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| [•] |
|  | COMMON TERMS AGREEMENTRELATING TO [INSERT NAME OF PROJECT] |  |

**EXPLANATORY NOTE**

***Development of this template***

This template has been produced at the initiative of Infrastructure Asia to create a partially standardised project finance common terms agreement which is suitable for use as a starting point for negotiation in project finance transactions for different assets across multiple sectors in Asia, with the objectives of shortening the time required for the negotiation of project finance loan documents and improving regional projects' access to liquidity.

This template has been developed by Infrastructure Asia in conjunction with Clifford Chance LLP and Allen & Gledhill LLP, after consultation with a group of project finance lenders and sponsors and other legal practitioners in Asia.

This template incorporates loan mechanics from the Asia Pacific Loan Market Association Singapore Law Primary Single Borrower, Single Guarantor, Single Currency Term Facility Agreement (dated 5 May 2020) and adds customary features for a project financing. It is intended to harmonise with the Asia Pacific Loan Market Association Guidelines on Standardisation of Project Finance Loan Documentation (dated 17 February 2020).

This template is intended to be used in conjunction with the template Term Sheet and the template Mandate Letter which have also been developed as part of the same initiative and consultation process.

***Key assumptions***

This template has been developed based on two key assumptions. If either of these assumptions do not apply in a particular transaction, parties should make appropriate changes to the documentation.

1. *Transaction structure assumption*: The financing made available to the Borrower contemplated by this template is a limited recourse, senior secured financing on a *pari passu* basis, provided by lenders in the syndicated market.
2. *Documentation structure assumption*: This template forms part of a set of Finance Documents, all of which are entered into and become effective before the financing becomes available to the Borrower.

These two assumptions are described further below. Other more specific assumptions are noted in footnotes in the template itself.

*Transaction structure assumption*

This template assumes that the financing made available to the Borrower has the following features:

* *Limited recourse*: This template assumes that the financing is not on a full recourse basis (such as the provision of a guarantee by the Sponsors/Shareholders or other creditworthy entities), but that the claims of the finance parties in respect of the financing are principally against the Transaction Security, the support made available by the Sponsors/Shareholders under the Shareholder Contribution and Sponsor Support Agreement, and any contractual rights afforded to the finance parties against third parties under the Direct Agreements or other agreements specific to the transaction. In certain transactions, some finance parties may also benefit from additional credit support, such as guarantee or insurance support provided by export credit agencies ("**ECAs**") in respect of buyer credits (to take just one example). Additional provisions would need to be added to this template, and other documents in the Finance Documents suite, to cater for such arrangements.
* *Senior secured financing*: This template assumes that the finance parties do not rank below any other debt creditors in respect of their claims against the Obligors, and that those claims benefit from all-asset security provided by the Borrower, together with third-party security provided by the Sponsor/Shareholders (in respect of their equity in the Borrower) and certain other parties, such as the primary insurers of the Project (who grant security over their claims under any reinsurance policies in connection with the Project). Any changes to this assumption may require significant changes to this template as well as the other documents in the Finance Documents suite.
* *Pari passu basis*: This template has been prepared on the basis that the claims of the finance parties are *pari passu*. Changes to this assumption would have significant impacts on the security and intercreditor arrangements (not treated in this template) and could also have an impact on the treatment of various sections of this template, including provisions relating to mandatory prepayments, representations, undertakings and events of default among others.
* *Syndicated lenders*: Project financing can be provided by a wide range of financiers, including banks, funds, trusts, investors in different capital markets, insurers, multilateral finance institutions ("**IFIs**"), development finance institutions ("**DFIs**"), and many other types of entities. The inclusion of certain types of financiers can be critical to the bankability of Projects in different sectors and jurisdictions. Since this template was developed with the objective of being suitable for use as a starting point for negotiation in project finance transactions for different assets across multiple sectors in Asia, it starts from the broad assumption that the financing is sourced from the syndicated market. The documentation structure (described further in the next section) would allow other types of senior secured debt (such as capital markets debt) to accede to the intercreditor and security arrangements (on a *pari passu* basis with the syndicated financiers), without acceding to the Common Terms Agreement. Where (as is commonly the case) financiers outside the syndicated market participate in the financing, such as IFIs, DFIs or other types of financiers, adjustments and additions will be required to the Common Terms Agreement and other documents in the Finance Documents suite.

*Documentation structure assumption*

A consequence of the transaction structure assumption (described in the previous section) is that the terms of a project financing are customarily split into a suite of Finance Documents. A "principle of economy" applies to the allocation of provisions across the suite: provisions applying to all senior secured creditors are located in the Finance Documents to which all senior secured creditors are party, whereas provisions applying to only one, or a limited class, of senior secured creditors are located in separate Finance Documents to which only those specific senior secured creditors (or their trustee or agent) are party.

As a result, the Finance Documents suite will typically include:

1. *Provisions common to all senior secured parties:*
	1. a Security Trust and Intercreditor Deed under which one or more security trustees or agents are appointed by the secured parties to hold the transaction security on behalf of all secured parties, and the manner of applying security enforcement proceeds is set out, and key arrangements between the senior secured creditors, such as voting on common actions, restrictions on unilateral action by any individual senior secured creditor, and sharing of payments are regulated;
	2. each of the Security Documents, under which each of the security grantors grants security to the applicable security trustee or agent (who holds such security on behalf of all secured parties);
	3. one or more Accounts Agreements, under which payments into and out of the project accounts, and the rights and obligations of the Account Banks, are regulated;
	4. one or more Subordination Agreements, under which the Sponsors/Shareholders will agree to the subordination of their claims to the claims of the senior secured creditors; and
	5. one or more Direct Agreements, under which contractual privity is created between one or more representatives of the senior secured creditors and the counterparties to Project Documents.
2. *Provisions specific to certain senior secured parties:*
	1. a Shareholder Contribution and Sponsor Support Agreement, under which the Sponsors/Shareholders will agree to certain contractual arrangements (including with respect to equity contribution and (if applicable) share retention) and whose terms will be subject to the requirements of a particular transaction;
	2. a Common Terms Agreement, under which terms that are common to each of the senior secured lenders of the project company (but not other senior secured creditors, such as hedge counterparties or noteholders) are documented;
	3. for each senior secured facility, a Facility Agreement under which the key terms for utilising and servicing principal and interest under that facility are set out;
	4. for each hedge transaction (or set of hedge transactions) between the project company and a hedge counterparty, a Hedging Agreement between the project company and that hedge counterparty; and
	5. for each role undertaken by a senior secured party on behalf of all or a sub-set of the senior secured parties (such as the Intercreditor Agent, the Security Agents, each Facility Agent, etc.), a Fee Letter between the project company and that senior secured party.

This is not a comprehensive list of Finance Documents. The documentation suite will need to be tailored for each transaction.

What the list shows, however, is that the Common Terms Agreement does not (and is not intended to) contain all the provisions required for a project financing. This principle is fundamental to the documentation structure assumption on which this template is based. One consequence of this is that the following security and intercreditor provisions (which are applicable to all senior secured creditors) will not be found in this template, but will need to be included in the other Finance Documents (which is the Security Trust and Intercreditor Deed under this template):

* 1. appointment of security agents and (if applicable) declaration of trust by the security agents over secured property;
	2. parallel debt language (if necessary);
	3. duties and obligations of the security agents;
	4. resignation and replacement of security agents;
	5. indemnities given by the project company, lenders (and other creditors) to the security agents;
	6. fees and costs of the security agents;
	7. winding up of security trust;
	8. regulation of release of security;
	9. ranking and priority of senior secured creditor liabilities;
	10. voting mechanics among senior secured creditors, including the required threshold to be met for different decisions, the way voting entitlements are calculated;
	11. taking of acceleration and enforcement actions;
	12. standstill periods before enforcement action can be taken;
	13. turnover of receipts and recoveries;
	14. redistribution and sharing of proceeds;
	15. order of application of enforcement proceeds;
	16. payment mechanics;
	17. contractual set-off rights of secured parties against matured obligations of obligors;
	18. appointment of the Intercreditor Agent;
	19. duties and obligations of the Intercreditor Agent;
	20. resignation and replacement of the Intercreditor Agent;
	21. indemnities given to the Intercreditor Agent;
	22. fees and costs of the Intercreditor Agent; and
	23. accession mechanics relating to accession of additional obligors and senior secured creditors[[1]](#footnote-2).

Please note that the list above is not exhaustive, and readers of this template should consider whether other terms should be included in these Finance Documents (or other Finance Documents) on a case by case basis. It may be useful to refer to templates published by APLMA and the Loan Market Association for items (a), (c), (d), (g), (m), (p) to (t) and (w) as a starting point, although they should be used with care to ensure all necessary adaptations are made for use in project finance transactions generally and in the relevant transaction.

Readers should note that there are different ways of structuring project finance documentation. Whilst this template has been prepared on the bases outlined above and some potential variations have been mentioned above, careful consideration should be given to the structure that is the most appropriate for use in the relevant transaction and the changes which need to be made to this template to reflect any deviation of the relevant transaction from the present structure.

***Securitisation***

There has been increasing demand to customise project finance documentation in the Asia market to facilitate any future securitisation of project finance loans. To the extent future securitisations of loans made under documentation including this Common Terms Agreement, there are a number of areas which readers should take into consideration at the origination/structuring stages of the project finance transaction. As the structures of securitisations could vary, this template does not purport to create a "one size fits all" approach but we set out below a non-exhaustive list of areas that may need to be considered.

*Transferability*: The ability to assign or transfer a loan should be considered carefully if future securitisations are intended.  In such a scenario, readers may consider defining a new concept of a "permitted securitisation" with assignment or transfers in relation to such permitted securitisation being permitted under Clause 19.2 (*Conditions of assignment or transfer*) of this Common Terms Agreement (together with any corresponding lender transfer restrictions in the Facility Agreements) or adapting those provisions such that assignments and transfers are permitted if prior notice is provided by the relevant Lender and no reasonable objection is received from the borrower within a certain period of time.

An alternative structure for consideration is the use of an "originator trust", where a loan is not assigned or transferred to the securitisation by the lending bank, but rather held on trust for the securitisation vehicle by the lending bank.  Parties will need to consider whether such a declaration of trust without borrower consent or notification could be made under the lender transfer restrictions in the Finance Documents, together with any additional lender transfer restrictions in any credit enhancements (such as state guarantees and ECA cover).

*Confidentiality*: If future securitisations are intended, the list of persons to whom confidential information could be disclosed by Finance Parties could be amended to cover counterparties to a securitisation.  Clause 30.2 (*Disclosure of Confidential Information*) provides a starting point and allows disclosure to third parties providing services to the securitisation vehicle, the rating agencies and the investors in a securitisation of the Finance Parties certain information, but the relevant counterparties will differ from deal to deal and could include the following:

1. arrangers and lead managers of the securitisation, who will need access to all material information in respect of the project loans in order to ensure appropriate disclosure can be made in a prospectus to investors;
2. the servicer / collateral manager, who will generally need full access to everything which the lending bank of the project loan has and will have access to as they will, broadly, fulfil the administrative function of the lender after the assignment or transfer;
3. investors, who will review the information contained in the prospectus as well as a data tape setting out the historic data collected by the lending bank in respect of the project loan and all future data collected about the project loans which is made available in frequent investor reports; and
4. trustees, who will (broadly) be provided with the same information as the investors.

Where limits are imposed which do not allow information to be freely shared with the counterparties to a securitisation then it may be necessary to exclude that particular loan from a securitisation, unless borrower consent is obtained.

Consideration should be given to whether the confidentiality and disclosure provisions can (i) generally permit more public disclosure of information about (and in relation to) the Project, the project loan and its performance and (ii) include a "permitted securitisation" concept, with disclosure in relation to permitted securitisations being permitted.  Usage of such a permitted securitisation concept could also help establish the boundaries within which confidential information may be shared with noteholders.  Completely ringfencing sharing of confidential information can be difficult in a public deal where information needs to be publicly available, but is more commonly seen in private deals with limited distributions as each individual investor can be requested to sign-up to confidentiality provisions.

* *Information covenants*: In connection with including a project loan in a securitisation transaction there are counterparties, such as the rating agencies, arrangers or lead managers, who may wish to have access to premises or information which is not otherwise available to lending banks. These might include site visits for the purpose of conducting due diligence, meetings with management to discuss strategy or risks and granular financial data. Access and information requests in connection with a securitisation and assistance may also be required from the borrower/project obligors in order to facilitate such securitisation. If future securitisations are intended, parties may wish to consider including any such requirements in Clause 15.8 (*Access*) and Clause 17.34 (*Access*).
* *Tax gross-up*: Consideration should be given to the withholding tax treatment applicable to the loan at the outset.  Many banks benefit from zero, or low, withholding tax rates under double tax treaties but securitisation vehicles – which are usually orphan companies, trusts or statutory entities – do not benefit from those rates.  The eligibility of non-bank lenders for withholding tax relief in the applicable jurisdiction, and any features the project loan can include to benefit from that eligibility, should be taken into account as part of the documentation process if future securitisation is intended.
* *Set-off*: To be eligible for inclusion in securitisations, it is often a requirement (of rating agencies and investors) that loans exclude any rights of set-off which the underlying borrower may be able to exercise against its obligation to repay the loan. The enforceability of restrictions on set-off differs between jurisdictions and should be checked at origination. Set-off rights are contemplated under this template to be included in the Security Trust and Intercreditor Deed and/or the individual Facility Agreements.

