

# OUTLINE OF COMMON TERMS SHEET

## A. EQUITY SUPPORT

### 1 Initial Ownership

The Sponsor will hold, indirectly through wholly owned subsidiaries (the Shareholders), all share capital in the Project Vehicle as at Financial Close.

### 2 Base Equity

- (a) The Sponsor will commit to provide (through the Shareholders) base equity funding (Base Equity) to the Project Vehicle in an amount at least equal to \_\_\_% of Budgeted Project Costs up to a maximum aggregate amount of \_\_\_% (such commitment being the Base Equity Commitment) in accordance with the following provisions.
- (b) \_\_\_% of Base Equity will be provided before the First Drawdown Date. The remainder of the Base Equity will be contributed at least three Business Days before the date of each subsequent drawdown under the Facilities in an amount necessary to comply with Section E 2(f)

### 3 Contingent Equity

The sponsor will commit to provide contingent equity funding (Contingent Equity) to the project vehicle in a maximum amount of % (such commitment being the Contingent Equity Commitment) in accordance with the following provisions:

- (a) If, at any time prior to project completion, the amount of Available Funding is insufficient to meet project costs which have become due and payable or will become due and payable within 30 days (each such shortfall being a Shortfall Amount), then the sponsor will, upon notice in writing from the Project Vehicle or, failing it, the Inter-creditor Agent, pay an amount equal to the lesser of (i) the Identified Contingent Equity Requirement at that time; (ii) the remaining Contingent Equity Commitment (if any); and (iii) that Shortfall Amount.
- (b) If contingent equity is contributed to fund a project cost and at that time either:
  - (i) The Project Vehicle is entitled to make, or has made, a claim for general or liquidated damages against the Construction Contractor or a Government Authority; or
  - (ii) The Project Vehicle is entitled to make, or has made, an insurance claim, which in each case has not been paid and which would, if paid, have funded the project cost, that contingent equity shall be contributed by way of a bridging loan which shall be repaid from the recoveries in respect of such claims, save that repayments of any such bridging loan after the date of project completion may only be made if, at the time of the repayment, each Debt Service Reserve Account is fully funded to its required balance. The Finance Documents will include provisions to secure to the Sponsor a first priority claim to such recoveries.

### 4 Acceleration of Base Equity

- (a) If an Event of Default has occurred and is continuing but the loans have not been accelerated the Project Vehicle or the Inter-creditor Agent may require any remaining Base Equity commitment to be contributed in advance of the loans, as and when required to fund Project Costs.
- (b) If an Event of Default has occurred and is continuing but the loans have been accelerated, any remaining Base Equity Commitment shall be paid, on demand by the Inter-creditor Agent, to the Inter-creditor Agent for application to outstanding indebtedness under the Facilities.

## 5 Restoration Support

If, at any time after the Commercial Operations Date, the Project Vehicle must undertake a Restoration in accordance with the Implementation Agreement (IA), the Sponsor will undertake to procure that Restoration is completed in accordance with the provided that the Sponsor's liability under this paragraph shall not exceed the Threshold Amount agreed to under the IA.

## 6 Maintenance of Ownership

The Sponsor will undertake to maintain, in the period before the \_\_\_\_ anniversary of the Commercial Operations Date, directly or indirectly through wholly owned subsidiaries, legal and beneficial ownership of, and the power to vote, 100% of the ordinary shares of the vehicle project

## 7 Sponsor Representations and Warranties

The Sponsor will give the following representations and warranties

- (a) Corporate status. It is a limited liability project vehicle, duly incorporated and validly existing under the laws of \_\_\_\_\_.
- (b) Powers and authority. It has the power to enter into and perform, and has taken all necessary action to authorize the entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.
- (c) Enforceability. Each Transaction Document to which it is or will be a party constitutes, or when executed in accordance with its terms will constitute, its legal, valid and binding obligation enforceable against it in accordance with its terms (subject to limitations on enforcement caused by bankruptcy, insolvency, liquidation, reorganization and other similar laws of general application affecting the rights of creditors).
- (d) No conflict. The execution, delivery and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is or will be a party do not and will not violate or conflict with (i) any law, rule or regulation or Governmental approval or judicial or official order to which it is subject; (ii) its constitutional documents; or (iii) any document which is binding upon it or any of its assets to an extent, in each case, which is reasonably likely to have a Material Adverse Effect.
- (e) Authorizations and consents. All material authorizations and licenses required by it in connection with the entry into, performance, validity and enforceability of the transaction documents to which it is a party and the transactions contemplated by the Transaction Documents to which it is a party have been obtained or effected on or before the date they are required in order to perform its obligations under those Transaction Documents, are in full force and effect and, so far as the Sponsor is aware, no steps have been taken to revoke or cancel any authorization or license obtained or effected.
- (f) Improper payments. It has not and to the best of its knowledge and belief neither the Project Vehicle nor any of the Project Vehicle's or its officers, employees or agents has paid or received any unlawful commission, inducement, bribe, pay-off or kickback directly or indirectly in connection with the Project.
- (g) Share capital. It owns, legally and beneficially, 100% of the share capital of the Project Vehicle.

## 8 Undertakings

The Sponsor will undertake the following, for so long as the Sponsor has an undischarged obligations under the Equity Support Agreement (ESA):

- (a) Financial information. Provide its audited annual accounts as soon as the same are available. Accounting policies. Maintain accounting records in accordance with US generally accepted accounting principles (GAAP), consistently apply the principles and ensure that its financial statements supplied under paragraph (a) above are so prepared and fairly present its financial condition as of the dates specified therein and the results of its operations for the periods specified therein.
- (b) Authorizations. Promptly:
  - (i) Obtain, maintain and comply with the terms of; and
  - (ii) Supply certified copies to the Inter-creditor Agent of; all material Governmental approvals, licenses and consents that, under all applicable laws, may from time to time become necessary in connection with the execution, delivery, validity, enforceability and performance by or against the Sponsor in accordance with the terms of the Transaction Documents to which that Sponsor is a party.
- (c) Maintenance of status. Do all such things as are necessary to maintain its corporate existence.
- (d) Abandonment. Ensure that the project is not abandoned.

## 9 Equity Support Agreement-Miscellaneous Provisions

The ESA will also contain, in respect of the Sponsor's payment obligations under the ESA:

- (a) A prohibition against the Sponsor exercising rights of setoff.
- (b) A currency indemnity provision.
- (c) A tax gross-up provision.
- (d) A default interest provision (applying the same rate of default interest as applying to the Project Vehicle and excluding any double counting of liability for default interest against the Project Vehicle and the Sponsor).

## B. SECURITY

### 1 Security Interests

- (a) First-ranking security interests will be created over the assets of the Project Vehicle in favor of the Security Trustees (on behalf of the Finance Parties). This security will comprise:
  - (i) A simple or legal mortgage over the Project Vehicle's lease interest in the site and all fixtures, plant and machinery attached thereon
  - (ii) hypothecation or fixed charge over all moveable assets of the Project Vehicle located in \_\_\_\_
  - (iii) A floating charge over all assets of the Project Vehicle not subject to the security under paragraphs (i) to (ii) above (including the Project Vehicle's stock and receivables, its rights in the Secured Accounts located in \_\_\_\_ and its business as a going concern).
  - (iv) An assignment of the Project Vehicle's rights under all contracts executed by the Project Vehicle and other contracts which become Project Documents in the future.

- (v) An assignment of the Project Vehicle's rights under the insurance policies entered into by the Project Vehicle, and the rights of the insurer under the reinsurance policies as- signed to the Project Vehicle, and all benefits accruing to the Project Vehicle under those policies.
- (vi) Fixed and floating charges, over the Project Vehicle's as- sets not subject to the security under paragraphs to above (including the Secured Accounts (but not including the Restricted Payments Account and any account into which recoveries are paid pending repayment of Sponsor Bridging Loans to the Sponsor) and other assets located outside of \_\_\_\_)
- (b) A pledge, governed by \_\_\_\_ law, over 100% of the shares in the Project vehicle at all time.
- (c) The Direct Agreements.

## 2 Credit Support for Construction Contractor

The Project Vehicle will benefit from the Contractor Performance Bond from The Export-Import Bank of \_\_\_\_ or other bank acceptable to the Inter-creditor Agent (acting reasonably) covering \_\_\_\_% of the contract price under the Construction Contracts and which will remain in force (if not en-cashed) until issuance of the Takeover Certificate (as defined in the Construction Contracts).

## C. ACCOUNTS STRUCTURE

### 1 Accounts

The Project Vehicle will establish and maintain, with the relevant Account bank(s) the following accounts prior to the first drawdown

Account	Currency	Location
Proceeds Account	Local/USD	Offshore and Onshore (USD) and Onshore (Local)
Operating Account	Local/USD	Offshore and Onshore (USD) and Onshore (Local)
Debt Service Payment Account	USD	Offshore
Debt Service Reserve Account	USD	Offshore
Compensation Account	Local/USD	Offshore and Onshore (USD) and Onshore (Local)
Major Maintenance Reserve Account	USD	Offshore
Restricted Payments account	USD	Offshore
Petty Cash Account	Local	Offshore
Disputed Payments Account	Local/USD	Offshore

### 2 Proceeds Account

All advances under the Facilities, proceeds of Base Equity, Contingent Equity and all Project Revenues shall be paid into the Proceeds Account. The Project Vehicle will be permitted to make withdrawals from the Proceeds Account only to make payments in connection with the Project and transfers to other Accounts in accordance with the Order of Priority.

