nathalie Questroy  
Title: Authorised signatory

### **CAIXABANK, S.A.**

as Original Lender

---

By: Victor Granero Valero  
Title: Authorised signatory

---

By: Jordi Fuster Fornos  
Title: Authorised signatory

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

as Original Lender

---

By: Pauline GEOFFROY  
Title: Authorised signatory

---

By: Raphaëlle ADRIEN  
Title: Authorised signatory

**CRÉDIT INDUSTRIEL ET COMMERCIAL**

as Original Lender

---

By: Stéphanie DE ROUX  
Title: Authorised signatory

---

By: Claire CONNAULT  
Title: Authorised signatory

**THE AGENT**

**CRÉDIT INDUSTRIEL ET COMMERCIAL**

as Agent

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By: Stéphanie DE ROUX  
Title: Authorised signatory

---

By: Claire CONNAULT  
Title: Authorised signatory

**THE INTERCREDITOR AND SECURITY AGENT**

**CRÉDIT INDUSTRIEL ET COMMERCIAL**

as Intercreditor and Security Agent

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By: Stéphanie DE ROUX  
Title: Authorised signatory

---

By: Claire CONNAULT  
Title: Authorised signatory

**THE ACCOUNT BANK**

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

as Account Bank

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By: Philippe BARRAUD  
Title: Authorised signatory

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By: Axel THIEULLENT  
Title: Authorised signatory