*Hedging*: In the event that a lending bank sells its participation in the loan to a securitisation it may no longer wish to leave the hedge outstanding.  The cost of terminating such a hedge may influence the overall cost of undertaking a securitisation.  Some options for addressing this include:

1. allowing (without consent from the other lenders) the hedge to be moved to another financial institution with a credit rating at least as high as the outgoing lender;
2. the outgoing lender agreeing to pay the cost of implementing the new hedge; and/or
3. if the hedge is "in the money", the incoming hedge counterparty paying the value to the outgoing lender, or *vice versa* if the old hedge is "out of the money".

Readers may wish to adapt Schedule 8 (*[Hedging*) to reflect the above if future securitisations are intended.

*Sanctions*: In a securitisation context, the sanctions provisions should be considered carefully as their content may limit the capital markets into which securitisation notes can be issued. For example, inclusion of European-only sanctions provisions may restrict issuances into the US markets or participation of US arrangers and lead managers.

*Know your customer (KYC) provisions*: Consideration should be given as to whether the KYC provisions in Clause 15.16 (*"Know your customer" checks*) should be extended to allow the various counterparties involved in that securitisation, such as the trustee, swap counterparties, collateral manager, etc., to benefit from the KYC provisions in the project loan to allow them to request information directly to satisfy their reasonable internal KYC requirements for future securitisation purposes.

**Closing remarks**

Project financing transactions are typically bespoke and the terms vary depending on the sector, the project jurisdiction, the level of recourse to the sponsors and other matters. As this template is intended to be suitable for use for different assets across multiple sectors, the terms are not customised to account for or to reflect practices or terms which are widely accepted by market participants for a particular asset or a particular sector. Careful consideration should always be given to the manner in which this template and any other suggested reference documents referred to in this template should be adjusted to reflect the structure and the characteristics of the relevant transaction.

Readers should note that certain provisions in project finance transactions, in particular the representations and warranties, covenants, events of default and financial covenants, are typically heavily negotiated and customised, and the resulting position will be dependent on the particular project, the particular asset, the parties involved (and their respective negotiation strength), specific risk profiles and practicalities of each project. The position set out in this template is only intended to serve as a starting point for discussion/negotiation.

**IMPORTANT NOTICE**

Readers of this template acknowledge that all intellectual property rights associated with this template are vested with Infrastructure Asia, the APLMA, Clifford Chance LLP and Allen & Gledhill LLP (as applicable).

No representation or warranty is given by Infrastructure Asia, the APLMA, Clifford Chance LLP or Allen & Gledhill LLP (or any of their affiliates):

* as to the suitability of this template for any particular transaction; or
* that this template will cover any eventuality.

Readers of this template should satisfy themselves as to its taxation, regulatory and accounting aspects.

None of Infrastructure Asia, APLMA, Clifford Chance LLP or Allen & Gledhill LLP (or any of their affiliates) is liable for any losses suffered by any person as a result of any contract made on the terms of this template or which may arise from the presence of any errors or omissions in this template and no proceedings shall be taken by any person in relation to such losses.

Readers choosing to use this template as the basis for preparing loan documentation for transactions should note that in the absence of established market practice this template does not offer any standardised position in relation to a number of fundamental structuring issues. Those issues will require consideration and resolution by the relevant parties in the context of the relevant transaction.

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**THIS AGREEMENT** is dated [•] and made among:

* 1. [•], a [limited liability company] incorporated under the laws of [*insert jurisdiction of incorporation*] with registration number [•] (the "**Borrower**");
	2. [•] and [•] as mandated lead arrangers (whether acting individually or together, the "**Mandated Lead** **Arrangers**");
	3. **THE FINANCIAL INSTITUTIONS** listed in Part 1 of Schedule 1 (*Original Lenders*) (in such capacity, the "**Original Term Loan A Facility Lenders**");
	4. [**THE FINANCIAL INSTITUTIONS** listed in Part 2 of Schedule 1 (*Original Lenders*) (in such capacity, the "**Original [ ] Facility Lenders**");][[2]](#footnote-3)
	5. [•], in its capacity as agent of the other Finance Parties (in such capacity, the "**Intercreditor Agent**"[[3]](#footnote-4));
	6. [•], in its capacity as agent of the Term Loan A Facility Lenders (in such capacity, the "**Term Loan A Facility Agent**");[[4]](#footnote-5)
	7. [[•], in its capacity as agent of the [ ] Facility Lenders (in such capacity, the "[ ] **Facility Agent**");]
	8. [[•], in its capacity as offshore security [trustee][agent][[5]](#footnote-6) for the Secured Parties (in such capacity, the "**Offshore** **Security [Trustee][Agent]**");]
	9. [[•], in its capacity as onshore security [trustee][agent] of the Secured Parties (in such capacity, the "**Onshore Security Agent**"[[6]](#footnote-7));] and
	10. [*include other relevant parties*][[7]](#footnote-8).

**IT IS AGREED** as follows:

**SECTION 1
INTERPRETATION**

1. Definitions and Interpretation
	1. Definitions

In this Agreement:

"**Acceptable Bank**" means:

* 1. a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of [•] or higher by S&P Global Ratings, a division of S&P Global Inc., or Fitch Ratings Ltd or [•] or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency approved by the Intercreditor Agent; or
	2. any other bank or financial institution approved by the Intercreditor Agent.[[8]](#footnote-9)
1. "**Acceptable Credit Support**" means a letter of credit or bank guarantee satisfying each of the following conditions[[9]](#footnote-10):
	1. it is issued in favour of a Security Agent by an Acceptable Bank (as at the date of issuance or renewal thereof);
	2. it is unconditional and payable on demand by a Security Agent;
	3. it is substantially in the form agreed by the Intercreditor Agent prior to its issuance;
	4. the issuer of such letter of credit or bank guarantee has no recourse to, or rights of counter-indemnification or other rights against, the Borrower or any of its assets;
	5. the Borrower has no liability in respect of the cost of procuring and maintaining such letter of credit or bank guarantee; and
	6. it has a minimum maturity of 364 days from the date of its issuance.
2. "**Accession Certificate**" means an undertaking substantially in the form set out in Schedule 12 (*Form of Accession Certificate*).
3. "**Accounts**" means the Offshore Accounts and the Onshore Accounts, and "**Account**" means any of them.
4. "**Account Banks**" means the Offshore Account Bank and the Onshore Account Bank, and "**Account Bank**" means any of them.[[10]](#footnote-11)
5. "**Accounts Agreements**" means the Offshore Accounts Agreement and the Onshore Accounts Agreement, and "**Accounts Agreement**" means any of them.[[11]](#footnote-12)
6. "**Advisers**" means:
	1. the Model Auditor;
	2. the Technical Adviser;
	3. [the E&S Adviser];
	4. [the Insurance Adviser];
	5. the Lenders' Legal Adviser[s]; and
	6. [*other adviser(s)*] acting as adviser in that capacity to the Finance Parties,

and each other person appointed as Adviser to the Finance Parties in accordance with Clause 13.5 (*Advisers*), and "**Adviser**" means any of them.[[12]](#footnote-13)

1. ["**Affected Communities**" means local communities within the Project's [or the Associated Facilities'] area of influence that are directly affected by the Project [or the Associated Facilities (as applicable)].]
2. "**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.
3. "**Agents**" means the Finance Agents and the Security Agents, and "**Agent**" means any of them.
4. "**Anti-Corruption Laws**" means [the United Kingdom Bribery Act 2010,] the United States Foreign Corrupt Practices Act of 1977, and any similar laws or regulations in any jurisdiction (including Singapore) relating to bribery, corruption or any similar practices.
5. "**Applicable Law**" means any law, legislation, statute, ordinance, code, order, decree, circular, directive, judgment, decision, injunction, licence, permit, rule, regulation, and judicial interpretation thereof, and any interpretation of or determination in respect of any of the foregoing, by any Authority having jurisdiction over the matter in question and binding on a given person.
6. "**Approved Development Costs**" means [•][[13]](#footnote-14), representing amounts actually spent on developing the Project prior to Financial Close by any Affiliate of the Borrower or any other [Sponsor][Shareholder] and for which the Borrower has provided evidence in form and substance satisfactory to the Intercreditor Agent relating to the amounts paid, the recipients of the payments and the purposes of the payments.
7. "**Assignment Agreement**" means an agreement substantially in the form set out in Schedule 11 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

["**Associated Facilities**" means [*include if required after environmental and social due diligence*].[[14]](#footnote-15)]

1. "**Assumptions**" means the assumptions set out in the Original Base Case (including technical, economic, accounting, timing and tax assumptions) on which the projections of Revenue, Operating Costs, Debt Service and other amounts in the Original Base Case are based, as updated from time to time in accordance with Clause 16.3 (*Assumptions*).
2. "**Auditor**" means an internationally recognised audit firm that the Borrower appoints as its auditor from time to time in accordance with this Agreement following the approval of the Intercreditor Agent.
3. "**Authorisation**" means an authorisation, permit, consent, approval, resolution, licence, exemption, ruling, order, stamping, filing, certification, notarisation or registration or other requirement (howsoever described) from or with any Authority.
4. "**Authority**" means a government, supranational, local government, statutory or regulatory body or any subdivision thereof and/or any ministerial or governmental, intergovernmental, quasi-governmental or other regulatory department, body, instrumentality, agency, court, tribunal, department, central bank, municipality, or other entity of any kind or other person exercising executive, legislative, judicial, regulatory or administrative functions.
5. "**Availability Period**" in respect of a Facility, has the meaning given to that term in the Facility Agreement under which such Facility is made available.
6. "**Available Cashflow**" means, in relation to any period, the sum (without double counting) of:
	1. Revenue for such period[[15]](#footnote-16),

minus

* 1. the aggregate amounts of:
		1. Operating Costs and Project Costs, in each case to the extent not funded by way of the Loans or Equity, paid or payable during such period;
		2. Fees, Costs [and Hedging Entry Costs] paid or payable during such period; and
		3. any amount transferred or projected to be transferred to the MRA from the Operating Account in such period, to the extent such transfer is permitted in accordance with the Finance Documents,

in each case, received, paid or payable by the Borrower (as the case may be) during that period (or, in the case of the Projected DSCR, projected in good faith to be received, paid or payable by the Borrower (as the case may be) during that period) and **provided that**, for the purpose of determining Available Cashflow for any period, with respect to any amount received or projected to be received by the Borrower in a currency other than the currency of the Loans, only the amount in the currency of the Loans received or reasonably expected by the Borrower to be received following conversion into the currency of the Loans shall be taken into account, and otherwise such amount shall not be taken into account.

1. "**Available Commitment**" means, in relation to a Facility, a Lender's Commitment under that Facility minus:
	1. the amount of its participation in any outstanding Loans under that Facility; and
	2. 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.
2. "**Available Facility**" means, in relation to a Facility, the aggregate for the time being of each Lender's Available Commitment in respect of that Facility.
3. "**Balance**" means, in respect of an Account, the cash amount standing to the credit of such Account [plus, in respect of the DSRA [or the MRA], the aggregate principal amounts available for drawing under each Acceptable Credit Support in respect of that Account].
4. "**Banking Act**" means the Banking Act, Chapter 19 of Singapore.
5. "**Base Case**" means:
	1. the Original Base Case; or
	2. if produced in accordance with Clause 16.2 (*Updated Base Case*), the most recently agreed Updated Base Case.
6. "**Base Equity**" means the amount of Equity payable by the [Sponsors][Shareholders] in accordance with clause [•] of the Shareholder Contribution and Sponsor Support Agreement.[[16]](#footnote-17)
7. ["**Basel III**" has the meaning given to that term in Clause 10.1 (*Increased Costs*).]
8. "**Borrower's Legal Adviser[s]**" means [•], [[•] and [•]] in [its capacity][their capacities] as legal adviser[s] of the Borrower.
9. "**Break Costs**"[[17]](#footnote-18) means the amount (if any) by which:
	1. the interest [excluding the applicable 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 received been paid on the last day of that Interest Period;

exceeds:

* 1. 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 Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.
1. "**Broker's Letter of Undertaking**" means each letter delivered or to be delivered by the Borrower's insurance and/or reinsurance broker to the Intercreditor Agent, substantially in the form set out in Schedule 7 (*Broker's Letter of Undertaking*) or any other form acceptable to the Intercreditor Agent.
2. "**Budget**" means, for any period, the current Construction Budget or (as applicable) the current O&M Budget for that period.
3. "**Budgeted Operating Costs**" means, in any period, Operating Costs included in the current O&M Budget for such period.
4. "**Budgeted Project Costs**" means, in any period, Project Costs included in the current Budget for such period.
5. "**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Singapore [and [*other*]][[18]](#footnote-19).
6. "**Calculation Date**" means:
	1. the Project Completion Date;
	2. each Repayment Date; and
	3. [*insert other dates if required*].[[19]](#footnote-20)
7. "**Calculation Period**"[[20]](#footnote-21) means, in relation to any Calculation Date:
	1. [(for the purposes of calculating the Projected DSCR)] the period of [six/12] calendar months starting from (and including) the date falling after such Calculation Date to (and including) the [immediately following][[21]](#footnote-22) Calculation Date[; and
	2. (for the purposes of calculating the Historic DSCR) the period of [six/12] calendar months ending on (and including) such Calculation Date (or, in the case of the first Calculation Date falling after the Project Completion Date, the period from (and including) the Project Completion Date to (and including) that Calculation Date)].[[22]](#footnote-23)
8. "**Cash Waterfall**" means the order of priority of withdrawals and payments from the Operating Account set out in the [Onshore/Offshore] Accounts Agreement.
9. "**Code**" means the US Internal Revenue Code of 1986.
10. "**Commercial Operation Date**" means [•].[[23]](#footnote-24)
11. "**Commitment**" means, in relation to a Facility and:
	1. an Original Lender, the amount specified in the relevant Facility Agreement as that Lender's commitment in relation to such Facility on the date of signature of that Facility Agreement and the amount of any other Lender's commitment under that Facility transferred to it in accordance with the Finance Documents; and
	2. any other Lender, the amount of any commitment under that Facility transferred to it in accordance with the Finance Documents,

to the extent not cancelled, reduced or transferred by it under the Finance Documents.