### 3 Operating Accounts, Petty Cash Account and Disputed Payments Account

The Project Vehicle may make transfers from the Proceeds Account to the Operating Accounts in respect of Operating Costs and Project Taxes provided that the aggregate amount transferred in any Semi-annual Period shall not exceed the Six-Month Transfer Amount as defined below.

#### **4 Debt Service Payment Account**

Subject to the Order of Priority and the availability of funds, the Debt Service Payment Account will be funded each month during any Semi-annual Period in which an installment of Debt Service falls due, in order to meet the following target balance (expressed as a fraction of the installment of Debt Service due at the end of that Semi-Annual Period

Month	Target Balance
1	1/6
2	2/6
3	3/6
4	4/6
5	5/6
6	6/6

The Project Vehicle will only be permitted to make withdrawals from the Debt Service Payment Account to meet Debt Service and to fund Permitted Operating Costs to the extent that funds are not available in the Operating Accounts and the Proceeds Account.

#### **5 Debt Service Reserve Account**

The Project Vehicle will establish and maintain a balance on the Debt Service Reserve Account at least equal to the Debt Service estimated to accrue during the next six months save that the initial required balance of the Debt Service Reserve Account shall include an amount in respect of Financing Principal due under the Facilities on the First Repayment Date notwithstanding that the First Repayment Date may not occur within the next six months.

The initial funding of the Debt Service Reserve Account shall be made as a Project Cost on or before the end of the Availability Period. Thereafter, transfers will be made at monthly intervals in accordance with the Order of Priority, subject to the availability of funds; in an amount (if any) to ensure the Debt Service Reserve Account is funded to its required balance.

The Project Vehicle may provide an irrevocable standby letter of credit, in a form acceptable to the Lenders' Agent (acting reasonably), from a bank with respect to its long-term unsecured and unsubordinated debt covering the cash balance on the Debt Service Reserve Account and may then withdraw that amount from the Debt Service Reserve Account.

The letter of credit must be for the account of the Sponsor. If there is a drawing under the letter of credit, there is no obligation to provide a replacement letter of credit in respect of the amount drawn.

#### **6 Compensation Account**

All proceeds of insurance claims, performance liquidated damages under the Construction Contracts, all other claims arising upon termination of the Project Agreements, all compensation for the cost of any Restoration from Government of \_\_\_\_\_, the Sponsor or any third party, and all compensation received by the Project Vehicle for an expropriation event which also constitutes a Government of Event of Default will be paid into segregated sub-accounts of the Compensation Account. Such amounts will be applied in accordance with the Accounts Agreement (AA).

## **7 Major Maintenance Reserve Account**

- (a) Subject to the Order of Priority and the availability of funds, transfers to the Major Maintenance Reserve Account will be made at six monthly intervals after the Commercial Operations Date to meet the target balances. The Project Vehicle will be permitted to make withdrawals from the Major Maintenance Reserve Account to meet Major Maintenance Costs and to fund Operating Costs identified in the latest Operating Budget to the extent that funds are not available in the Operating Accounts and the Debt Service Payment Account for this purpose. The Project Vehicle must ensure that an amount equal to the amount withdrawn is paid to the Major Maintenance Reserve Account within 12 months of the withdrawal.
- (b) The Project Vehicle may provide an irrevocable standby letter of credit, in a form acceptable to the Inter-creditor Agent (acting reasonably), from a reputable bank with respect to its long-term unsecured and unsubordinated debt covering the cash balance on the Major Maintenance Reserve Account and may then withdraw that amount from the Major Maintenance Reserve Account. The letter of credit must be for the account of the Sponsor. If there is a drawing under the letter of credit, there is no obligation to provide a replacement letter of credit in respect of the amount drawn.

## **8 Flow of Cash Revenues**

Cash balances in the Proceeds Account will (subject to the right of the Project Vehicle to deal with Recoveries) be applied in the following order (Order of Priority):

- First, Project Costs, Other Permitted Pre-completion Payments, repayments of Sponsor Bridging Loans and funding of the Operating Accounts.
- Second, transfers to the Major Maintenance Reserve Account.
- Third, Debt Service.
- Fourth, transfers to the Debt Service Reserve Account.
- Fifth, voluntary prepayments under the Facilities and any other amounts payable to the Finance Parties under the Finance Documents not referred to above in the Order of Priority.
- Sixth, other capital expenditure, repayments to Government of \_\_\_\_\_ or any other person in respect of advances by Government of \_\_\_\_\_ or that person in relation to the cost of any Restoration under the IA and Payments in relation to Sponsor Restoration Loans.
- Seventh, transfers to the Restricted Payments Account in respect of Restricted Payments or any other account required by the Sponsor.

## **9 Withdrawals during a Default**

If an Event of Default has occurred and so long as it is continuing, the Required Lenders may instruct the Inter-creditor Agent to give notice to the Account Banks (with a copy to the Project Vehicle) that the Inter-creditor Agent is to be the sole signatory on the Secured Accounts and to apply all amounts in the Secured Accounts in or towards repayment of the Facilities and such other liabilities of the Project Vehicle as the Inter-creditor Agent may elect. After delivery of such notice, no amount will be payable to the Project Vehicle, or may be withdrawn by the Project Vehicle, with respect to the Secured Accounts.

## 10 Permitted Investments

Cash balances held in the Accounts may be invested in the following authorized investments, subject to detailed procedures to be set out in the AA:

FOREIGN		
Instrument	Minimum Rating	Maximum Maturity
Term deposits	AI and PI	1 year
_____% commercial paper	AAA	1 year
Certificates of deposits(if available)	AI and PI	1 year
LOCAL		
Instrument	Minimum Rating	Maximum Maturity
Treasury bills		1 year
Treasury/Government bonds		1 year (remaining)
National Savings Certificates		

## 11 Monitoring of Operating Costs

- (a) During each Semi-Annual Period after the Commercial Operations Date, the Project Vehicle may not incur Operating Costs in excess of the amount equal to
  - i. Resource Costs which become due and payable under the Resource Supply Agreement (RSA) in that Semi-Annual Period
  - ii. Operating Costs (other than Resource Costs) which do not exceed 110% of the budgeted amount for those Operating Costs for that Semi-annual Period in the latest Operating Budget.
- (b) With effect from the Commercial Operations Date, the Project Vehicle will provide to the Lenders a semi-annual statement of all Operating Costs incurred in the last Semi-annual Period.

## D. COMMON PAYMENT TERMS

### 1 Prepayment

- (a) Voluntary prepayment. The Project Vehicle will be permitted to make voluntary prepayments under the Facilities at any time, subject to the payment of any applicable breakage costs and other fees and charges referred to in the Schedules to this term sheet but otherwise without penalty, on \_\_\_\_days' written notice. For any one prepayment, the amount prepaid under the Facilities must exceed an aggregate of\_\_\_\_% or the balance of the facilities if less.
- (b) Mandatory prepayment. Each Facility will be prepaid pro rata using:
  - (i) The proceeds of any performance liquidated damages received by the Project Vehicle from the construction Contractors under the Construction Contracts.

(ii)

(iii) Insurance proceeds for physical damage or loss received by the Project Vehicle or the relevant loss payee:

*If the amount of such proceeds is greater than \_\_\_\_ % (or its equivalent) in respect of a single incident unless (1) or (2) applies:*

- (I) Within \_\_\_\_ days of the relevant incident, the Project Vehicle provides a reinstatement plan to the Inter-creditor Agent for the reinstatement of the damaged Project Facilities to a state least necessary to achieve a level of performance of the Project equal to the Level of performance immediately before the relevant incident or, if less, the level of performance reflecting the technical assumptions used in compiling the First Forecast and the Required Lenders (acting reasonably and in consultation with the Project Vehicle, the Technical Advisor and the Insurance Advisor) are satisfied that
  - The proposed reinstatement will at least achieve that level of performance; or
  - The Project Vehicle has sufficient available funds (taking into account the relevant insurance proceeds) to undertake that reinstatement.
- (II) A Forecast (which shall be compiled at the time) shows that no Event of Default would arise under Section H. 21 at any time in the future if such reinstatement were to take place, and provided further that, in both cases, if the relevant insurance proceeds received by the Project Vehicle exceed the actual cost of the agreed reinstatement, the surplus shall be applied in prepayment of the Facilities (pro rata).

(iv) The proceeds of compensation for an Expropriation Event if such event is also a Government of \_\_\_\_ Event of default (as defined in the LA).

(v) All termination payments under the IA, Power Purchase Agreement (PPA), Gas Supply Agreement (GSA) Land Lease Agreement (LLA).

## **2 Cancellation**

Cancellation of the undrawn portion of the Facilities will be permitted, in whole or in part, upon at least \_\_\_\_ days' written notice without penalty, provided that (a) there is simultaneous pro rata cancellation between all Facilities; and (b) Remaining Project Costs would not exceed Available Funding as a result.

## **E. COMMON CONDITIONS PRECEDENT**

### **1 Conditions Precedent to First drawdown**

The documentary conditions precedent to the initial under the Facilities shall be the following:

- (a) Corporate documents. A certificate (substantially in the form set out in the Common Terms Agreement (CTA) of a director of the Project Vehicle, attaching copies of its incorporation certificates, constitutional documents and evidence of corporate authority (including board resolutions or comparable documents), regarding due authorization and due execution of each document to which the Project vehicle is a party required to be delivered under this Section E.