1. "**Companies Act**" means the Companies Act, Chapter 50 of Singapore.
2. "**Compensation**" means the aggregate of all sums (other than Insurance Proceeds) paid or payable to the Borrower or the [Sponsors][Shareholders]:
	1. in respect of the seizure, compulsory acquisition, confiscation, expropriation or nationalisation of all or any part of the Project (or any interest in the Project), or the assets or share capital of the Borrower;
	2. in respect of the proceeds of any claims against the Construction Contractor for breach of warranty under the Construction Contract;
	3. in respect of the proceeds of any liquidated damages (other than delay liquidated damages) paid or payable by the Construction Contractor under the Construction Contract or any credit support relating thereto;
	4. in respect of the release, inhibition, modification, suspension or extinguishment of any rights, easements or covenants enjoyed by or benefiting the Project, or the imposition of any restrictions affecting the Project, or the grant of any easement or rights over or affecting all or any part of the Project;
	5. as compensation for any Authorisations not being granted or renewed, revoked or suspended or otherwise ceasing to be in full force and effect without modification;
	6. in return for any decrease in its rights (including the release, modification, suspension or extinguishment of any rights) in relation to any assets of the Borrower, any increase in its obligations (including the grant by it of rights or the modification of them) under any Authorisations or any restriction affecting any asset of the Borrower or the grant of and rights over the same; or
	7. the proceeds of any disposal of assets of the Borrower made in compliance with any order of an Authority.
3. ["**Compensation and Insurance Proceeds Account**" has the meaning given to that term in the [Onshore/Offshore] Accounts Agreement.]
4. "**Compliance Standards**" means all Applicable Laws, the E&S Standards and Good Industry Practice.
5. "**Confidential Information**" means all information relating to any Obligor, the Finance Documents or a 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 a Facility from either:
	1. any Obligor or any of its advisers; or
	2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any Obligor 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:

* + 1. is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 30 (*Confidentiality*); or
		2. is identified in writing at the time of delivery as non-confidential by any Obligor or any of its advisers; or
		3. is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (i) or (ii) 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 any Obligor 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.
1. "**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a form agreed between the Borrower and the Intercreditor Agent.
2. "**Construction Budget**" means, for any period, the current construction budget for that period under Clause 15.3 (*Construction Budgets*).
3. "**Construction Contract**" means [the turnkey engineering, procurement and construction contract entered or to be entered into between the Construction Contractor and the Borrower for the engineering, procurement and construction of the [Plant] by the Construction Contractor][[24]](#footnote-25).
4. "**Construction Contract Direct Agreement**" means the direct agreement entered or to be entered into between the Construction Contractor[, *insert any guarantor*], the Borrower and the Offshore Security Agent containing terms with respect to, among others, the Finance Parties' rights and remedies in respect of the Construction Contract.
5. "**Construction Contractor**" means [•].
6. "**Construction Period**" means the period from the date of this Agreement to (but excluding) the Commercial Operation Date.
7. "**Construction Report**" means each construction report that the Borrower delivers or is required to deliver to the Intercreditor Agent under Clause 15.5 (*Construction reports*).
8. "**Control**" means, in respect of any person:
	1. the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
		1. cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of that person; or
		2. appoint or remove all, or the majority, of the directors or other equivalent officers of that person; or
		3. give directions with respect to the operating and financial policies of that person which the directors or other equivalent officers of that person are obliged to comply with; or
	2. the holding of more than [one-half] of the issued share capital of that person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).
9. "**Costs**" means any amount payable by the Borrower under Clause 13 (*Costs and Expenses*).
10. ["**CRD IV**" has the meaning given to that term in Clause 10.1 (*Increased Costs*).]
11. "**Cure Amount**" has the meaning given to that term in Clause 18.2 (*Immediate Events of Default*).
12. "**Debt Service**" means, in respect of any period, the aggregate (without double counting) of:
	1. Financing Costs;
	2. Scheduled Principal; and
	3. any principal, interest, fees, commissions, costs, expenses and any other payments in respect of other Financial Indebtedness under the Finance Documents and any Taxes paid or payable in respect thereof,

in each case, accruing or falling due (or, in the case of a projection, forecast to accrue or to fall due) for payment during that period.

1. "**Debt to Equity Ratio**" means, on any date, the ratio of:
	1. the aggregate amount of outstanding Loans on that date plus the aggregate amount of any Loans requested to be made on or before that date;

to

* 1. the aggregate Equity actually contributed to the Borrower as at that date[[25]](#footnote-26).
1. ["**Decommissioning Plan**" means the plan for the decommissioning of the Project.]
2. "**Default**" means an Event of Default or any event or circumstance specified in Clause 18 (*Events of Default*) which would (with the lapse of time, expiry of a grace period, the giving of notice, the making of any determination under any Finance Document or any combination of any of the foregoing) be an Event of Default.
3. "**Defaulting Lender**" means any Lender:
	1. which has failed to make its participation in a Loan available (or has notified the Intercreditor Agent or the Borrower (which has notified the Intercreditor Agent) that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with the Facility Agreement to which it is party;
	2. which has otherwise rescinded or repudiated a Finance Document[; or
	3. with respect to which an Insolvency Event has occurred and is continuing,]

unless, in the case of paragraph (a) above:

* + 1. its failure to pay is caused by:
			1. administrative or technical error; or
			2. a Disruption Event; and

payment is made within [10] Business Days of its due date; or

* + 1. the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.
1. "**Delay Action Report**" has the meaning given to that term in Clause 17.28 (*Delay*).
2. "**Delay Liquidated Damages**" means delay liquidated damages payable to the Borrower under or pursuant to any Project Document (including any amount payable pursuant to any guarantee issued in favour of the Borrower with respect to any liability for delay under such Project Document).
3. "**Delegate**" means any delegate, agent, attorney or co-trustee appointed by a Security Agent.
4. "**Direct Agreements**" means:
	1. the Construction Contract Direct Agreement;
	2. the Offtake Contract Direct Agreement[s];
	3. the O&M Contract Direct Agreement;
	4. the Supply Contract Direct Agreement[s]; and
	5. each other document designated as such by the Borrower and the Intercreditor Agent,

and "**Direct Agreement**" means any of them.[[26]](#footnote-27)

1. ["**Disbursement Account**" has the meaning given to that term in the [Onshore/Offshore] Accounts Agreement.]
2. "**Discharged**" means, in respect of any document or arrangement, that it has expired at the end of its term (or if it has no express term, the obligations of all parties to that document or arrangement have been performed in full) and that is not required, in order to carry out the Project, or for the Borrower's or the Project's compliance with the Compliance Standards and the Transaction Documents, to be renewed or replaced after such expiry or full performance.
3. ["**Discounted Cashflow for Debt Service**" means, in relation to any Calculation Date, the Available Cashflow projected in the current Base Case for such Calculation Period discounted back to such Calculation Date on the basis that:
	1. the discount rate to be applied shall be the weighted average (calculated by the Intercreditor Agent by reference to the amount outstanding under [each] Facility) of the rates assumed in the current Base Case to be the rates at which interest will accrue under the [Facilities] from such Calculation Date until the Final Maturity Date[, in each case, taking into account any interest rate hedging applicable under the Hedging Agreements][[27]](#footnote-28); and
	2. the discounting shall be made on a [semi-annual/annual] basis and on the assumption that cashflow for a [semi-annual/annual] period occurs at the end of that [semi-annual/annual] period.]
4. "**Discretion**" means a right or remedy of the Borrower under a Project Document that the Borrower:
	1. may or may not exercise at its discretion (including the making of a determination and the granting of consent); or
	2. must exercise, but in respect of which the Borrower has discretion as to the manner of its exercise,

but does not include any amendment or waiver.[[28]](#footnote-29)

1. "**Dispute**" has the meaning given to that term in Clause 34.1 (*[Jurisdiction]/[Arbitration]*).
2. "**Disruption Event**" means either or both of:
	1. a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (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
	2. the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
		1. from performing its payment obligations under the Finance Documents; or
		2. 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.

1. "**Distribution Account**" has the meaning given to that term in the [Onshore/Offshore] Accounts Agreement.
2. "**Distribution Tests**" has the meaning given to that term in paragraph (b) of Clause 17.16 (*Restricted Payments*).
3. "**DSRA**" or "**Debt Service Reserve Account**" has the meaning given to that term in the [Onshore/Offshore] Accounts Agreement.
4. "**DSRA Required Balance**" means, on each day (starting from the [Project Completion Date]/[Financial Completion Date]), an amount equal to the aggregate [scheduled] Debt Service payable during the [six] Month period starting from (but excluding) that day and (if that day falls before the last day of the Availability Period) assuming each Facility is fully utilised[[29]](#footnote-30).
5. "**Environment**" means the environment including the air (including the air within buildings and the air within other natural or man-made structures above or below ground), water (including, territorial, coastal and inland waters, ground and surface water and water in drains and sewers), land (including surface and sub-surface soil), animals, plants, natural habitats and human health.
6. ["**Equator Principles**" means the set of principles set out in the paper entitled "A financial industry benchmark for determining, assessing and managing environmental and social risk in projects" dated [July 2020] and adopted by certain financial institutions.][[30]](#footnote-31)
7. "**Equity**" means, at any time, the aggregate of:
	1. the amounts paid by the Shareholders to the Borrower in consideration for the issue of one or more shares in the Borrower's capital to that Shareholder to the extent not redeemed, reduced, repurchased or repaid at that time; [and]
	2. the principal amount of Shareholder Loans made to the Borrower to the extent not reimbursed, repaid or prepaid at that time[; and
	3. Revenues in respect of the period prior to the [Project Completion Date], applied or to be applied to the Project Costs].
8. "**Equity** **Cure**" has the meaning given to that term in Clause 18.2 (*Immediate Events of Default*).
9. "**Event of Default**" means any event or circumstance specified as such in Clause 18 (*Events of Default*).
10. "**Excess Amount**" has the meaning given to that term in Clause 3.4 (*[Equity true-up*).
11. "**Expert**" has the meaning given to that term in Clause 34.5 (*Resolution Procedure*).
12. ["**E&S Action Plan**" means the plan prepared by the Borrower that describes and prioritises the actions needed to be taken by the Borrower to address any gaps in the E&S Documents in order to bring the Project [and Associated Facilities] in line with the E&S Standards.]
13. ["**E&S Adviser**" means [•], in its capacity as environmental and social adviser to the Finance Parties.]
14. ["**E&S Assessment Documents**" means each of:
	1. the E&S Impact Assessment;
	2. the [E&S Audit];
	3. [*others*].[[31]](#footnote-32)]

["**E&S Audit**" means [•].][[32]](#footnote-33)

1. "**E&S Authorisation**" means any Authorisation and the filing of any notification, report or assessment required under any E&S Law to carry out the Project [or in connection with the Associated Facilities].
2. "**E&S Claim**" means any claim, proceeding or investigation by any person in respect of any E&S Law.
3. "**E&S Documents**" means:[[33]](#footnote-34)
	1. [the E&S Assessment Documents];
	2. [the E&S Action Plan];
	3. [the E&S Management Plan];
	4. [the Stakeholder Engagement Plan]; and
	5. [*others*],

and "**E&S Document**" means any of them.

1. "**E&S Impact Assessment**" means the environmental and social impact assessment in respect of the Project [and the Associated Facilities].
2. "**E&S Laws**" means any Applicable Laws relating to E&S Matters.
3. ["**E&S Management Plan**" means the environmental and social management plan prepared by the Borrower in respect of the Project [and the Associated Facilities] to manage on an ongoing basis the risks identified in the E&S Impact Assessment.]
4. ["**E&S Management System**" means an overarching environmental, social, health and safety management system designed by the Borrower to identify, assess and manage risks and impacts in respect of the Project [and the Associated Facilities] on an ongoing basis, which includes a grievance mechanism for use by Stakeholders, as appropriate, to receive and facilitate resolution of concerns and grievances about the Project's environmental and social performance.]
5. "**E&S Matters**" means matters relating to the Environment or Social Fabric, including those environmental and social aspects identified in the E&S Documents that are considered therein to be relevant to the Project [or the Associated Facilities].
6. "**E&S Report**" means each environmental and social report that the Borrower delivers or is required to deliver to the Intercreditor Agent under paragraph (a) of Clause 15.7 (*E&S matters*).
7. "**E&S Standards**" means, as applicable to the Borrower, the Project [and the Associated Facilities], the Performance Standards[, the Equator Principles] and all E&S Laws.
8. "**Facilities**" means the Term Loan A Facility and the [ ] Facility[[34]](#footnote-35), and "**Facility**" means any of them.
9. ["**[ ] Facility**" means the [term/revolving] loan facility made available under the [ ] Facility Agreement.]
10. ["**[ ] Facility Agreement**" means the facility agreement dated on or about the date of this Agreement and made between the Borrower, the [ ] Facility Agent and each [ ] Facility Lender pursuant which contains terms specific to the [ ] Facility.]
11. ["**[ ] Facility Lenders**" means:
	1. the Original [ ] Facility Lenders; and
	2. any bank, financial institution, trust, fund or other entity which has become a party to the [ ] Facility Agreement in accordance with the terms of the [ ] Facility Agreement and a Party (in such capacity) in accordance with Clause 19 (*Changes to the Lenders*),

which in each case has not ceased to be a party to the [ ] Facility Agreement in accordance with the terms of the [ ] Facility Agreement and a Party (in such capacity) in accordance with the terms of this Agreement, and "**[ ] Facility Lender**" means any of them.]

1. ["**[ ] Facility Loan**" means a loan made or to be made under [ ] Facility or the principal amount outstanding for the time being of that loan.]
2. "**Facility Agents**" means the Term Loan A Facility Agent and the [ ] Facility Agent, and "**Facility Agent**" means any of them. [[35]](#footnote-36)
3. "**Facility Office**" means the office or offices notified by a Lender to the Intercreditor 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 or offices through which it will perform its obligations under the Finance Documents.
4. "**FATCA**" means:
	1. sections 1471 to 1474 of the Code or any associated regulations;
	2. 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; or
	3. any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.
5. "**FATCA Deduction**" means a deduction or withholding from a payment under a Finance Document required by FATCA.
6. "**FATCA Exempt Party**" means a Party that is entitled to receive payments free from any FATCA Deduction.
7. "**Fee**" means any fees payable by the Borrower under Clause 8 (*Fees*) (including under any Fee Letter referred to in that Clause) or under any other Finance Document.
8. "**Fee Letter**" means any letter or letters referring to this Agreement or any Facility Agreement between one or more Finance Parties and the Borrower setting out any of the fees referred to in Clause 8 (*Fees*) or any other fees payable by the Borrower under any other Finance Document.
9. "**Final Maturity Date**" means [•].
10. "**Finance Agents**" means the Intercreditor Agent and the Facility Agents, and "**Finance Agent**" means any of them.
11. "**Finance Documents**" means:
	1. the Acceptable Credit Supports;
	2. the Accession Certificates;
	3. the Accounts Agreements;
	4. this Agreement;
	5. the Assignment Agreements;
	6. the Direct Agreements;
	7. the Facility Agreements;
	8. the Fee Letters;
	9. [the Hedging Agreements];
	10. the Security Documents;
	11. the Security Trust and Intercreditor Deed;
	12. the Shareholder Contribution and Sponsor Support Agreement;
	13. [the Shareholder Loan Agreements][[36]](#footnote-37);
	14. the Subordination Agreement;
	15. the Transfer Certificates;
	16. [*any other agreements in relation to the financing of the Project*]; and
	17. any other document designated as such by the Intercreditor Agent and the Borrower,

and "**Finance Document**" means any of them.

1. "**Finance Parties**" means:
	1. the Agents;
	2. the Mandated Lead Arrangers;
	3. the Lenders; [and]
	4. the Account Banks[; and
	5. the Hedging Banks],

and "**Finance Party**" means any of them.

1. "**Financial Close**" means the date on which the Intercreditor Agent delivers the notification to the Borrower and the Lenders referred to in paragraph (a) of Clause 3.1 (*Initial conditions precedent*).
2. ["**Financial** **Completion Date**" means the date on which the Intercreditor Agent confirms that the Financial Completion Tests have been met to its satisfaction.]
3. ["**Financial** **Completion Tests**" means each of the following tests: [•].][[37]](#footnote-38)
4. "**Financial Indebtedness**" means any indebtedness for or in respect of:
	1. moneys borrowed;
	2. any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
	3. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
	4. the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability [(other than any liability in respect of a lease or hire purchase contract which would, in accordance with GAAP in force [prior to 1 January 2019][[38]](#footnote-39)/[prior to [ ]]/[                 ][[39]](#footnote-40), have been treated as an operating lease)];
	5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
	6. 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);
	7. 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;
	8. any amount raised by the issue of redeemable shares;
	9. any amount of any liability under an advance or deferred purchase agreement if one of the primary reasons behind the entry into that agreement is to raise finance;
	10. any amount raised under any other transaction (including any forward sale or purchase agreement, any sale and sale back and sale and lease back) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing; and
	11. (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.
5. "**Financial Model**" means the Original Financial Model as amended, updated or replaced from time to time in accordance with Clause 16.1 (*Financial Model*).
6. "**Financial Report**" means, for any period, the current report for that period under Clause 16.4 (*Financial Report*).
7. "**Financing Costs**" means, without double counting:
	1. all interest, fees, premiums, commissions, costs, expenses, indemnity amounts and any other payments accrued, paid or payable by the Borrower to a Finance Party under the Finance Documents;
	2. Scheduled Hedging Payments;
	3. [all amounts accrued, paid or payable by the Borrower to a Finance Party under the Finance Documents under any indemnity or in respect of any Increased Cost;] and
	4. any Taxes accrued, paid or payable by the Borrower in respect of any amount referred to in paragraph (a), (b) or (c) above.
8. "**First Repayment Date**" means [•].
9. "**Force Majeure**" means, in respect of a Project Document, any event or circumstance (or series of events or circumstances) beyond the reasonable control of a party to the Project Document having the effect of suspending, excusing or limiting the performance of the obligations of a party to the Project Document, including any event or circumstance described as a force majeure in that Project Document.
10. ["[**Fuel**]/[**Feedstock**]" means [*insert any fuel or raw materials required to be supplied to the project during the operating phase in order for the project to produce its output (e.g. gas for a gas-fired power plant)*].][[40]](#footnote-41)
11. "**Funding Shortfall**" means, at any time prior to the Project Completion Date/[Financial Completion Date], the circumstance where the aggregate Project Costs not yet paid but projected to be payable by the Borrower up to and including the Project Completion Date/[Financial Completion Date] exceed the sum of:
	1. [for so long as a Default is not continuing,] the Available Facilities;
	2. the aggregate Balances of the Accounts that are available in accordance with the provisions of the Accounts Agreements to pay Project Costs[[41]](#footnote-42);
	3. the aggregate Equity not yet contributed but projected to be contributed by the end of the Availability Period under the Shareholder Contribution and Sponsor Support Agreement;
	4. any amounts permitted to be reinvested into the Project under a Reinvestment Plan;
	5. [any Revenues received by the Borrower on or prior to the Project Completion Date/[Financial Completion Date] that are available in accordance with the provisions of the Finance Documents to pay Project Costs][[42]](#footnote-43); and
	6. any other amounts that the Intercreditor Agent is satisfied have been unconditionally committed to the Borrower to pay Project Costs payable by the Borrower on or prior to the Project Completion Date/[Financial Completion Date].
12. ["**FX Hedging Agreement**" means the [2002] ISDA Master Agreement, a Schedule and each confirmation containing a Hedge Transaction in respect of FX Risk entered into between the Borrower and each Hedging Bank.
13. "**FX Risk**" means the risk of a devaluation of the currency of all or any of the Revenues against the currency in which the Loans (or any other amounts payable under the Finance Documents) are denominated.]
14. "**GAAP**" means, in respect of an Obligor, generally accepted accounting principles in [the jurisdiction of incorporation of that Obligor [including IFRS]] / [the "Accounting Standards" as defined in the Companies Act] / [IFRS].
15. "**Good Industry Practice**" means standards, practices, methods and procedures complying with Applicable Laws, E&S Standards and with that degree of skill, diligence, judgment, prudence and foresight which would ordinarily be expected from an international skilled and experienced owner, contractor, equipment manufacturer or, as the case may be, operator engaged in designing, engineering, constructing, developing, commissioning, repairing, refurbishing, operating, insuring and/or maintaining the same type of undertaking as the Project.
16. ["**Hedge Transaction**" means any currency, interest or commodity purchase, cap or collar agreement, forward rate agreements, interest rate, currency or commodity future or option contract, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap, commodity swap or combined interest rate, commodity and/or currency swap agreement and any other similar agreement.
17. "**Hedging Agreement**" means each IRS Hedging Agreement and FX Hedging Agreement, and each other Hedge Transaction entered into between the Borrower and a Hedging Bank pursuant to Schedule 8 (*[Hedging*).
18. "**Hedging Banks**" means:
	1. the Original Hedging Bank[s]; and
	2. any bank or financial institution, which has acceded to the Security Trust and Intercreditor Deed as a Hedging Bank,

which, in each case:

* + 1. has not ceased to be a party to the Security Trust and Intercreditor Deed in that capacity; and
		2. is an Acceptable Bank on:
			1. each date it becomes a counterparty to a Hedging Agreement, including by way of novation, transfer or assignment; and
			2. each date it enters into a Hedge Transaction with the Borrower.
1. "**Hedging Entry Costs**" means any costs to the Borrower of entering into any Hedging Agreements.[[43]](#footnote-44)
2. "**Hedging Termination Costs**" means any amount that the Borrower is required to pay to a Hedging Bank under a Hedging Agreement as a result of termination, close-out or total or partial notional amount adjustment, whether due to the Borrower's default or otherwise.]
3. ["**Historic** **DSCR**" (*Historic Debt Service Cover Ratio*) means, in relation to any Calculation Date, the ratio of:
	1. Available Cashflow for the Calculation Period ending on that Calculation Date;

to

* 1. Debt Service payable during the Calculation Period ending on that Calculation Date.][[44]](#footnote-45)
1. "**Holding Company**" means, in relation to a person, any other person in respect of which it is a Subsidiary.
2. ["**IFRS**" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.]
3. "**Impaired Agent**" means an Agent at any time when:
	1. 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;
	2. it otherwise rescinds or repudiates a Finance Document;
	3. (if it is also a Lender) it is a Defaulting Lender under paragraph (a), (b) [or (c)] of the definition of "Defaulting Lender"; or
	4. an Insolvency Event has occurred and is continuing with respect to it;

unless, in the case of paragraph (a) above:

* + 1. its failure to pay is caused by:
			1. administrative or technical error; or
			2. a Disruption Event; and

payment is made within [10] Business Days of its due date; or

* + 1. it is disputing in good faith whether it is contractually obliged to make the payment in question.
1. "**Increased Costs**" has the meaning given to that term in Clause 10.1 (*Increased Costs*).
2. "**Indemnified Liabilities**" has the meaning given to that term in Clause 11.2 (*Other indemnities*).
3. "**Indemnified Persons**" has the meaning given to that term in Clause 11.2 (*Other indemnities*).
4. "**Indirect Tax**" means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.
5. ["**Information Memorandum**" means (if any) the document in the form approved by the Borrower concerning the Project which, at the Borrower's request and on its behalf, was prepared in relation to this transaction and distributed by the Mandated Lead Arrangers to selected financial institutions [during [ ]/before the date of this Agreement].][[45]](#footnote-46)
6. ["**Informed Consultation and Participation Process**" means an in-depth exchange of views and information and an organised and iterative consultation that has led the Borrower to incorporate the views of Affected Communities on issues that affect them directly (such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues) into its decision-making process in connection with the Project [and the Associated Facilities].]
7. "**Initial Financial Report**" means the report, substantially in the form of Schedule 3 (*Form of Financial Report*) or otherwise in form and substance satisfactory to the Intercreditor Agent, delivered or to be delivered to the Finance Parties as a condition to Financial Close under Schedule 2 (*Conditions Precedent*).
8. "**Insolvency Event**", in relation to an entity, means that the entity:
	1. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
	2. 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;
	3. makes a general assignment, arrangement or composition with or for the benefit of its creditors;
	4. 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;
	5. 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 or entity not described in paragraph (d) above and:
		1. 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
		2. is not dismissed, discharged, stayed or restrained in each case within [30] days of the institution or presentation thereof;
	6. has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
	7. 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 (other than for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
	8. has a secured party take 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;
	9. causes or is subject to any event which, under any Applicable Law, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
	10. takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
9. "**Instructing Parties**" means:
	1. (in respect of the Intercreditor Agent) the instructing persons specified in the Security Trust and Intercreditor Deed;[[46]](#footnote-47)
	2. (in respect of a Security Agent) the Intercreditor Agent; and
	3. (in respect of a Facility Agent) the person or group of persons who are entitled to instruct that Facility Agent as specified in the Facility Agreement to which it is party.
10. ["**Insurance Adviser**" means [•], in its capacity as insurance adviser to the Finance Parties.]
11. "**Insurance Proceeds**" means all proceeds and amounts payable or paid in respect of any claim under any of the Insurances other than Third Party Liability Insurance.[[47]](#footnote-48)
12. "**Insurances**" means each of the contracts of insurance or reinsurance taken out or maintained (or required to be taken out or maintained) in accordance with this Agreement.
13. "**Intellectual Property**" means any patents, trademarks, service marks, designs, business and trade names, copyrights, database rights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered, and the benefit of all applications and rights to use such assets in which the Borrower may from time to time have an interest.
14. "**Interest Payment Date**" means [•] and [•] of each calendar year.
15. "**Interest Period**" means, in relation to a Loan, each period determined in accordance with Clause 7 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 6.2 (*Default interest*).
16. ["**Interest Rate Risk**" means the risk of any increase in the floating rate of interest that accrues on any Loan.
17. "**IRS Hedging Agreement**" means the [2002] ISDA Master Agreement, a Schedule and each confirmation containing a Hedge Transaction in respect of Interest Rate Risk entered into between the Borrower and each Hedging Bank.]
18. "**Legal Reservations**" means:
	1. the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws or regulations of general application relating to bankruptcy, insolvency, liquidation, reorganisation and other laws generally affecting the rights of creditors generally;
	2. the time barring of claims under the Limitation Act, Chapter 163 of Singapore, and defences of set-off or counterclaim; [and]
	3. similar principles, rights and defences under the laws of any Relevant Jurisdiction[; and
	4. any other matters which are set out as qualifications or reservations in each case as to matters of law of general application in the legal opinions delivered to the Intercreditor Agent under [Clause 3.1 (*Initial conditions precedent*)]][[48]](#footnote-49).
19. "**Lenders**" means:
	1. the Term Loan A Facility Lenders[; and
	2. the [ ] Facility Lenders],

and "**Lender**" means any of them.

1. "**Lenders' Legal Adviser[s]**" means [•], [[•] and [•]] in [its capacity][their capacities] as legal adviser[s] of the Lenders.
2. ["**LLCR**" (*Loan Life Cover Ratio*) means, in relation to any Calculation Date, the ratio of:
	1. the sum of the Discounted Cashflow for Debt Service and any Balance of [the DSRA][and] [the Operating Account] (without double counting) on such Calculation Date;

to

* 1. the aggregate principal amount outstanding under the Facilities [and any *pari passu* Financial Indebtedness scheduled for repayment [or reduction] on or before the Final Maturity Date] on such Calculation Date,

in each case, having taken into account all repayments to be made on such Calculation Date.][[49]](#footnote-50)

1. "**Loans**" means the Term Loan A Facility Loans [and the [ ] Facility Loans], and "**Loan**" means any of them.[[50]](#footnote-51)
2. "**Longstop Date**" means the date falling [•] months after the Scheduled Project Completion Date/[Scheduled Financial Completion Date].[[51]](#footnote-52)
3. "**Loss of Revenue Insurance**" means the Insurances against loss of income or revenue resulting from delays in start-up or business interruption.
4. "**Maintenance Costs**" means the costs of maintenance and repair of the [Plant] or replacement of any part of the [Plant] (and includes Major Maintenance).
5. "**Major Maintenance**" means, during the Operating Period, [*Technical Adviser to describe the major maintenance (if any) that will need to be undertaken during operations*].
6. "**Major Project Participants**"[[52]](#footnote-53) means:
	1. the Construction Contractor;
	2. the O&M Contractor;
	3. the Obligors;
	4. the Offtaker[s];
	5. the Supplier[s]; [and
	6. [*other counterparties to the Project Documents, and guarantors to these counterparties (if any)*]],

in respect of each of paragraphs (a) to (e)/[(f)] above, until each Project Document to which it is party has been Discharged [or, in the case of the Construction Contractor, the end of the [defects notification period][[53]](#footnote-54) under the Construction Contract] and all warranty or performance guarantee periods (if any) under each Project Document to which it is party have expired; and

* 1. any other party which the Intercreditor Agent and the Borrower designate as a Major Project Participant,

and "**Major Project Participant**" means any of them.

1. "**Mandatory Prepayment**" means any prepayment of all or part of a Loan made or required to be made pursuant to Clause 5 (*Prepayment and Cancellation*) other than a Voluntary Prepayment.
2. "**Material Adverse Effect**"[[54]](#footnote-55)means a material adverse effect on:
	1. the present or future business, operations, assets, property or condition (financial or otherwise) of [the Borrower][an Obligor];
	2. the ability of any Major Project Participant to perform its [payment or other material] obligations under:
		1. any of the Finance Documents; or
		2. any of the Project Documents [other than any Project Documents that have been Discharged or Replaced]; or
	3. (subject to the Legal Reservations and the applicable Perfection Requirements which are not overdue) the validity or enforceability of, or the effectiveness or ranking of any Transaction Security granted or purported to be granted pursuant to any of, the Transaction Documents or the rights or remedies of any Finance Party under the Transaction Documents [other than, in each case, any Project Documents that have been Discharged or Replaced].
3. "**Minor Change Order**" means a change order (however described) issued or to be issued by any party to a Project Document that if implemented (and taken together with all other change orders issued or proposed to be issued under that Project Document during the period of 12 Months ending on the date of that change order) is not reasonably likely to result in a liability to the Borrower exceeding [•]/[material effect on the Project].
4. "**Model Auditor**" means [•], in its capacity as model auditor to the Finance Parties.
5. "**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:
	1. (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;
	2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
	3. if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

1. ["**MRA**" or "**Maintenance Reserve Account**" has the meaning given to that term in the [Offshore] Accounts Agreement.]
2. ["**MRA Required Balance**" means, on each day (starting from [the Project Completion Date]), an amount equal to [•].][[55]](#footnote-56)
3. "**New Lender**" has the meaning given to that term in Clause 19 (*Changes to the Lenders*).
4. "**Non-Consenting Lender**" has the meaning given to that term in Clause 29.4 (*Replacement of Lender*).
5. "**Obligors**" means:
	1. the Borrower;
	2. the [Sponsors][Shareholders]; and
	3. any other party which the Intercreditor Agent and the Borrower designate as an Obligor,

and "**Obligor**" means any of them.

1. "**Offshore** **Account**" has the meaning given to that term in the Offshore Accounts Agreement.
2. "**Offshore Account Bank**" means [•] in its capacity as offshore account bank.
3. "**Offshore Accounts Agreement**" means the offshore account agreement dated on or about the date of this Agreement between, among others, the Borrower[, the Intercreditor Agent, the Offshore Security Agent] and the Offshore Account Bank.
4. "**Offtake Contract[s]**" means [each][the] contract entered or to be entered into between the Borrower and [an][the] Offtaker for the offtake by [such][the] Offtaker of the Project Output[[56]](#footnote-57)[, and "**Offtake Contract**" means any of them].
5. "**Offtake Contract Direct Agreement[s]**" means [[each][the] direct agreement entered or to be entered into between [an][the] Offtaker[, *insert any guarantor*], the Borrower and the Offshore Security Agent containing terms with respect to, among others, the Finance Parties' rights and remedies in respect of the [relevant] Offtake Contract][[57]](#footnote-58)[, and "**Offtake Contract Direct Agreement**" means any of them].
6. "**Offtaker**" means [each of [•], [•] and ][•].
7. "**Onshore** **Account**" has the meaning given to that term in the Onshore Accounts Agreement.
8. "**Onshore Account Bank**" means [•] in its capacity as onshore account bank.
9. "**Onshore Accounts Agreement**" means the onshore account agreement dated on or about the date of this Agreement and made between, among others, the Borrower, the [Intercreditor Agent, the Onshore Security Agent] and the Onshore Account Bank.
10. "**Operating Account**" has the meaning given to that term in the [Onshore/Offshore] Accounts Agreement.
11. "**Operating Costs**"means, for any period on and from the Commercial Operation Date, the following costs and expenses that are paid or payable by the Borrower during that period, in connection with the operation and maintenance, administration and management of the Project (without double counting):
	1. payments under or in relation to the [Supply Contract[s]], [O&M Contract], [Offtake Contract], [*insert others as appropriate such as land lease agreement*];
	2. Tax and any Tax Deductions required by law related to the Project and the Borrower;
	3. insurance premia in respect of the Insurances for the Operating Period;
	4. Maintenance Costs;
	5. administrative, accounting and professional costs;
	6. fees payable in respect of, including the costs of renewing, any Required Authorisation;
	7. other fees, expenses and payments necessary for the continued operation and maintenance of the Project;
	8. [*insert others if necessary*]; and
	9. any other amounts which the Intercreditor Agent agrees shall be Operating Costs,

but excluding, in each case:

* + 1. any amount constituting a Restricted Payment;
		2. any amount constituting a Project Cost;
		3. capital expenditures (other than Maintenance Costs);
		4. any amounts payable in respect of Financial Indebtedness (including under the Finance Documents); and
		5. depreciation, other non-cash charges, reserves, amortisation of intangibles and similar book-keeping entries.
1. "**Operating Period**" means the period from the Commercial Operation Date to the Final Maturity Date.
2. "**Original Base Case**" means the financial projections produced by the Original Financial Model and the Assumptions used to prepare those financial projections.
3. "**Original Construction Budget**" means the construction budget in respect of the Project delivered or to be delivered to the Finance Parties, and approved by the Intercreditor Agent, as a condition to Financial Close under Schedule 2 (*Conditions Precedent*).
4. "**Original Financial Model**" means the financial model in respect of the Project delivered or to be delivered to the Finance Parties, and approved by the Intercreditor Agent, as a condition to Financial Close under Schedule 2 (*Conditions Precedent*).[[58]](#footnote-59)
5. "**Original Financial Statements**" means, for any person, its financial statements for its financial year that most recently ended prior to the date of this Agreement.
6. ["**Original** **Hedging Bank**" means [•] in its capacity as hedging bank.]
7. ["**Original Lenders**" means:
	1. the Original Term Loan A Facility Lenders; and
	2. the Original [ ] Facility Lenders,

and "**Original Lender**" means any of them.][[59]](#footnote-60)