- (b) Finance documents. An original of each of the following Finance Documents duly executed by the parties:
- (i) Each Facility Agreement.
  - (ii) The CTA.
  - (iii) The AA (which shall include a notice of the security assignment (and acknowledgement thereof) of the Project Vehicle's rights under the Secured Accounts).
  - (iv) The Calculations and Forecasting Agreement.
  - (v) Each Security Document.
  - (vi) The ESA.
  - (vii) Each Direct Agreement, which shall each include:
    - *A notice of the security assignment (and acknowledgement thereof) of the Project Vehicle's rights under each Project Document which is the subject of the Direct Agreement; and*
    - *Confirmation from the Project Vehicle and the contract counter-party that Project Document is unconditional and in full force and effect.*
  - (viii) Each Fee Letter.
  - (ix) Each Hedging Agreement.
- (c) Project documents and other documents. A certified or, where required for the purposes of perfecting security, an original of each of the following documents duly executed by the parties:
- (i) The IA (condition precedent to Financial Close).
  - (ii) The off-take agreement (condition precedent to Financial Close).
  - (iii) The RSA (condition precedent to Financial Close).
  - (iv) The LLA (condition precedent to Financial Close).
  - (v) Each Construction Contract (condition precedent to Financial Close).
  - (vi) Each credit enhancement agreement.
- (d) Corporate authorities of other major project parties. A copy of a resolution of the board of directors or other governing body of each party to the Project Documents and Finance Documents or a certified extract of the minutes or other documentary evidence authorizing the execution of each document to which it is a party or other evidence of the power and authority of the persons signing on behalf of each such party to bind that party.
- (e) Consents: Copies of all required approval listed in \_\_\_\_ of the 1A and the approval of the Board of Investment or, like authority, if any, of \_\_\_\_ to this term sheet and the Finance Documents.
- (f) Equity. Evidence that the Sponsor has paid the amount of Base Equity which is required under Section A. 1 to be paid before the First drawdown date (which can include a letter from the Project Vehicle's auditors that such amount has been paid).
- (g) Security.
- (i) Share certificates in respect of 100% of the issued share capital of the Project Vehicle duly noted as to the share pledge along with undated share transfer forms executed in blank.

- (ii)
- (iii) Evidence that the share pledge has been registered in the books of the Project Vehicle.
- (iv) Evidence that notices of the Security Interests created by the Security Documents have been received, and acknowledged, by each counter party to a document specified in paragraph (c) above which is not subject to a Direct Agreement.
- (v) Evidence of registration of the mortgage over the site with the relevant Registry of Land in \_\_\_\_ under the Registration Act of \_\_\_\_ within \_\_\_\_ months of the date of execution of the mortgage.
- (vi) Evidence of registration of the mortgage, fixed charge and floating charge with the Registrar of Joint Stock Companies under the Companies Act of \_\_\_\_ within \_\_\_\_ days of their respective execution
- (vii) Evidence of compliance with all requirements in \_\_\_\_ in relation to the share pledge, as identified in the legal opinions in paragraph (O) below.
- (viii) Deposit of the lease deeds (and all related documents) in relation to the leasehold interest in the site.
- (ix) Other registrations and perfection of security specified in any legal opinion in paragraph below.
- (h) Insurance advisor's report.
  - (i) The Insurance Advisor's report in relation to the insurances (and all related documents) (condition precedent to Financial Close).
  - (ii) A certificate of the Insurance Advisor addressed to the Inter creditor Agent that all construction phase insurances required by the Finance Documents to be in effect on the First drawdown dates are in full force and effect and all premiums have been paid and the Lenders have been named as co-insured under those insurances.
- (i) Technical advisor's report. The Technical Advisor's report in relation to the project (condition precedent to Financial Close).
- (j) Model
  - (i) A letter from the Financial Model Auditor in relation to the review of the computer model in accordance with a scope of work to be agreed between the Project Vehicle and the Lead Arranger before Financial Close (condition precedent to Financial Close).
  - (ii) A letter from the Financial Model Auditor in relation to the review of the computer model in accordance with a scope of work to be agreed between the Project Vehicle and the Lead Arranger before Financial Close (condition precedent to Financial Close).
  - (iii) An initial Forecast (the First Forecast) showing, until the final maturity of the Facilities
    - a minimum semi-annual Debt Service Cover Ratio of \_\_\_\_ and
    - a minimum Loan Life Cover Ratio of more than \_\_\_\_ (condition precedent to Financial Close).
- (k) Accounts. Evidence that each of the Accounts has been established.

(l)

(m) Financials.

- (i) Pro forma statement of the Project Vehicle's assets and liabilities immediately following Financial Close.
- (ii) Audited statement from the Project Vehicle's auditors of any costs and expenses paid prior to Financial Close.
- (iii) Latest audited financial statements of the Sponsor, Onshore Technical Services Provider (TSA) and each Construction Contractor.

(n) Site.

- (i) Legal opinion on project site.
- (ii) Evidence of registration of the LLA and the Direct Agreement.

(o) Budget. The first Project Budget (condition precedent to Financial Close).

(p) Legal opinions. Legal opinions from:

- (i) The attorney general or other Governmental lawyer in relation to the IA and Government of - Guarantee.
- (ii) Lenders' onshore legal advisor in relation to - law aspects of the Transaction Documents governed by - law and the due execution by Government of the Off-taker; the Lessor and the resource supplier of all Transaction documents to which they are a party.
- (iii) Internal counsel of each of the Sponsor and the Technical Service Provider, in relation to the due execution by those persons of the Transaction Documents executed by them.
- (iv) Internal counsel of each of the Construction Contractors, in relation to the due execution by the Construction Contractors of the Transaction Documents executed by them

(q) Fees and expenses. Evidence that all fees, costs and expenses due to the Finance Parties and their advisors under the Finance Documents on or before the first drawdown date have been paid or shall be paid out of the proceeds of the disbursement due on the first drawdown date.

(r) Environment. A certificate from two directors of the Project Vehicle confirming that:

- (i) The environmental mitigation measures for the Project contained in the Environmental Impact Assessment will be implemented.
- (ii) The Project Vehicle will carry out the monitoring programme included in the Environmental Impact Assessment.
- (iii) The Project is in compliance, and will remain in compliance with the applicable environmental laws.

(s) Confirmation from individual lenders. Confirmation from individual Lenders that the conditions precedent to the individual loan facility agreements (ILFAs) have been satisfied or waived

## 2 Conditions Precedent to all Drawings

The conditions precedent to all drawings under the Facilities will be the following:

- (a) Representations and warranties. The representations and warranties contained in the Finance Documents are true and correct in all material respects.
  - (b) No default. No Default shall have occurred and be continuing or will occur as a result of the drawdown.
  - (c) Technical advisor's certificate. The Technical Advisor has provided a certificate substantially in the form agreed to under the CTA.
  - (d) Unfunded cost overrun. Remaining Project Costs do not exceed Available Funding.
  - (e) Request. Receipt of a request for disbursement in a form set out in final documentation along with a certificate:
    - (i) Describing in reasonable detail the Project Costs which the relevant drawing will or is likely to fund and confirming that the Project Costs have become due and payable or will become due and payable within \_\_\_\_ days of the proposed drawdown date (for which purpose, no Default or Event of Default will arise solely by virtue of projections in relation to Project Costs made in good faith being incorrect),
    - (ii) Confirming that there have been no variations or charge orders under the Construction Contracts or that all such variations and charge orders were permitted under the relevant contract.
  - (f) Base equity contribution. In relation to each drawdown date after the first drawdown date, the Sponsor has contributed Base Equity in an amount equal to the lesser of:
    - (i) The amount necessary to ensure that the ratio of that contribution of base Equity to the total amount to be drawdown under the Facilities on that drawdown date is at least \_\_\_\_
    - (ii) The remaining Base Equity Commitment (if any) at that time.
- In relation to the conditions precedent under this Section E. 2, the Inter-creditor Agent will, promptly on receipt of a copy of the relevant drawdown request, confirm to each of Lender X, the Lender Y Guarantee Agent and Subordinate Lender whether or not the conditions precedent have been satisfied. If a condition precedent has not been satisfied or the Inter-creditor Agent decides to seek instruction in relation to that condition precedent:
- (i) In the case of the first drawdown only, the Initial Conditions Precedent Instructing Group shall exercise instructing authority in relation to the satisfaction or waiver of that condition precedent.
  - (ii) In the case of subsequent drawdowns, Lenders representing 60% of the original loan commitments shall exercise instructing authority in relation to the satisfaction or waiver of that condition precedent.