1. "**Original O&M Budget**" means the O&M budget in respect of the Project delivered or to be delivered to the Finance Parties, and approved by the Intercreditor Agent[, as a condition to Financial Close under Schedule 2 (*Conditions Precedent*)].
2. ["**Original** **Shareholders**" means [•], [•] and [•], and "**Original Shareholder**"means any of them.]
3. "**Original** **Sponsors**" means [•], [•] and [•], and "**Original Sponsor**" means any of them.
4. "**O&M Budget**" means, for any period, the current O&M budget for that period under Clause 15.4 (*O&M Budgets*).
5. "**O&M Contract**" means the contract entered or to be entered into between the Borrower and the O&M Contractor for the operation and maintenance by the O&M Contractor of the Project for the Borrower.[[60]](#footnote-61)
6. "**O&M Contract Direct Agreement**" means the direct agreement entered or to be entered into between the O&M Contractor[, *insert guarantor*], the Borrower and the Offshore Security Agent containing terms with respect to, among others, the Finance Parties' rights and remedies in respect of the O&M Contract.
7. "**O&M Contractor**" means [•] / [the operations and maintenance contractor to be appointed by the Borrower in respect of the Project][[61]](#footnote-62).
8. "**O&M Report**" means each O&M report that the Borrower delivers or is required to deliver to the Intercreditor Agent under Clause 15.6 (*O&M reports*).
9. "**Party**" means a party to this Agreement.
10. "**Perfection Requirements**" means the making of the appropriate registrations, filings or notifications (and the corresponding acknowledgements) of, or the payment of any stamp duty (including mortgage duty), registration or similar Taxes or payments on, or in respect of, or the obtaining of any approval for, the Security Documents as specifically contemplated in this Agreement, any Security Document or in any related legal opinion delivered to the Intercreditor Agent under [Clause 3.1 (*Initial conditions precedent*)][[62]](#footnote-63).
11. "**Performance Liquidated Damages**" means liquidated damages, purchase price reduction or buy-down amounts (however described), in each case payable or paid to the Borrower under [any Project Document for failure to achieve any performance or quality standards (however described) under a Project Document][[63]](#footnote-64).
12. "**Performance Standards**" means:
	1. International Finance Corporation's Performance Standards on Environmental and Social Sustainability as in force on the date of this Agreement;
	2. the World Bank Group's Environmental and Social Standards as in force on the date of this Agreement; and
	3. the World Bank Group's Environmental Health and Safety (EHS) Guidelines relating to [ ][[64]](#footnote-65) as in force on the date of this Agreement.
13. "**[Plant]**" means the [*insert details of the project to be constructed, e.g. if a power project, the type of plant and its capacity; if a toll road, the type of road and its length, etc.*].
14. ["**Pre-Approved New Lender List**" means the list of entities set out in Schedule 9 (*[Pre-Approved New Lender List]*).]
15. "**Prepayment**" means a Mandatory Prepayment or a Voluntary Prepayment.
16. "**Project**" means the project to design, engineer, procure, construct, commission, [*insert further details as appropriate*] test, complete, operate, maintain [and decommission] the [Plant] and all ancillary works, infrastructure and utilisation whether on or off the Site.
17. "**Project Completion**" means each of the following requirements has been satisfied:
	1. the [*insert completion, reliability and performance tests*] (as defined in the Construction Contract [and the Offtake Contract]) have been satisfied in accordance with the Construction Contract [and the Offtake Contract[s], respectively];
	2. the [*insert name of provisional/initial acceptance certificate*] (as defined in the Construction Contract) has been issued [without amendment, reservation or waiver (other than in respect of any [Punch List Items] (as such term is defined in the Construction Contract)) and any required warranty bond has been received by the Borrower];
	3. the [*insert relevant project authority*] has confirmed acceptance of [ ] under [*insert relevant agreement*];
	4. the [Plant and all associated infrastructure and utilities required for the Project] are complete to the satisfaction of the Technical Adviser (including all outstanding [Punch List Items] (as such term is defined in the Construction Contract)), have been accepted by the Borrower and have been functioning in accordance with the design and operating specifications set out in the Construction Contract [and the Offtake Contract[s]];
	5. [*insert any further technical or performance requirements of the Plant or associated or required infrastructure and utilities whether on or off the Site*];
	6. the Commercial Operation Date has occurred [without amendment, reservation or waiver of any requirement in respect thereof];
	7. the [Supply Contract[s], the Offtake Contract[s] and the O&M Contract, [*insert others that are relevant*]] are unconditional and in full force and effect and the parties thereto are performing in accordance with their terms;
	8. there are no pending or outstanding actions, claims, disputes or proceedings against the Borrower and all Project Costs which have become due and payable have been paid in full or adequate reserves have been made therefor;
	9. any Delay Liquidated Damages and/or Performance Liquidated Damages payable under the Construction Contract [and the Offtake Contract[s]] have been paid in full;
	10. the Updated Base Case and the O&M Budget have been prepared by the Borrower and approved by the Intercreditor Agent in consultation with the Technical Adviser;
	11. [the most recently-delivered Financial Report (which shall be on a date no earlier than [ ]) demonstrates that, on the most recent Calculation Date, each of the Ratios was at least equal to the required level for such Ratio set out in the table below:

| **Ratio** | **Required Level** |
| --- | --- |
|  |  |
| [Projected DSCR | At least [ ]:1.0][[65]](#footnote-66) |
| [LLCR | At least [ ]:1.0][[66]](#footnote-67)] |

* 1. the Project is in compliance with all Compliance Standards;
	2. all Required Authorisations are in full force and effect and not subject to conditions to effectiveness (or, if they are issued subject to conditions, such conditions have been satisfied or waived);
	3. the Balance of the DSRA is at least equal to the then applicable DSRA Required Balance;
	4. [the Balance of the MRA is at least equal to the then applicable MRA Required Balance;]
	5. all Insurances required under Schedule 6 (*Insurance*) for the Operating Period have been effected and are in full force and effect, as certified by the Insurance Adviser;
	6. no Default[[67]](#footnote-68) [or Force Majeure] is continuing;
	7. [*insert any other conditions (e.g. E&S reports or updates) or performance, documentary (e.g. defects/performance warranties) or financial requirements*];
	8. the Technical Adviser has delivered to the Intercreditor Agent a report confirming that the Borrower has satisfied each of the requirements in paragraphs [ ] and [ ] above; and
	9. the Borrower has delivered to the Intercreditor Agent a notice, signed by a director, certifying that the requirements of paragraphs [ ] and [ ] above have been satisfied and the Intercreditor Agent has confirmed its acceptance of such notice.
1. "**Project Completion Date**" means the date upon which Project Completion has been achieved.
2. "**Project Costs**"[[68]](#footnote-69) means (without double counting):
	1. all sums payable under the Construction Contract;
	2. reimbursement of Approved Development Costs;
	3. initial working capital (up to and including the [Commercial Operation Date]/[Project Completion Date]/[Financial Completion Date]);
	4. [*contingencies*];
	5. Financing Costs, [Hedging Entry Costs,] [Fees and Costs] payable by the Borrower during the Construction Period;
	6. [initial funding of the DSRA to the DSRA Required Balance [and the MRA to the MRA Required Balance];][[69]](#footnote-70)
	7. reasonable costs and expenses arising under the Finance Documents, and closing and administration costs related to the Project until [the Commercial Operation Date]/[Project Completion Date]/[Financial Completion Date], legal fees and expenses, financial advisory fees and expenses, technical fees and expenses;
	8. insurance premia and other costs (including deductibles) in respect of the Insurances for the Construction Period;
	9. [costs and expenses incurred with respect to initial stocks of the [Fuel]/[Feedstock], commissioningand initial spare parts;][[70]](#footnote-71)
	10. fees payable in respect of, including costs of obtaining, maintaining or renewing, any Required Authorisations during the Construction Period;
	11. Operating Costs up to the Commercial Operation Date;
	12. [*insert others as necessary*];
	13. any other costs which the Intercreditor Agent agrees shall be Project Costs; and
	14. Taxes payable in relation to any of the above,

but excluding:

* + 1. any costs and expenses payable by the Borrower in relation to the repair, reinstatement or replacement of any asset, to the extent that such liabilities are to be funded from any Insurance Proceeds (other than any proceeds of any Loss of Revenue Insurance) in accordance with the Finance Documents;
		2. any amount constituting a Restricted Payment;
		3. any Scheduled Principal, Prepayment and any Hedging Termination Costs (or payments of principal or similar amounts under any Financial Indebtedness); and
		4. depreciation, other non-cash charges, reserves, amortisation of intangibles and similar book-keeping entries.
1. "**Project Documents**" means:
	1. the Construction Contract;
	2. the O&M Contract;
	3. the Offtake Contract[s];
	4. the Shareholders Agreement;
	5. the Supply Contract[s];
	6. [*insert others*];
	7. any credit support document required to be provided in respect of any of the above documents; and
	8. any other document designated as such by the Intercreditor Agent and the Borrower,

and "**Project Document**" means any of them.

1. "**Project Jurisdiction**" means [*insert project jurisdiction*].
2. "**Project Output**" means [*insert details of what the project will produce when operational – if there will be multiple outputs (e.g. in the case of a renewables project, the outputs may be both electricity and green energy certificates), specify all of these*]. [[71]](#footnote-72)
3. "**Projected** **DSCR**" (*Projected Debt Service Cover Ratio*) means, in relation to any Calculation Date, the ratio of:[[72]](#footnote-73)
	1. Available Cashflow for the Calculation Period starting on the date falling after such Calculation Date;

to

* 1. Debt Service payable during the Calculation Period starting on the date falling after such Calculation Date.[[73]](#footnote-74)
1. "**Quasi-Security**" has the meaning given to that term in Clause 17.13 (*Negative pledge*).
2. "**Ratio**" means [each of the Historic DSCR, the Projected DSCR and the LLCR][[74]](#footnote-75).
3. "**Real Property**" means:
	1. any freehold, leasehold or immovable property (including the freehold or (as applicable) leasehold property in respect of the Site); and
	2. any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.
4. "**Receiver**" means a receiver or receiver and manager or administrative receiver or judicial manager of the whole or any part of the Secured Property.
5. "**Reinstatement Plan**" has the meaning given to that term in Clause 17.24 (*Insurance*).
6. "**Reinvestment Plan**" has the meaning given to that term in Clause 5.2 (*Mandatory prepayment – Compensation*).
7. "**Related Fund**" in relation to a fund (the "**first fund**"), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.
8. "**Relevant Facility Agent**" means, in respect of any Facility or any Lender under that Facility, the Facility Agent appointed under the Finance Documents as agent for the Lenders under that Facility.
9. "**Relevant Insurance Proceeds**" means the proceeds of any Relevant Insurances.
10. "**Relevant Insurances**" means any of the Insurances covering all risks relating to the physical loss of, or damage to, any asset of the Project.
11. "**Relevant Jurisdiction**" means:
	1. the jurisdiction of incorporation of each Obligor;
	2. the jurisdiction where any asset subject to or intended to be subject to the Transaction Security is situated;
	3. the jurisdiction whose laws govern the validity, enforceability, admission in evidence, or perfection of any [Transaction][Finance] Documents; and
	4. the Project Jurisdiction.
12. "**Relevant Market**" means the [Singapore] interbank market[[75]](#footnote-76).
13. "**Repayment Date**" means the First Repayment Date and each [Interest Payment Date]/[[*insert dates*] of each calendar year] thereafter up to (and including) the Final Maturity Date.
14. "**Repeating Representations**" means:
	1. (in respect of the Borrower) each representation and warranty that is expressed in Clause 14.32 (*Repetition*) to be a Repeating Representation; and
	2. (in respect of any other Obligor) each representation and warranty made by that Obligor set out in a Finance Document to which it is party that is expressed in that Finance Document to be a "Repeating Representation".
15. "**Replaced**" means, in respect of any document or arrangement, that it has been renewed or replaced prior to its expiry at the end of its term (or if it has no express term, prior to the full performance of the obligations of all parties under that document or arrangement) by a document or arrangement:
	1. under which the material unperformed obligations owed to the Borrower under the renewed or replaced document or arrangement are assumed or replaced on substantially equivalent terms (or on terms more favourable to the Borrower); and
	2. with the same counterparties as those parties to the renewed or replaced document or arrangement, or with any new counterparties to which the Intercreditor Agent has provided its prior written consent.
16. "**Replacement Lender**" has the meaning given to that term in Clause 29.4 (*Replacement of Lender*).
17. "**Representative**" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
18. "**Required Authorisation**" means, at any time, each Authorisation specified in Schedule 5 (*Authorisations*) as required by that time and each other Authorisation required at that time:
	1. to enable each Obligor to lawfully to enter into, exercise its rights and comply with its obligations under the Transaction Documents to which it is a party (including, to open, maintain and operate the Accounts and make all required payments in accordance with the terms of the Finance Documents);
	2. to make the Transaction Documents to which each Obligor is a party admissible in evidence in each Relevant Jurisdiction; and
	3. to carry out the Project in accordance with the Transaction Documents and the Compliance Standards.
19. "**Resolution Procedure**" means the procedure set out in Clause 34.5 (*Resolution Procedure*).
20. "**Restricted Payment**" means:
	1. any dividend, charge, fee, cash distribution or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of the shares of the Borrower (or any part or class thereof);
	2. any bonus issue or any redemption, reduction, repurchase, defeasance, retirement or repayment of share capital, share premium or other capital reserves;
	3. [any repayment or prepayment of principal, payment of interest or payment of other amounts in respect of Shareholder Loans]; or
	4. any other payment of management, advisory or other fee or distribution of any kind by the Borrower to any other Obligor or any Affiliates thereof (including any payment or discharge by way of set-off, counterclaim or otherwise in respect of any indebtedness made by the Borrower to any such person),

[but does not include [(i)] any Approved Development Costs [or (ii) any payments made pursuant to the Project Documents which are not prohibited under paragraph (a) of Clause 17.23 (*Project expenditure*)][[76]](#footnote-77)].

1. "**Revenue**" means, in relation to any period, all amounts received (or, in the case of a projection, projected to be received) by the Borrower during such period (without double counting), comprising:
	1. revenues received from or in connection with [*insert principal source of revenue(s) for the Project*][[77]](#footnote-78);
	2. Delay Liquidated Damages;[[78]](#footnote-79)
	3. Insurance Proceeds received under Loss of Revenue Insurance;
	4. interest paid on the Accounts;
	5. refunds of Tax of any kind;
	6. [(if a positive amount) net scheduled amounts paid (or, in the case of a projection, projected to be paid) to the Borrower pursuant to the Hedging Agreements (other than Hedging Termination Costs);] and
	7. other amounts which the Intercreditor Agent agrees shall be Revenue,

but Revenue shall not include the proceeds of any Financial Indebtedness, Equity (or amounts received or projected to be received pursuant to any guarantee or other insurance in respect of any Financial Indebtedness or Equity) or Compensation.