## F. COMMON REPRESENTATIONS AND WARRANTIES OF THE PROJECT VEHICLE

The Project Vehicle will give the following representations:

- (a) Corporate status. It is a limited liability Project Vehicle, duly incorporated and validly existing under the laws of \_\_\_\_\_
- (b) Powers and authority.
  - (i) It has the power to own its assets and carry on its business as it is being conducted and perform all its obligations under the Transaction Documents to which it is a party.
  - (ii) It has the power to enter into and perform, and has taken all delivery of, each Transaction Document to which it is a party and the transactions contemplated by those Transaction Documents.
- (c) Enforceability. Each Transaction Document to which it is or will be a party constitutes, or when executed in accordance with its terms will constitute, its legal, valid and binding obligation enforceable against the Project Vehicle in accordance with its terms and, so far as the Project Vehicle is aware, is in full force and effect.
- (d) No conflict. The execution, delivery and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is or will be a party do not and will not violate or conflict with:
  - (i) Any law, rule or regulation or Governmental approval or judicial or official order to which it is subject in any material respect;
  - (ii) The constitutional documents of the Project Vehicle in any material respect or
  - (iii) Any document which is binding upon the Project Vehicle or any asset of the Project Vehicle to an extent which is likely to have a Material Adverse Effect.
- (e) No Default.
  - (i) No Default is outstanding.
  - (ii) It is not, and, so far as the Project Vehicle is aware, no Major Project Party is, in breach of the material terms of any Transaction Document to which that Major Project Party is a party.
- (f) Consents.
  - (i) All material authorizations and licenses required by it in connection with the entry into, performance, validity and enforceability of the Transaction Documents and the transactions contemplated by the Transaction Documents have been obtained or effected on or before the date they are required in order to implement the Project, are in full force and effect to the extent required at the relevant time and, so far as the Project Vehicle is aware, no steps have been taken to revoke or cancel any such authorization or license obtained or effected.
  - (ii) It has no reason to believe that any such authorization or license will not be renewed as and when required and without imposing any further material restrictions or conditions thereto.
  - (iii) It has not received any notice that any such authorization or license not yet required but that will be required will not be obtained or effected at the time it is required.
- (g) Taxes on payments. All amounts payable by it under the Finance Documents to the Finance Parties as at Financial Close may be made free and clear of and without deduction for or on account of any tax.
- (h) Assets. It has good title to, or freedom to use in accordance with any applicable laws and has acquired has vested in it access to the site and all easements to implement the Project.

- (i) Immunity. It is and will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in-in relation to any Transaction Document to which it is a party.
- (j) Choice of law.
  - (i) Its irrevocable submission to the jurisdiction of the English courts (where it has been chosen).
  - (ii) Recognition of the choice of English law in the Transaction Documents (where it has been chosen).
  - (iii) Agreement not to claim any immunity to which it or its assets may be entitled, are legal, valid and binding under the laws of \_\_\_\_\_
- (k) Accounts.
  - (i) Its latest audited financial statements most recently delivered the Inter-creditor Agent have been prepared in accordance with \_\_\_\_\_ consistently applied and fairly represent its financial condition as at the date to which they were drawn up and the results of its operations for the period then ended
  - (ii) There has been no Material Adverse Change in its financial condition since the date to which those accounts were drawn up
- (l) Proceedings. No litigation, arbitration or administrative or other proceedings are current or, to its knowledge, pending or threatened, which could reasonably be expected, if adversely determined, to have a Material Adverse Effect.
- (m) Information. All material information supplied to the Lenders by it or the Sponsor was true and accurate in all material respects on the date it was supplied.

- (n) Project documents. The copies of the Project Documents which it has delivered to the Inter-creditor Agent are true and complete copies of those contracts and there are no other material agreements to which it is a party as at Financial Close.
- (o) Intellectual property. It has available to it, prior to the date upon which it is required for the Project, all material intellectual property of every description.
- (p) Status of security. Each Security Document confers the Security Interests it purports to confer over the Security Assets and those Security Interests are not subject to any prior or pari passu Security Interests (other than any Permitted Security Interests).
- (q) Insurances. All key Insurances are in full force and effect and no event or circumstance has occurred, nor has there been any omission to disclose a fact, which would in either case entitle any insurer to avoid or otherwise reduce its liability under any policy relating to the Key Insurances.
- (r) No other business. It has not engaged in any business or activities.
- (s) No force majeure. No event of force majeure as defined in or contemplated by any Project Document has occurred and is continuing for the purposes of that Project Document.
- (t) Taxes. The Project Vehicle has filed, or procured the filing of, all tax and informational returns that are required by any law or regulation applicable to it to have been filed by it in any jurisdiction, and has paid or discharged all taxes due and payable from it or against its assets.
- (u) Budgets. The first Project Budget and the First Forecast, are consistent with the provisions of the Transaction Documents in all material respects, and have been prepared in good faith and with due care.
- (v) Options. No person has any right to call for the issue or transfer of any share capital or loan stock in the Project Vehicle other than the Sponsor.
- (w) Environmental matters. It has complied with all environmental requirements.
- (x) Improper payments. The Project Vehicle has not and to the best of its knowledge and belief neither the Sponsor nor any of the Project's Vehicle or the Sponsor's officers, employees or agents has paid or received any unlawful commission, inducement, bribe, pay-off or kickback directly or indirectly in connection with the Project.
- (y) Share capital. 100% of its share capital is legally and beneficially owned by the Sponsor.

## G. COMMON COVENANTS

The covenants of the Project Vehicle will be the following:

### 1 General covenants

- (a) Provision of information. The Project Vehicle shall supply to the Inter-creditor Agent in sufficient copies for all the Lenders, the financial information set out under CTA.
- (b) Access.
  - (i) The Project Vehicle shall procure that each of the Lenders and their agents be allowed (at their own risk and liability) reasonable access to inspect the Project Facilities, records and other data in the possession or control of the Project Vehicle with respect to the Project Facilities as they may reasonably require and so as not unreasonably to interfere with the operations of the Project Vehicle and any Major Project Party for the purposes of performing their respective duties.

- (ii) The Project Vehicle shall keep and maintain up to date in accordance with good business practice and all applicable laws all statutory books, books of account, bank statements and other records of the Project Vehicle.
- (c) Required approvals. The Project Vehicle shall promptly obtain, maintain and comply in all material respects with the terms of, and supply certified copies to the Inter-creditor Agent of, each Required Approval.
- (d) Negative pledge. The Project Vehicle will not create or permit to remain outstanding any Security Interest over its present and future assets other than Permitted Security Interests.
- (e) Transactions similar to security. - Other than Permitted Security Interests, the Project Vehicle shall not
  - (i) sell, transfer or otherwise dispose of any of its material assets on terms whereby it is or may be leased to or re-acquired or acquired by it or any of its related entities, or
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms, except for the discounting of bills or notes in the ordinary course of business, in circumstances where the transaction is entered into primarily as a method of raising finance or of financing the acquisition of an asset.
- (f) Financial indebtedness. The Project Vehicle will not incur Financial Indebtedness except Permitted Financial Indebtedness.
- (g) Loans and credits. The Project Vehicle shall not make any loans or provide credit except for:
  - (i) Credit provided pursuant to any Project Document.
  - (ii) Loans or credit approved in writing by the Required Lenders.
- (h) Disposals. The Project Vehicle shall not either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily, sell, transfer, grant or lease or otherwise dispose of all or any substantial part of its assets.
- (i) Change of business. The Project Vehicle shall not engage in any business or activities other than the Project and activities reasonably incidental thereto.
- (j) Merger and acquisitions. The Project Vehicle shall not enter into any amalgamations, demerger, merger or reconstruction
- (k) Project Works. The Project Vehicle shall use all reasonable endeavors to procure that the project works are constructed, completed, tested, commissioned, equipped and maintained in accordance with the construction contracts and the requirements relating to the Project Works in any other Project Document.
- (l) Operations and maintenance.
  - (i) The Project Vehicle shall diligently operate and maintain, or procure the operations and maintenance of the Project Facilities, in a safe, efficient and business-like manner and in accordance with good industry practice and all material requirements of the Project Documents.
  - (ii) The Project Vehicle shall between 120 and 90 days before the start of each year with effect from the Commercial Operations Date (or part thereof in relation to the period from the Commercial Operations Date until the end of the year), provide to the Inter-creditor Agent a draft annual operating budget for that year (or part thereof), showing likely expenditure to be incurred in each month during that year.
  - (iii) The Project Vehicle shall maintain adequate working capital in accordance with good industry practice.



(m) Project Documents.

- (i) The Project Vehicle shall comply with its obligations under the Project Documents in all material respects and the Project Vehicle shall not, without the prior written consent of the Required Lenders, agree to any material amendment, or the termination or abandonment of, or waive compliance with any material provision of, any Project document.
  - (ii) The Project Vehicle shall not, without the prior written consent of the Required Lenders, amend its constitutional documents.
  - (iii) The Project Vehicle shall not request or agree to any variations to any part of the Project Works except variations which it is contractually obliged to agree to or make under the Construction Contracts.
- (n) Material contracts. The Project Vehicle shall not without the consent of the Required Lenders enter into any contracts with third parties.
- (o) Compliance with laws and payments of taxes. The Project Vehicle shall comply in all material respects with all laws and regulations applicable to it and the Project Vehicle shall pay all its taxes when due
- (p) Environmental matters. The Project Vehicle shall:
- (i) Ensure that the environmental management plan stated, and the environmental mitigation and monitoring measures recommended, in the Environment Impact Assessment are followed in design, construction, implementation and maintenance of the Project.
  - (ii) Comply with all applicable Environmental Laws.
  - (iii) Take all necessary mitigation measures specified in the Environmental Impact Assessment to minimize the environmental impact of the Project.
- (q) Share capital. The Project Vehicle shall not purchase, cancel or redeem any of its share capital or issue any further voting capital. The Project Vehicle will not register transfer of shares in the Project Vehicle in breach of Section \_\_\_\_
- (r) Investments. The Project Vehicle shall not acquire any share or loan capital of any corporate body or other investments except permitted investments using cash balances in the Secured Accounts.
- (s) Distributions. The Project Vehicle will not make any Restricted Payment or make any transfer to the Restricted Payments Account (other than in respect of Recoveries) before the date of Project Completion or at any time thereafter, unless each of the following conditions has been met
- (i) No Default has occurred or is occurring or will occur as a result of making that payment or distribution.
  - (ii) The first repayment installment under the Facility Agreement shall have been paid in full by the Project Vehicle.
  - (iii) The Historic Debt Service Cover Ratios for the previous Semi-annual Period is at least \_\_\_\_
  - (iv) Each of the Major Maintenance Reserve Account and the Debt Service Reserve Account is fully funded to its required balances.
  - (v) The Inter-Creditor Agent shall confirm satisfaction of the above conditions before a Restricted Payment is made or a transfer is made to the Restricted Payment Account.
- (t) Insurance. The Project Vehicle will maintain agreed insurances (which will be specified in final documentation to reflect the advice of the Insurance Advisor) in full force and effect.
- (u) Abandonment. The Project Vehicle will not abandon the project.