1. "**Sanctions**" means the economic or financial sanctions laws, regulations, trade embargoes, export control, anti-boycott, executive orders or other restrictive measures enacted, imposed, administered, implemented and/or enforced from time to time by any of the following (and including through any relevant Sanctions Authority):
	1. [*list any relevant jurisdiction for sanctions purposes, including the governments of any relevant jurisdiction*].
2. "**Sanctions Authority**" means any agency or person which is duly appointed, empowered or authorised to enact, impose, administer, implement and/or enforce Sanctions, including (without limitation):
	1. [*list any relevant sanctions authority*].
3. ["**Scheduled Hedging Payments**" means, in respect of any period, net amounts that are payable by the Borrower under the Hedging Agreements on scheduled dates during that period (and not any [Hedging Entry Costs] or Hedging Termination Costs).]
4. "**Scheduled Principal**" means, in respect of any period, amounts of the Loans that are repayable by the Borrower under the Finance Documents on scheduled dates during that period (and not Prepayments).
5. "**Scheduled [Project Completion Date]/[Financial Completion Date]**" means [•].

"**Secured Obligations**" has the meaning given to that term in the Security Trust and Intercreditor Deed.

1. "**Secured Parties**" means each Finance Party and any Receiver or Delegate, and "**Secured Party**" means any of them.
2. "**Secured Property**" means all the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.
3. "**Security**" means a mortgage, charge, pledge, lien, assignment, hypothecation or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
4. "**Security Agents**" means the Offshore Security Agent and the Onshore Security Agent, and "**Security Agent**" means any of them.
5. "**Security Documents**" means:
	1. the security document dated on or about the date of this Agreement and made between the Borrower and the Onshore Security Agent, pursuant to which Security is granted by the Borrower over all its assets and rights in the Project Jurisdiction, other than Real Property [and [*insert others*]][[79]](#footnote-80);
	2. [the security document dated on or about the date of this Agreement and made between the Borrower and the Onshore Security Agent, pursuant to which Security is granted by the Borrower over all its Real Property;]
	3. [the security document dated on or about the date of this Agreement and made between each [Sponsor][Shareholder] and the Onshore Security Agent, pursuant to which Security is granted by each [Sponsor][Shareholder] over all its rights in the Borrower's share capital;]
	4. [the security document dated on or about the date of this Agreement and made between each [Sponsor][Shareholder] and the Onshore Security Agent pursuant to which Security is granted by each [Sponsor][Shareholder] over all its rights in the Shareholder Loans;]
	5. the security document dated on or about the date of this Agreement and made between the Borrower and the Offshore Security Agent, pursuant to which Security is granted by the Borrower over all its assets and rights outside the Project Jurisdiction;
	6. the reinsurance security document dated on or about the date of this Agreement and made between the insurer, the Borrower and the Offshore Security Agent, pursuant to which Security is granted by the insurer over its rights in any reinsurance;
	7. [*insert others*][[80]](#footnote-81); and
	8. any other document designated as such by the Borrower and the Intercreditor Agent,
6. and "**Security Document**" means any of them.
7. "**Security Trust and Intercreditor Deed**" means the security trust and intercreditor deed dated on or about the date of this Agreement and made between the Borrower and each Finance Party and which contains, among others, provisions relating to the appointment and resignation of the Intercreditor Agent and the Security Agents, sharing of proceeds among Finance Parties and the procedure for instructing the Intercreditor Agent[[81]](#footnote-82).
8. ["**Shareholder**" means each Original Shareholder and each other person who from time to time owns any share in the capital of the Borrower.] [[82]](#footnote-83)
9. "**Shareholder Contribution and** **Sponsor Support Agreement**"[[83]](#footnote-84) means the shareholder contribution and sponsor support agreement dated on or about the date of this Agreement entered into between each [Sponsor][Shareholder] and the Intercreditor Agent, which contains, among others, obligations of each [Sponsor][Shareholder] to contribute Equity and maintain its shareholding in the Borrower.[[84]](#footnote-85)
10. ["**Shareholder Loan**" means the outstanding principal amount of each loan that a [Sponsor][Shareholder] makes to the Borrower, in accordance with the Shareholder Loan Agreement.]
11. ["**Shareholder Loan Agreement**" means any agreement setting out the terms of a Shareholder Loan made or to be made by the relevant [Sponsor][Shareholder] to the Borrower, the terms of which are fully subordinated in accordance with the terms of the Subordination Agreement.]
12. "**Shareholders Agreement**" means the shareholders' agreement entered or to be entered into between the [Sponsors][Shareholders] setting out, among others, the arrangements relating to the [Sponsors][Shareholders]' shareholding in the Borrower.]
13. "**Signing Date**" means the date on which this Agreement is executed.
14. "**Site**" means [*insert real property details where the* [*Plant*] *will be located*].
15. "**Social Fabric**" means the social fabric including labour, social security, the regulation of industrial relations (between government, employers and employees), the protection of occupational as well as public health and safety, the regulation of public participation, the protection and regulation of ownership of land rights (both formal and traditional), land use planning and development, immovable goods and intellectual and cultural property rights, the protection and empowerment of indigenous peoples or ethnic groups, the protection, restoration and promotion of cultural heritage or archaeological artefacts, health, safety, quality of life and legal rights of the community and the protection of employees and citizens. For the avoidance of doubt, "Social Fabric" shall include Affected Communities and Workers.
16. "**Sponsor**" means each Original Sponsor and each other person who from time to time becomes a sponsor pursuant to the terms of the Shareholder Contribution and Sponsor Support Agreement.
17. "**Stakeholder**" means any individual or group that:
	1. is affected, or likely to be affected, by the Project [or the Associated Facilities]; or
	2. may have an interest in the Project [or the Associated Facilities],
18. including Affected Communities and Workers.
19. "**Stakeholder Engagement Plan**" means the plan prepared by the Borrower that, among other things, shall describe the timing and methods of engagement with Stakeholders in respect of the Project [and the Associated Facilities] throughout the life cycle of the Project.
20. ["**Stakeholder Engagement Process**" means any process undertaken by the Borrower from time to time in accordance with the Stakeholder Engagement Plan in respect of external communication, environmental and social information disclosure, participation, informed consultation and grievance mechanisms with Stakeholders[, including the Informed Consultation and Participation Process].]
21. "**Subordination Agreement**" means the subordination agreement dated on or about the date of this Agreement entered into between each [Sponsor][Shareholder] and the Intercreditor Agent[ and the Offshore Security Agent], which contains, among others, terms pursuant to which each [Shareholder Loan] made by each such [Sponsor][Shareholder] is fully subordinated to [the liabilities of the Borrower to the Finance Parties under the Finance Documents]/[the Secured Obligations].
22. "**Subsidiary**"[[85]](#footnote-86) means, in relation to any company or corporation, a company or corporation:
	1. which is controlled, directly or indirectly, by the first mentioned company or corporation;
	2. more than [half the] issued equity share capital of which is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or
	3. which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and, for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body of that company or corporation.

1. "**Supplier[s]**" means [•], and "**Supplier**" means any of them.
2. "**Supply Contract[s]**" means [each][the] contract entered or to be entered into between the Borrower and [a][the] Supplier for the supply by [such][the] Supplier of the [Fuel]/[Feedstock][, and "**Supply Contract**" means any of them].
3. "**Supply Contract Direct Agreement[s]**" means [[each][the] direct agreement entered or to be entered into between [an][the] Supplier[, *insert any guarantor*], the Borrower and the Offshore Security Agent containing terms with respect to, among others, the Finance Parties' rights and remedies in respect of the [relevant] Supply Contract] [, and "**Supply Contract Direct Agreement**" means any of them].
4. "**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).
5. ["**Tax Credit**" has the meaning given to that term in Clause 9.1 (*Definitions*).]
6. "**Tax Deduction**" has the meaning given to that term in Clause 9.1 (*Definitions*).
7. "**Tax Payment**" has the meaning given to that term in Clause 9.1 (*Definitions*).
8. "**Technical Adviser**" means [•], in its capacity as technical adviser to the Finance Parties.
9. "**Technical Adviser Certificate**" means a certificate from the Technical Adviser to the Intercreditor Agent substantially in the form set out in Schedule 4 (*Form of Technical Adviser Certificate*) or any other form agreed between the Intercreditor Agent and the Technical Adviser.
10. "**Term Loan A Facility**" means the term loan facility made available under the Term Loan A Facility Agreement.
11. "**Term Loan A Facility Agreement**" means the facility agreement dated on or about the date of this Agreement and made between the Borrower, the Term Loan A Facility Agent and each Original Term Loan A Facility Lender which contains terms specific to the Term Loan A Facility.[[86]](#footnote-87)
12. "**Term Loan A Facility Lenders**" means:
	1. the Original Term Loan A Facility Lenders; and
	2. any bank, financial institution, trust, fund or other entity which has become a party to the Term Loan A Facility Agreement in accordance with the terms of the Term Loan A Facility Agreement and a Party (in such capacity) in accordance with Clause 19 (*Changes to the Lenders*),
13. which in each case has not ceased to be a party to the Term Loan A Facility Agreement in accordance with the terms of the Term Loan A Facility Agreement and a Party (in such capacity) in accordance with the terms of this Agreement, and "**Term Loan A Facility Lender**" means any of them.
14. "**Term Loan A Facility Loan**" means a loan made or to be made under Term Loan A Facility or the principal amount outstanding for the time being of that loan.
15. "**Third Parties Act**" means the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore.
16. "**Third Party Liability Insurance**" means the Insurances to cover liability to third parties.
17. "**Total Commitments**" means the aggregate of the Commitments under each Facility.
18. "**Transaction Documents**" means the Finance Documents and the Project Documents, and "**Transaction Document**" means any of them.
19. "**Transaction Security**" means the Security created or expressed to be created in favour of a Security Agent pursuant to the Security Documents.
20. "**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 10 (*Form of Transfer Certificate*) or any other form agreed between the Intercreditor Agent and the Borrower.
21. "**Transfer Date**" means, in relation to an assignment or a transfer of any Commitments and/or Loans, the later of:
	1. the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
	2. the first date on which both the Intercreditor Agent and the Relevant Facility Agent have executed the relevant Assignment Agreement or Transfer Certificate.
22. "**Updated Base Case**" has the meaning given to that term in Clause 16.2 (*Updated Base Case*).
23. "**Unpaid Sum**" means any sum due and payable but unpaid by the Borrower under the Finance Documents.
24. "**US**" means the United States of America.
25. "**US Tax Obligor**" means:
	1. an Obligor if it is resident for tax purposes in the US; or
	2. an Obligor if some or all of its payments under the Finance Documents are from sources within the US for US federal income tax purposes.
26. "**Utilisation**" means a utilisation of a Facility.
27. "**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made.
28. "**Utilisation Request**" means a notice requesting a Utilisation of a Facility, substantially in the relevant form set out in the Facility Agreement for that Facility.
29. "**Voluntary Prepayment**" means any prepayment of all or part of a Loan made or permitted to be made pursuant to Clause 5.7 (*Voluntary prepayment*) or pursuant to any clause providing for voluntary prepayments under any Facility Agreement.

"**Workers**" means any workers engaged directly or indirectly by the Borrower to work at the Site, including full-time and part-time workers, contractors, sub-contractors and temporary workers.