- (v) Improper payments. The Project Vehicle will not pay or receive and will use all reasonable endeavors to ensure that any of its officers, employees or agents will not pay or receive any unlawful commission, inducement, bribe, pay-off or kick back directly or indirectly in connection with the Project.
- (w) Maintenance of security.
  - (i) The Project Vehicle shall undertake all actions reasonably necessary to
    - Maintain the Security Interests under the Security Documents to which it is a party in full force and effect at all times.
    - Preserve and protect such Security Documents and protect and enforce the Project Vehicle's rights and title to the Security Assets and the rights of the Finance Parties to such Security Interests
  - (ii) If the Project Vehicle shall at any time acquire any interest in property not covered by the Security Documents to which it is a party or enter into an additional Project Document, promptly upon such acquisition or execution, the Project Vehicle shall execute, deliver and record a supplement or addition to the Security Documents, satisfactory in form and substance to the Inter-creditor Agent, ensure that such Security Interest will be a valid and effective interest.
- (x) Scope of business. The Project Vehicle shall not engage in any business or activities, either alone or in partnership or joint venture with any other person, other than those contemplated by the Transaction Documents.

## **2 Hedging**

- (a) The Project Vehicle will manage its exposure to interest rate fluctuations so as to ensure that:
  - (i) Between the First drawdown Date and the date of Construction Completion, 100% of its interest rate exposure is fixed or capped.
  - (ii) Thereafter, at least\_\_\_% of its interest rate exposure is fixed or capped.
- (b) All the hedging arrangements shall be evidenced by Hedging Agreements between the Project Vehicle and respective counter-parties. Amounts owing under Hedging Agreements will be secured pari passu with the debt under the Facilities by the

## **H. COMMON EVENTS OF DEFAULT**

### **1 Non-Payment**

The Project Vehicle or the Sponsor does not pay on the due date any amount payable by it under the Finance Documents at the place and in the currency in which it is expressed to be payable and such failure is not remedied.

### **2 Breach of other obligations**

The Project Vehicle or the Sponsor does not comply with any provision of the Finance Documents and such non-compliance is not remedied within\_\_\_ days of that person becoming aware, or being made aware.

### **3 Misrepresentation**

A representation or warranty by the Project Vehicle or the Sponsor made or repeated in any Finance Document is incorrect in any material respect when made or deemed to be made or repeated and which, if capable of remedy, has not been remedied within\_\_\_ days of that person becoming aware.

### **4 Cross-default**

- (a) Any of the Project Vehicle, the Sponsor or a Construction Contractor (for so long as they remain Major Project Parties) (each a Relevant Person) fails to pay when due any Financial Indebtedness and such failure is not remedied within the period of \_\_\_ days or, if shorter any originally applicable grace period.
- (b) Any Financial Indebtedness of any Relevant Person becomes prematurely due and payable or is placed on demand as a result of an event of default (howsoever described) under the document relating to the financial indebtedness.
- (c) Any event of default (howsoever described) occurs under any document relating to Financial Indebtedness of any Relevant Person.
- (d) Any security interest securing Financial Indebtedness over any asset of any Relevant Person becomes enforceable.

## **5 Insolvency**

- (a) Any of the Project Vehicle, the Sponsor or a Construction Contractor is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due.
- (b) Any of the Project Vehicle, the Sponsor or a Construction Contractor suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness.

## **6 Insolvency Proceedings**

- (a) Any insolvency proceedings are taken by the Project Vehicle, the Sponsor or the Construction Contractor.
- (b) A meeting of any of the Project Vehicle, Sponsor or a Construction Contractor is convened for the purpose of considering any resolution for (or to petition for) its winding-up or for its administration.
- (c) Any person presents a petition for the winding-up or for the administration of the Project Vehicle and such petition is not discharged or dismissed within \_\_\_ days of its presentation.
- (d) Any person presents a petition for the winding-up or for the administration of the Sponsor or a Construction Contractor and such petition is not discharged or dismissed within days of its presentation save if the Required Lenders are satisfied that the petition has been presented for frivolous or vexatious reasons.
- (e) An order for the winding-up or administration of the Project Vehicle is made.
- (f) An order for the winding-up or administration of the Sponsor or a Construction Contractor is made and such order is not discharged or dismissed within \_\_\_ days of its date.

## **7 Appointment of Receivers and Managers**

Any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or the like is appointed or requested to be appointed in respect of the Project Vehicle or any part of its assets.

## **8 Creditors' Process**

Any attachment, sequestration, distress or execution affects any material asset of the Project Vehicle and is not discharged within \_\_\_ days.

## 9 Cessation of Business

Any Major Project Party (except Government of \_\_) ceases, or threatens to cease, to carry on all or a substantial part of its business and which, in the case of a threatened cessation, the Inter-creditor Agent determines (acting on the instructions of the Required Lenders) that such threatened cessation has a Material Adverse Effect.

## 10 Project Documents and Direct Agreements

- (a) Any party to a Project Document or a Direct Agreement does not comply with any provision of that Project Document or Direct Agreement and such non-compliance is not remedied within \_\_\_\_ days of the Project Vehicle becoming aware, or being made aware, of the same and:
  - (i) If an Event of Default has occurred and is continuing by virtue of such non-compliance, either:
    - A. The Required Lenders determine that such noncompliance has a Material Adverse Effect; or
    - B. That Event of Default is not remedied during the cure period which ends on the date on which a party may serve a Termination Notice.
  - (ii) If no Event of Default has occurred and is continuing by virtue of such non-compliance, the Required Lenders determine that such non-compliance has a Material Adverse Effect.
- (b) Any of the following:
  - (i) Project Document or Direct Agreement is repudiated or is or becomes void or unenforceable (other than, in relation to a Direct Agreement by virtue of the breach by a Finance Party of the terms of that Direct Agreement) and such event has a Material Adverse Effect.
  - (ii) Obligation expressed to be assumed by a party under a Project Document or Direct Agreement is not or ceases to be a valid and binding obligation of, or is repudiated by, that party or becomes void or unenforceable or it becomes unlawful for any party to that Project Document or Direct Agreement to perform any of its material obligations in a Project Document or Direct Agreement and, in each case, such event has a Material Adverse Effect.
  - (iii) Project Document or Direct Agreement or any provision thereof is required by any law or regulation having the force of law to be waived, amended modified or abandoned and such event has a Material Adverse Effect.
  - (iv) Project Document or Direct Agreement terminates or is or becomes capable of being terminated (provided any applicable cure period under paragraph (a)(i)(B) has expired), in each case otherwise than by reason of full performance of the agreement or expiry of its term.

Save that, in relation to any Project Document except the IA, PPA, GSA or LLA, it will not be an Event of Default if, within \_\_\_\_ days of the Project Vehicle becoming aware, or being made aware of the same, the Project Vehicle has:

    - A. Supplied to the Inter-creditor Agent a replacement contract (which shall become a Project Document) in form and substance satisfactory to the Required Lenders and with an appropriately qualified and creditworthy contractor approved by the Required Lenders; or
    - B. Agreed alternative arrangements in relation to the matters addressed in that Project Document which are satisfactory to the Required Lenders.

## 11 Illegality, etc.

- (a) It is or becomes unlawful for any person (other than a Finance Party) to perform any of its material obligations under the Finance Documents.

- (b) Any Finance Document or any material provision thereof is required by any law or regulation having the force of law to be waived, amended, modified or abandoned.
- (c) Any Finance Document is repudiated or is or becomes void or unenforceable against the Project Vehicle or the Sponsor.
- (d) The Lender Y Guarantee is not, or ceases to be, in full force and effect, in each case otherwise that by virtue of the breach by Lender Y Guaranteed Lender of its obligations under the Lender Y Guarantee.

## **12 Effectiveness of Security**

Any Security Document is not effective or is alleged by the Project Vehicle or the Sponsor to be ineffective for any reason.

## **13 Equity Investment**

- (a) The Sponsor ceases to comply with its minimum ownership covenants in Section A. 6.
- (b) The Project Vehicle registers the issue or transfer of any of its share capital:
  - (i) In circumstances where that issue or transfer was made in breach of any provision of the ESA; or
  - (ii) To a shareholder or transferee which has not entered into a share pledge over its shares in the Project Vehicle in accordance with the terms of the Security Documents and a deed of accession to the ESA in accordance with the ESA.

## **14 Completion**

- (a) Construction Completion has not occurred by the date \_\_\_\_ months after Financial Close.
- (b) Construction Completion has not occurred by the date \_\_\_\_ months after Financial Close and at any time thereafter until Construction Completion occurs, a Forecast shows that the Project Vehicle is unlikely to meet all payments scheduled to fall due under the Facilities on the First Repayment Date.
- (c) At any time, the progress of the Project Works is \_\_\_\_ days or more behind the progress contemplated by the Milestone Payment Schedules (as defined in and set out in the Construction Contract) and the Technical Advisor, acting reasonably and following consultation with the Inter-creditor Agent, the Project Vehicle and the Construction Contractors, concludes that there is no reasonable prospect of Construction Completion occurring on or before \_\_\_\_ months after financial close

## **15 Abandonment**

The Project Vehicle abandons all or a material part of the Project Facilities.

## **16 Total Loss**

All or a significant part of the Project Facilities are lost, damaged or destroyed, in each case, beyond economic repair or reinstatement or declared by the relevant insurer(s) to be a constructive total loss, provided that (for the avoidance of doubt) an Event of Default shall not occur under this paragraph 16 if the Required Lenders have approved a reinstatement plan in respect of such loss, damage or destruction under Section D.1(b)(ii)(I).

## **17 Government Action**

- (a) Any Government Authority takes any expropriation action.
- (b) Any Required Approval is revoked, cancelled, not renewed, modified or amended and such event has a Material Adverse Effect.

## **18 Insurance**

Any Key Insurance which the Project Vehicle or a Construction Contractor is required to effect under the Finance Documents is not, or ceases to be, in full force and effect or (at the time it is required to be effected) is unavailable, or is avoided or any insurer is or will be entitled to avoid or otherwise reduce its liability under any policy relating to that Key Insurance.

## **19 Project Events**

- (a) The Project Facilities are not available for operations for a continuous period in excess of \_\_\_\_ days or for which periods, in aggregate, exceed \_\_\_\_ days in 12 months period otherwise than by reason of
  - (i) The scheduled maintenance contemplated in the PPA;
  - (ii) Force majeure or
  - (iii) For the duration of the applicable indemnity period only, any other event which the Insurance Advisor (or the relevant insurer) confirms to the Inter-creditor Agent is an insured event under the Key Insurances.
- (b) Construction of the Project Facilities is not commenced within \_\_\_\_ days of the date of the first drawdown under the Facilities.

## **20 Unfunded Cost Overrun**

At any time before the date of Construction Completion, Remaining Project Costs (excluding for the avoidance of doubt, any funding of the Debt Service Reserve Accounts) exceed Available Funding at that time.

## **21 Ratios**

- (a) The Historic Debt Service Coverage Ratio is less than \_\_\_\_ for any two consecutive Semi-annual Periods with effect from the Commercial Operations Date.
- (b) The Loan Life Cover Ratio on any Semi-annual Date in relation to which a Forecast is produced is less than \_\_\_\_

## **22 Environmental Matters**

- (a) There is a change in applicable environmental law which would be likely to result in the imposition of any material liability in relation to the project on any Finance Party.
- (b) There is a change in environmental law which might cause the rights of any person in relation to any claim against the Project Vehicle in relation to non-compliance with an environmental law or Required Approval relating environmental protection to rank ahead of the rights of any Finance Party against the Project Vehicle.

## **23 Material Adverse Change**

Any other event or series of events occurs which has a Material Adverse Effect provided that such event or series of events shall only be an Event of Default if:

- (a) Following notice from the Inter-creditor Agent of the occurrence of such event or series of events, the Project vehicle does not within business days enter into consultations with the inter creditor Agent (for such period as may reasonably be requested by the Inter-creditor Agent) as to possible steps of mitigation or remedy that may be taken; or
- (b) After such consultation such event is not remedied or mitigated to the reasonable satisfaction of the Required Lenders within days of the original notice from the Inter-creditor Agent to the Project Vehicle.

## **24 Construction Contractor**

- (a) References to a Construction Contractor in paragraphs 4-10 shall apply for so long as it remains a Major Project Party.

- (b) If an event occurs in relation to a Construction Contractor which causes a default to arise under paragraphs 4-10 inclusive, an Event of Default shall not occur if within-days of the Project Vehicle becoming aware, or being made aware of the same, the Project Vehicle has:
  - (i) Supplied to the Inter-creditor Agent a replacement contract (which shall become a Project Document) in form and substance satisfactory to the Required Lenders and with an appropriately qualified and creditworthy contractor approved by the Required Lenders; or
  - (ii) Agreed alternative arrangements in relation to the matters addressed in that Project Document which are satisfactory to the Required Lenders.

## **25 Remedies upon an Event of Default**

Upon the occurrence of an Event of Default, the Lenders may exercise one or more of the following remedies:

- (a) Cancellation or suspension of the loan commitments.
- (b) Acceleration of the loans.
- (c) Acceleration of Base Equity and/or Contingent Equity subject to and in accordance with Section A.
- (d) Enforcement of the security under the Security Documents.
- (e) Enforcement of remedies under the Direct Agreements.
- (f) The giving of notice regarding the payment of insurance proceeds.
- (g) Lock-up of the Accounts (except the Restricted Payments Account) in accordance with Section C.

If the Lenders exercise their rights under a Direct Agreement to have an Agent or a Project Vehicle owned by the Lenders accede as a party to a Project Document at a time when an Event of Default has occurred, then provided the Project Vehicle has not breached its obligations, or an Event of Default has not arisen, under that Project Document or the Lenders are not enforcing the security under the Security Documents (excluding the exercise of such rights under that Direct Agreement), the Lenders shall not agree or instruct an Agent or that project vehicle to agree to any amendments to that Project Document without the consent of the Project Vehicle.



# **I. TERMS OF SUBORDINATION FOR LENDER Z SUBORDINATED FACILITY**

## **1 Subordination and Inter-creditor Agreement**

Subordinate Lender in its capacity as provider of the subordinated facility will enter into the Subordination and Inter-creditor Agreement to be governed by English law in respect of the matters set out in this Schedule.

All references to Subordinate Lender in this Schedule are to it in its capacity as provider of the Subordinated Facility, unless otherwise stated.

## **2 Subordination**

All indebtedness under the Subordinated Facility (the Subordinated Indebtedness) will be subordinated to the indebtedness under the Senior Facilities (the Senior Indebtedness) in accordance with the terms of this Schedule \_\_\_\_

Senior Indebtedness will only include new moneys advanced by the Senior Lenders, in excess of the stated principal amount of the Senior Facilities in Section A of this term sheet, only if approved by Subordinate Lender.

Subordinate Lender will benefit from the Lenders' security and sponsor support package but may not enforce that security or support unless in accordance with this Schedule \_\_\_\_

## **3 Undertakings by the Company**

The Company will undertake not to make payments to Subordinate Lender unless permitted under this schedule and to otherwise comply with the terms of the subordination set out in this Schedule \_\_\_\_

## **4 General Undertakings by Subordinate Lender**

Save as specifically permitted in this Schedule, Subordinate Lender will undertake not to do any of the following:

- (a) Demand or receive payments of Subordinated Indebtedness.
- (b) Permit the Subordinated Indebtedness to benefit from any security, guarantee or other assurance other than as contemplated under the Security Documents or the ESA.
- (c) Exercise, or instruct anyone else to exercise, any remedy (including rights of acceleration and enforcement of security) exercisable upon an Event of Default under the Subordinated Facility.
- (d) Set off the Subordinated Indebtedness against any amount payable by it to the Company.
- (e) Take, or instruct anyone else to take, any action of whatsoever nature against the Company to recover the Subordinated Indebtedness, including:
  - (i) Court process to enforce compliance with the terms of the Subordinated Indebtedness.
  - (ii) Winding-up, liquidation or similar proceedings.
  - (iii) The levying of distress, execution or other creditors' process against the Company or its property in respect of the Subordinated Indebtedness.
  - (iv) Amend the terms of the Subordinated Facility

## **5 Permitted Subordinated Payments**

The Company may pay and Subordinate Lender may receive the payments of Subordinated Indebtedness on or after their due date provided that there are sufficient funds in the Proceeds Account, the Subordinated Debt Service Payment Account and/or the Subordinated Debt Service Reserve Account on the date of payment having first applied the Order of Priority (as set out in Section C of this term sheet).

## **6 Subordinated Debt Service Reserve Account**



The Company will establish and maintain a Subordinated Debt Service Reserve Account to hold an amount equal to the next installment of principal and interest due under the Subordinated Facility. The account will be funded in accordance with Section C. For the avoidance of doubt, the funding of each Debt Service Reserve Account from Project Costs shall be pro rata (calculated with respect to the original loan commitments) from funding available under the Facilities, Base Equity and Contingent Equity.

The Subordinated Debt Service Reserve Account will be exclusively dedicated to Subordinated Indebtedness (including upon the acceleration of the Facilities or liquidation of the Company).

## **7 Voting under the Senior Facilities**

Section J.3 sets out the voting regime under the Senior Facilities. Sub-ordinate Lender (in its capacity as provider of the Subordinated Facility) will not have voting rights under the Senior Facilities.

## **8 Amendments of Terms of the Senior Facilities**

The Senior Lenders may not amend the terms of the Senior Facilities without the prior written agreement of Subordinate Lender if the amendment would have the effect of:

- (a) Increasing the amount of a principal repayment installment under a Senior Facility.
- (b) Increasing the rate of interest, default or overdue interest, guarantee fee, or other fees under a Senior Facility.
- (c) Bringing forward the date for any payment referred to in (a) and (b) above.
- (d) Varying the amount of a Senior Lender's commitment under a Senior Facility.
- (e) Granting a security, surety or other support in favor of a Senior Lender other than previously existing under the Security or Equity Support Agreement and the other Finance Documents.

Subject to agreement between the Senior Lenders, Subordinate Lender and the Company, final documentation may also specify an exhaustive list of other amendments which could be prejudicial to Subordinate Lender and which therefore would require Subordinate Lender's consent.

## **9 Amendments of the terms of the Subordinated Facility**

Subordinate Lender may not amend the terms of the Subordinated Facility without the prior written consent of all Senior Lenders where the amendment would have the effect of:

- (a) Increasing the amount of a principal repayment installment under the Subordinate Lender's Facility.
- (b) Increasing the rate of interest, default or overdue interest, guarantee fee, or other fees under the Subordinated Facility.
- (c) Bringing forward the date for any payment referred to in (a) or (b) above.
- (d) Varying the amount of Subordinate Lender's commitment under the Subordinated Facility.
- (e) Granting a security, surety or other support in favor of Subordinate Lender other than previously existing under the Security Documents or the ESA and the other Finance Documents.

Subject to agreement between the Senior Lenders, Subordinate Lender and the Company, final documentation may also specify an exhaustive list of other amendments which could be prejudicial to the Senior Lenders and which therefore would require the Senior Lenders' consent.

## **10 Assignments and Sell-Downs**

- (a) The Senior Lenders may transfer their rights and/or obligations under the Senior Indebtedness, in accordance with Section J. 2(a)
  - (i) During primary syndication of the Senior Facilities, without restriction;

- (ii) Thereafter until the end of the Availability Period, to banks or financial institutions which meet credit rating criteria to be specified in final documentation; and
  - (iii) Thereafter, without restriction, provided in each case the transferee accedes to the Subordination and Inter-creditor Agreement and the CTA.
- (b) The Subordinate Lender may transfer its rights and/or obligations under the Subordinated Indebtedness, in accordance with Section J .2(b).
- (i) If the transfer is made after the Availability Period and does not involve more than \_\_\_\_% of the principal amount out- standing under the Subordinated Facility and, after the transfer, Subordinate Lender can continue to exercise effective control over acceleration of the Subordinated Facility and other remedies permitted under paragraph 12 below; or
  - (ii) Otherwise with the consent of the Senior Lenders, pro- vided in each case the transferee accedes to the Subordination and Inter-creditor Agreement and the CTA.

Both the Senior Lenders and Subordinate Lender may enter into sub-participations in respect of the Senior Indebtedness and the Subordinated Indebtedness without restriction.

## **11 Satisfaction of Conditions Precedent and Rights of draw stop As per Section E.**

## **12 Permitted Enforcement Action by Subordinate Lender If:**

- (a) A payment default occurs under the Subordinated Facility; and
- (b) Payment default and any subsequent payment defaults have not been remedied in full within \_\_\_\_ months of the date of the original payment default; and
- (c) The total defaulted amount under the Subordinated Facility exceeds US\$ m before the eighth anniversary of Financial Close or US\$ \_\_\_\_ m thereafter; or
- (d) The Senior Lenders accelerate the Senior Indebtedness after an Event of Default, Subordinate Lender may, so long as the payment default is continuing, at its option accelerate the Subordinated Indebtedness and may also enforce other remedies which it is otherwise prevented from enforcing under paragraph 4 above. Any amounts received by virtue of the acceleration or other action under this paragraph 12 will be applied in accordance with paragraph 13 below.

## **13 Application of Proceeds**

The proceeds of all Security will be applied:

- **First**, to all costs and expenses of enforcement incurred by the Security Trustee.
- **Second**, to all costs and expenses of enforcement incurred by the other Senior Finance Parties.
- **Third**, to the Senior Indebtedness in such order as the Senior Lenders may agree in the CTA.
- **Fourth**, to all costs and expenses of enforcement incurred by Sub- ordinate Lender.
- **Fifth**, to the Subordinated Indebtedness in such order as Subordinate Lender may determine.
- **Sixth**, to the Company or as the Company may otherwise direct.

## **14 Subordination upon Insolvency**

Upon insolvency of the Company, the Subordinated Indebtedness will be subordinate to the Senior Indebtedness save that balances remaining in the Subordinated Debt Service Payment Account and Subordinated Debt Service Reserve Account shall be exclusively dedicated to the Subordinated Indebtedness.

## **15 Other Provisions**

The Subordination and Inter-creditor Agreement will contain other customary provisions for a subordination of this nature including:

- (a) An undertaking by each Lender to turn over any payments received in breach of the terms of the Subordination and inter creditor Agreement.
- (b) Provisions relating to the filing of claims and other matters relating to the insolvency of the Company.

## **J. MISCELLANEOUS COMMON FINANCING TERMS**

### **1 Miscellaneous**

Usual clauses relating to increased costs, gross up, market disturbance, illegality, reimbursement of stamp duties and legal and other out of pocket expenses (including as referred to in the Lead Arranger's mandate letter), breakage costs, etc.

### **2 Assignment**

- (a) Subject to Subordinated Lender's rights of consent set out in Schedule\_\_\_\_, Lender Y Guaranteed Lender or a Lender Y Participant (subject to the terms of the Lender Y Participation Agreement) may, at any time, assign, transfer or novate any part of its commitment and/or any of its rights and/or obligations under the Finance Documents to another bank or financial institution specified in a list to be agreed between the Lead Arranger and the Sponsor before Financial Close or otherwise with the consent of the Company (not to be unreasonably withheld or delayed).
- (b) Subject to the Senior Lenders' rights of consent set out in Schedule\_\_\_\_ Subordinated Lender may assign, transfer or novate any part of its commitment and/or any obligation under the Finance documents to another bank or financial institution following consultation with the Company.
- (c) Subject to Subordinated Lender's rights of consent set out in Schedule \_\_\_\_and the terms of the Lender Y Participation Agreement, Lender Y may assign, transfer or novate any part of its commitment and/or any obligation under the Finance Documents (except the Lender Y Guarantee) to another bank or financial institution following consultation with the Company.
- (d) The Company may not assign or transfer its rights or obligations under the Finance Documents.
- (e) Nothing in this paragraph 2 or Schedule \_\_\_\_shall prevent a Lender or Lender Y Participant entering into sub-participations in respect of its rights and/or obligations under the Finance Parties.

### **3 Decision-making among the Finance Parties**

#### **3.1. General**

The following decision making arrangements shall subsist between the Finance Parties and all references to "Required Lenders" in this term sheet shall be construed in accordance with this paragraph 3. Nothing in this paragraph 3 shall override anything in Schedule \_\_\_\_

#### **3.2. Satisfaction of Conditions Precedent and Rights of drawstop**

- (a) Section E sets out the decision-making in respect of the satisfaction or waiver of all conditions precedent.
- (b) No Lender will be obliged to lend if a draw stop is in effect under any Facility.

#### **3.3. Amendments and Waivers**

- (f) Subject to paragraphs (e) and (f) below:

- (i) any term of, or matter dealt with under, the CTA and any other Finance Document (other than a Finance Document referred to below in this paragraph 3.3) may be amended or waived or supplemented with the agreement of the Company and the Majority Senior Lenders.
- (ii) Any term of, or matter dealt with under, the Facility Agreement for the Lender Y Principal Loan (other than terms of the CTA incorporated into that Facility Agreement) may be amended or waived or supplemented with the agreement of the Company and Lender Y.
- (iii) Any term of, or matter dealt with under, the Facility Agreement for the Lender Y Complementary Loan (other than terms of the CTA incorporated into that Facility Agreement) may be amended or waived or supplemented with the agreement of the Company and (subject to the terms of the Lender Y Participation Agreement) Lender Y.
- (iv) Any term of, or matter dealt with under the Facility Agreement for the Lender Y Guaranteed Facility (other than terms of the CTA incorporated into that Facility Agreement) may be amended or waived or supplemented with the agreement of the Company and (subject to Lender Y's rights of consent under scheduled \_\_\_\_ ) the Majority Lender Y Guaranteed Lenders.
- (v) Any term of, or matter dealt with under, the Facility Agreements for the Subordinated Lender Senior Facility and the Subordinated Facility (other than terms of the CTA incorporated into that Facility Agreement) may be amended or waived or supplemented with the agreement of the Company and Subordinated Lender.
- (vi) Any term of, or matter dealt with under, the Subordination and Inter-Creditor Agreement may be amended or waived or supplemented with the agreement of the Company (except in relation to certain clauses mutually agreed between the Company and the Finance Parties in final documentation), all Senior Lenders and (except in the case of the Clause dealing with pro rata sharing among Senior Lenders and other clauses mutually agreed between the Company and the Finance Parties) Subordinated Lender.
- (vii) Any term of, or matter dealt with under, a Hedging Agreement may be amended or waived or supplemented with the agreement of the Company, the hedge counter-party and the Majority Senior Lenders.
- (g) Any term of, or matter dealt with under, the Lender Y Guarantee may only be amended, waived or supplemented with the agreement of Lender Y and each Lender Y Guaranteed Lender. The Facility Agreement for the Lender Y Guaranteed Facility will also contain restrictions on the Lender Y Guaranteed Lenders right to agree amendments and waivers under the Lender Y Guarantee where such amendments and waivers could reasonably prejudice the interests of the Company.
- (h) Any term of, or matter dealt with under, the Lender Y Direct Agreement may only be amended, waived or supplemented with the agreement of Lender Y and the Company (subject also to the Majority Lender Y Guaranteed Lenders' rights of consent under Schedule \_\_\_\_)
- (i) Any term of, or matter dealt with under, the Government \_\_\_\_ Counter Indemnity may only be amended, waived or supplemented with the agreement of Lender Y and the Government of \_\_\_\_
- (j) Any amendment or waiver which relates to:
  - (i) The definition of Majority Senior Lenders or the definition of Required Lenders.
  - (ii) Any change to the date for, or change in the amount of, or change in the currency of, any payment to a Senior Lender.
  - (iii) Any increase or decrease in a Senior Lender's commitment under a Senior Facility (otherwise than by a transfer in accordance with the terms of the Finance Documents) or an extension to its

availability or the imposition on a Senior Lender of an additional obligation to lend money or provide any other form of credit.

- (iv) Any change in the interest rates or fees payable to a Senior Lender.
- (v) A term of a finance Document which expressly requires the consent of each Senior Lender or each Lender.
- (vi) The clause of the Subordination and Inter-Creditor Agreement governing amendments and waivers.
- (vii) The release of any asset from the security interests created by any of the Security Documents.
- (viii) The clause of the Finance Documents covering the order of distribution on partial payment by the Company of amounts due on the relevant due date.
- (ix) The covenants relating to:
  - the negative pledge [Section G. 1(d)]
  - disposals of assets [Section G. 1(h) ]
  - investments [Section G. 1 (r) ]
  - Payments [Section G.1(s)]
  - improper payments [Section G 1(v)]

may not be effected without the consent of each Senior Lender. If any of the above Sections specifically contemplate action being taken with the consent of the Required Lenders, any such consent will constitute a waiver of the covenant.

(k) Any amendment or waiver which relates to:

- (i) The definition of Required lenders
- (ii) A term of a finance Document which expressly requires the consent of each Lender or Subordinated Lender.
- (iii) The release of any asset from the security interests created by any of the Security Documents.
- (iv) The clause of the Finance Documents covering the order of distribution on partial payment by the Company of amounts due on the relevant due date
- (v) The covenants relating to:
  - Controls on the level of Operating Costs [Section c.11]
  - The negative pledge [Section G. 1(d)] Financial Indebtedness [Section G.1(f)]
  - Disposals of assets [Section G.1 (h)]
  - Change of business [Section G.1 (i)]
  - Mergers and acquisitions [Section G. 1 (j) ], save for arrangements relating to a voluntary reorganization of the Company, the terms of which have been agreed between the Company and the Majority Senior Lenders and which could not reasonably prejudice Subordinated Lender's position as a Sub-ordinated Lender (and without prejudice to subordinated Lender's rights under applicable law to approve the arrangement).
  - Amendments and waivers to Project Documents [Section G. 1(m) ] where the relevant amendment or waiver (i) could reasonably put the Company in a worse financial position (including where the amendment or waiver has the effect of reducing the amount due from a contract counter-party upon termination of a Project Document) or impose materially more onerous obligations on the Company or materially and adversely affect the performance of the Power Station; or (ii) arises under the PPA. (For avoidance of doubt, the Majority Senior

Lenders shall exercise all rights of the Required Lenders under the Finance Documents to consent to, or direct, termination of the Project Documents but shall not agree, or permit or direct the Company to agree, to waive any claim for any amount of a termination sum or compensation due from the relevant contract counterparty as expressly provided in the relevant Project Document.)

- Amendments to constitutional documents [Section G. 1(m)(ii)]
  - Variations to the Construction Contracts where the relevant variation could reasonably put the Company in a worse financial position or impose materially more onerous obligations on the Company or materially and adversely affect the performance of the Power Station.
  - Investments [Section G.1(r)].
  - Restricted Payments [Section G. 1(s)]
  - Abandonment of the project [Section G.1 (u)]
  - Improper payments [Section G.1 (v)]
  - The undertakings relating to required hedging [Section G. 2(a)]
- (vi) The clause of the Subordination and Inter-Creditor Agreement governing amendments and waivers, may not be effected without the consent of Subordinated Lender. If any of the above Sections specifically contemplate action being taken with the consent of the Required Lenders, any such consent will constitute a waiver of the covenant.

### 3.4. Consents

Subject to paragraph 3.5 below, in granting any consent(e.g. in relation to a reserved discretion identified in Schedule\_\_\_) or exercising any discretion, the inter creditor Agent shall (if no instructing body is specified) be fully protected if it acts in accordance with the instructions of the Majority Senior Lenders, provided that:

- (i) In relation to the reserved discretions in Schedule, Part \_\_\_Subordinated Lender shall have equal rights of consultation with the Senior Lenders.
- (ii) In relation to the reserved discretions in Schedule\_\_\_, Part\_\_\_;
  - A. The Majority Senior Lenders shall consult with Subordinated Lender and consider in good faith Subordinated Lender's views before directing the inter creditor agent to exercise rights under Schedule\_\_\_, Part\_\_\_, and
  - B. The Majority Senior Lenders shall not direct the Inter creditor agent to give consent for the Company to agree to:
    - (I) Any assignment of rights or obligations of the contract counter-parties under the Project Documents;
    - (II) Opt for contract price abatement rather than the payment of liquidated damages under the Construction Contracts;
    - (III) Consent to the appointment of another contractor to complete the works under Clause \_\_\_of the Installation, Erection and Commissioning Contract and the Supply Contract;
    - (IV) Approve a financial institution which does not meet the specified credit rating for issuance of performance security under Clause \_\_\_the guarantee and coordination agreement referred to in the definition of "Construction Contract"; or
    - (V) A settlement or compromise of any claim exceeding US\$\_\_\_ m under Schedule\_\_\_ Part \_\_\_paragraphs, without the consent of Subordinated Lender; and

- (iii) In relation to the reserved discretions in Schedule\_\_Part\_\_ the Majority Senior Lenders shall consult with Subordinated Lender's views before directing the Inter credited Agent to exercise rights under Schedule\_\_\_\_, Part\_\_\_\_

Any right of the Required Lenders to reject a draft Operating Budget under Section G.(1)(1)(ii) shall be exercised by subordinated Lender and the Majority Senior Lenders.

### **3.5. Protections for Lender Y Guaranteed Lenders**

- (a) Each Finance Party will agree in the Subordination and Inter Creditor Agreement that:
- (i) The Lender Y Guaranteed Lenders will be entitled to exercise their rights under the Lender Y Guarantee without restriction by the other Finance Parties;
  - (ii) If requested by the Lender Y Guarantee Agent (acting on the instructions of the Majority Lender Y Guaranteed Lenders), the Inter-Creditor Agent shall instruct the Company (pursuant to Schedule \_\_,Part \_\_) to:
    - A. Make a demand under the Government of \_\_\_\_Guarantee (Clause \_\_Government of \_\_\_\_Guarantee); and
    - B. Provide a signed certificate (Clause\_\_\_\_ Government of\_\_ guarantee); and/or \_\_\_\_
  - (iii) If the Lender Y Guarantee Agent (acting on the instructions of the Majority Lender Y Guaranteed Lenders) has instructed the Inter-Creditor Agent to give a direction to the Company to take action or refrain from taking action which the Inter-Creditor Agent is permitted to give under the Finance Documents (including the exercise of positive and negative reserved discretions under Schedule ) and such action or restraint of action is a stated precondition to the Lender Y Guaranteed Lenders making a demand un- der the Lender Y Guarantee or otherwise preserving their rights under the Lender Y Guarantee, the Inter- Creditor Agent shall forthwith inform each of Lender Y and Subordinated Lender and shall, no earlier than five Business Days after such notification, give such a direction to the Company.
- (b) If the Inter-Creditor Agent is instructed to take action under paragraph (a) (ii) or (ii) above, the Lender Y Guaranteed Lenders shall be solely responsible for indemnifying it in respect of such action.
- (c) For the avoidance of doubt, any subrogation to the rights of the Lender Y Guaranteed Lenders by Lender Y under the terms of the Lender Y Guarantee shall not affect or alter the rights of the Lender Y Guaranteed Lenders under this paragraph 3.5.



### **3.6. Action under the Government of \_\_\_\_ Counter Indemnity**

Nothing in this paragraph 3 shall restrict or prevent Lender Y from enforcing or preserving its rights under the Government of \_\_\_\_ Counter Indemnity in such manner as it sees fit.

### **3.7. Enforcement**

The remedies available to the Lenders under Section H. 25 shall be exercised upon the instructions of the Majority Senior Lenders.

### **3.8. Repayment of the Senior Lenders**

Following the irrevocable and unconditional discharge of all liabilities owed by the Company to the Senior Lenders under the Finance Documents, Subordinated Lender shall exercise all remaining rights under the Finance Documents, including under this Section J.

## **4. Other Inter-Creditor Arrangements**

The Finance Documents will contain terms relating to the appointment of Agents, sharing of Security and application of the proceeds of Security, pro rata sharing, reflecting among other things (i) Lender Y's right of subrogation under the Lender Y Guarantee in accordance with paragraph \_\_\_\_ of Schedule \_\_\_\_; and (ii) Lender status as preferred creditor under the treaty establishing the Lender Y. [If, following termination of the IA, Lender Y is liable to pay the Shortfall Amount (as defined in schedule, paragraph \_\_\_\_ ) in installments in accordance with Schedule \_\_\_\_ paragraph \_\_\_\_ then the Company shall be liable to pay to the Lender Y Guaranteed Lenders, by way of liquidated damages, upon acceleration of the Lender Y Guaranteed Facility (which shall be permitted in such circumstances notwithstanding anything to the contrary in Section J. 3) an amount equal to the net present value (computed using a discount rate to be agreed in final documentation) of the aggregate amount the Lender Y Guaranteed Lenders would have received if, during the period between termination of the IA and the scheduled final maturity date of the Lender Y Guaranteed Facility, interest would have accrued on the outstanding Shortfall Amount at the rate of \_\_\_\_% per annum. The Lender Y Guaranteed Lenders' claim for such amount shall rank ahead of any other claim for interest (including default interest) and principal by the Lenders.]

## **5. Documentation**

In form and substance satisfactory to the Company and the Lenders.

## **6. Governing Law and Jurisdiction**

English, save where specified in Section B or as otherwise agreed between the Lenders and the Company in final documentation.