* 1. Construction
		1. Unless a contrary indication appears, any reference in this Agreement to:
			1. an "**acquisition**" shall be construed so as to include any purchase, taking of a lease, assignment, conveyance, transfer or gift, acquisition of any form of ownership, title, estate or interest, subscription for an investment and any option or pre–emption right to do any of the foregoing and acquire shall be construed accordingly;
			2. [an "**agreed form**" of a document shall be construed as a reference to the form of that document initialled as such on or prior to the Signing Date for the purposes of identification as such by or on behalf of the Borrower and the Intercreditor Agent;]
			3. an "**agreement**" includes a deed and an instrument;
			4. an "**agreement**" or "**document**" is a reference to it as amended, assigned or novated from time to time; **provided that** any consents required under the Finance Documents have been obtained for the relevant amendment, assignment and/or novation (but where a defined term is incorporated by reference in this Agreement from a document which is not a Finance Document, then it shall be treated (unless otherwise agreed by the Intercreditor Agent) as having the meaning given to that term in the other document as in effect on the Signing Date);
			5. an "**amendment**" includes a supplement, novation, replacement, assignment, variation, re-enactment, modification or restatement, and "**amended**" shall be construed accordingly;
			6. "**assets**" includes business, undertaking, present and future properties, revenues (including any right to receive revenues), uncalled capital and rights of every description;
			7. "**carry out the Project**", "**carrying out the Project**" or "**carried out the Project**" means to carry out all aspects of the Project;
			8. "**disposal**" of assets includes a sale, transfer, grant, loan (other than of money), lease and any other kind of disposal of, and the grant of any option in respect of, any right or interest, legal or equitable, in such assets, and any agreement for any of the foregoing (but excludes any salvage realised by any insurers or reinsurers in the process of the settlement of any insured claims pursuant to the terms and conditions of the Insurances), and "**dispose**" shall be construed accordingly;
			9. the "**equivalent**" on any given date in one currency (the "**first currency**") of an amount denominated in another currency (the "**second currency**") is a reference to the amount of the first currency which could be purchased with the amount of the second currency at the prevailing spot rate of exchange at the office of the Intercreditor Agent and quoted by it at or about [11:00 a.m.] (local time) on such date for the purchase of the first currency with the second currency;
			10. a "**group of Lenders**" includes all the Lenders;
			11. "**including**" means including without limitation and the *ejusdem generis* principle of construction shall not apply to this Agreement;
			12. "**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;
			13. ["**judgment**" includes references to any order, injunction, decree, determination or award of any court or tribunal;]
			14. a "**law**" includes any law (including statutory and rule of common law or equity), statute, constitution, decree, judgment, treaty, convention, regulation, rule, by-law, order, official directive, ordinance, request or guideline, other legislative measure (in each case, whether or not having the force of law) of any Authority, and "**lawful**" and "**unlawful**" shall be construed accordingly;
			15. any "**obligation**" of any person under this Agreement or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Agreement or, as the case may be, that other agreement or document, and "**due**", "**owing**", "**payable**" and "**receivable**" shall be similarly construed;
			16. a "**person**", "**party**" or "**entity**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
			17. a "**right**" shall be construed as including any right, title, interest, claim, remedy, discretion, power or privilege, in each case whether actual, contingent, present or future;
			18. save as provided in the Finance Documents, phrases such as "**satisfactory to**" any person, "**approved by**" any person, "**acceptable to**" any person, "**at the discretion**" of any person, and similar phrases authorise and permit the relevant person to approve, disapprove, act or decline to act in its sole discretion;
			19. the "**winding-up**", "**dissolution**", "**administration**" or "**bankruptcy**" of a person shall be construed so as to include any equivalent or analogous proceedings under the laws of any jurisdiction in which such person is incorporated or resident or any jurisdiction in which such person carries on business or in which any of its assets are located (including the seeking of liquidation, winding-up, appointment of a bankruptcy trustee, reorganisation, reconstruction, amalgamation, merger or consolidation of that person, dissolution, administration, arrangement, adjustment, protection or relief of debtors, insolvency and suspension of payments);
			20. a "**year**" is a year of 365 or, as the case may be, 366 days determined by reference to the Gregorian calendar and "**calendar year**" is a year that begins on 1 January;
			21. a provision of law or regulation is a reference to that provision as amended or re-enacted from time to time;
			22. an Agent, a Mandated Lead Arranger, any Finance Party, any Secured Party, any Lender, any Account Bank, any Hedging Bank, the Borrower, any Obligor, any Party or any counterparty to a Transaction Document 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 and, in the case of each Agent, any person for the time being appointed as an Agent in accordance with the Finance Documents; and
			23. a time of day is a reference to time in [the Project Jurisdiction]/[Singapore].
		2. Section, Clause and Schedule headings are for ease of reference only and Clauses, Sections, paragraphs and Schedules are references to Clauses, Sections and paragraphs of, and Schedules to, this Agreement.
		3. Unless a contrary indication appears, 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.
		4. A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been [remedied or waived]/[waived].
		5. Words importing a gender include every gender.
		6. Use of the singular shall include the plural and vice versa.
		7. [If any E&S Standard imposes higher or more stringent requirements or standards to those set out in any other E&S Standard, then the higher or more stringent requirements or standards will prevail for the purposes of the Finance Documents.]
		8. In computing any period of time under this Agreement, the day of the act or event or default from which such period begins to run shall be included unless otherwise specified.
		9. When an expression is defined all related words and expressions shall be construed accordingly.
	2. Currency symbols and definitions

["**S$**" and "**Singapore** **dollars**" denote the lawful currency of Singapore.][[87]](#footnote-88)

* 1. Third party rights

[A person who is not a Party has no right under the Third Parties Act to enforce or to enjoy the benefit of any term of this Agreement.]

**OR**

* + 1. [Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Third Parties Act to enforce or to enjoy the benefit of any term of this Agreement.
		2. Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.]
	1. Independence of Finance Documents

The Borrower acknowledges that its obligation to pay amounts due under the Finance Documents is unconditional and shall not be affected or discharged by any event or circumstance relating to the Major Project Participants (including any insolvency event, insolvency proceedings or creditors' process) or to the Project Documents (including any Force Majeure, suspension, termination, cancellation, repudiation or failure to be legal, valid, binding and enforceable).

* 1. Actions of Agents
		1. Any:
			1. action to be taken or expressed to be taken;
			2. discretion to be exercised or expressed to be exercised; or
			3. opinion or consent to be given or expressed to be given,

under or in respect of this Agreement or any other Finance Document by any Agent shall be taken, exercised or, as the case may be, given by it acting in accordance with the instructions given to it or authority granted to it by its Instructing Parties.

* + 1. Any provision in this Agreement or any other Finance Document which provides that the prior written consent of an Agent is required and which provides that such consent cannot be unreasonably withheld or which otherwise requires such Agent to act reasonably or form a reasonable opinion, shall be construed as requiring the Instructing Parties for that Agent to act reasonably or form a reasonable opinion when providing instructions to it, but shall not fetter the ability of that Agent to act in accordance with the instructions of its Instructing Parties.
	1. Finance Parties' rights and obligations
		1. The obligations of each Finance Party under the Finance Documents are several. 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. 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 an Obligor is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) 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 other amount owed by an Obligor which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any such amount payable to any Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
		3. A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.
		4. Notwithstanding any other provision of a Finance Document to the contrary, a Finance Party is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any Applicable Law, in any jurisdiction in connection with the Finance Documents applicable to that Finance Party and relating to anti-money laundering, counter-terrorism financing or economic or trade sanctions, or imposing "know your customer" or other identification checks or procedures.
	2. Conflicts between Finance Documents
		1. This Agreement is subject to the Security Trust and Intercreditor Deed.  In the event of any inconsistency between this Agreement and the Security Trust and Intercreditor Deed as among the Finance Parties, the Security Trust and Intercreditor Deed shall prevail.
		2. In the case of any conflict or inconsistency between this Agreement and any other Finance Document (other than the Security Trust and Intercreditor Deed and the Facility Agreements), this Agreement shall prevail.

**SECTION 2
THE FACILITIES**

1. Purpose
	1. Purpose[[88]](#footnote-89)

The Borrower shall apply the proceeds of each Utilisation as follows (in each case, only to the extent permitted in accordance with the terms of the Facility Agreement for the Facility under which such Utilisation is made):

* + 1. to pay Budgeted Project Costs due and payable by the Borrower[[89]](#footnote-90);
		2. towards initial funding of the DSRA up to the DSRA Required Balance [and the MRA up to the MRA Required Balance];
		3. [in respect of the first Utilisation only of the Term Loan A Facility, to reimburse to the [Sponsor][Shareholder] Approved Development Costs;]
		4. [(subject to satisfaction of the conditions set out in Clause 3.4 (*[Equity true-up*)] towards the making of any Restricted Payment to a [Sponsor][Shareholder];] and
		5. for any other purpose approved in writing by the Intercreditor Agent.
	1. Monitoring

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

1. Conditions of Utilisation
	1. Initial conditions precedent
		1. The Borrower may not deliver a Utilisation Request for the first Utilisation of any Facility unless:
			1. the Intercreditor Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Intercreditor Agent (or, if it has not received such documents or other evidence, the Intercreditor Agent has waived such requirement). The Intercreditor Agent shall notify the Borrower and the Lenders in writing promptly upon being so satisfied[; and
			2. each Relevant Facility Agent has received all of the documents and other evidence listed as conditions precedent in the Facility Agreement for that Facility in form and substance satisfactory to such Relevant Facility Agent (or, if it has not received such documents or other evidence, such Relevant Facility Agent has waived such requirement). Each Relevant Facility Agent shall notify the Borrower, the Lenders under the Facility for which it is Relevant Facility Agent and the Intercreditor Agent in writing promptly upon being so satisfied][[90]](#footnote-91).
		2. No Agent shall be liable for any damages, costs or losses whatsoever as a result of giving any such notification.
	2. Further conditions precedent

The Lenders under any Facility will only be obliged to make or participate in any Utilisation under that Facility if:

* + 1. the Borrower has delivered a duly completed Utilisation Request to the Intercreditor Agent and the Relevant Facility Agent in accordance with the requirements of the relevant Facility Agreement;
		2. on the date of the Utilisation Request and the proposed Utilisation Date:
			1. no Default has occurred and is continuing or would result from the proposed Loan;
			2. [each condition precedent set out in the relevant Facility Agreement under which the Utilisation is to be made has been satisfied or waived;][[91]](#footnote-92)
			3. the Repeating Representations are true in all material respects; and
			4. [no Force Majeure is continuing [that is reasonably likely to have a Material Adverse Effect];]
		3. the Borrower has delivered all reports required to be provided by the Borrower under Clause 15.5 (*Construction reports*);
		4. the Borrower has certified to the Intercreditor Agent [in the Utilisation Request] that:
			1. sufficient Equity has been (or will be) contributed so that the Debt to Equity Ratio does not exceed (and the making of the Utilisation will not cause the Debt to Equity Ratio to exceed) [•], together with reasonable supporting evidence;[[92]](#footnote-93)
			2. the amounts specified in the Utilisation Request are in accordance with the Construction Budget and are for the payment of Project Costs incurred [or expected to be incurred in the next 90 days] or such amount will be used to make the payments contemplated in paragraphs (b), (c) or (d) of Clause 2.1 (*Purpose*)[[93]](#footnote-94);
			3. Project Completion will occur no later than the Longstop Date; and
			4. a Funding Shortfall does not exist;
		5. [the Technical Adviser has delivered to the Intercreditor Agent a duly completed and signed Technical Adviser Certificate, dated no earlier than [two] Business Days prior to the proposed Utilisation Date;] and
		6. [*others*].
	1. Utilisations
		1. The Borrower may utilise a Facility in accordance with this Agreement and the Facility Agreement under which the Utilisation is to be made.
		2. [Each Facility shall be utilised simultaneously and in amounts *pro rata* to the total Commitments under all Facilities.]/[A Facility may be utilised without utilising the other Facilities *pro rata* to the total Commitments under all Facilities.]
		3. Each Utilisation Request is irrevocable and shall not be given unless it complies with this Agreement, the relevant Facility Agreement and satisfies the following additional requirements:

#### it has been signed by a duly authorised representative of the Borrower;

#### in the case of the initial Utilisation under a Facility, all conditions precedent set out in Clause 3.1 (*Initial conditions precedent*) and Clause 3.2 (*Further conditions precedent*) have been satisfied or waived as at the date of such Utilisation Request;

#### in the case of all other Utilisations under a Facility, all conditions precedent set out in Clause 3.2 (*Further conditions precedent*) have been satisfied or waived as at the date of such Utilisation Request;

#### only one Loan may be requested in each Utilisation Request;

#### only one Utilisation Request may be delivered under each Facility in any calendar month[, except that the Borrower may deliver Utilisation Requests pursuant to Clause 3.4 (*[Equity true-up*) in the same month];

#### the aggregate amount of the requested Loans under the Facility must be a minimum of [•] and in integral multiples of [•], or, if less, the aggregate of the Available Commitments under that Facility;

#### the requested Utilisation Date is a Business Day falling within the Availability Period for the relevant Facility and is no earlier than [•][[94]](#footnote-95) Business Days after the date of the Utilisation Request; and

#### it sets out details of each Utilisation requested under each other Facility and the aggregate amount of all Utilisations requested under the Facilities, and such details demonstrate compliance with paragraph (b) above.

* 1. [Equity true-up[[95]](#footnote-96)
		1. On the Financial Completion Date, if the Available Facility under a Facility exceeds the remaining unpaid Project Costs (such amount, the "**Excess Amount**") [(as certified by the Technical Adviser)], the Borrower may [request a Utilisation of that Facility up to an amount not exceeding the Excess Amount and] apply the proceeds of such Utilisation to make a Restricted Payment to any [Sponsor][Shareholder].
		2. A Restricted Payment may only be made under paragraph (a) above to the extent that, immediately following the making of such Restricted Payment:
			1. the [Projected DSCR] for all Calculation Dates occurring after such Utilisation will not be less than [•:•];
			2. [the LLCR will not be less than [•:•];]
			3. the Debt to Equity Ratio will not exceed [•:•]; [and]
			4. no Default is continuing [or would result from the making of the Restricted Payment][; and
			5. the Balance of the DSRA is at least equal to the DSRA Required Balance[[96]](#footnote-97)].
		3. For the avoidance of doubt, any Restricted Payment pursuant to this Clause 3.4 is not subject to the satisfaction of the Distribution Tests.]

**SECTION 3
REPAYMENT, PREPAYMENT AND CANCELLATION**

1. Repayment
	1. Repayment of the Loans
		1. The Borrower shall repay each Loan in accordance with the Facility Agreement under which such Loan was made.[[97]](#footnote-98)
		2. The Borrower may not reborrow any part of the Loans which is repaid.[[98]](#footnote-99)
		3. All repayments and Loans outstanding under the Facilities shall rank *pari passu* in all respects with each other.[[99]](#footnote-100)
2. Prepayment and Cancellation
	1. Mandatory prepayment – Illegality

If, in any applicable jurisdiction, [at any time, it is or will become unlawful]/[it becomes unlawful] for any Lender to perform any of its obligations as contemplated by the Finance Documents or to fund, issue or maintain its participation in any Loan [or [at any time, it is or will become unlawful]/[it becomes unlawful] for any Affiliate of a Lender for that Lender to do so]:

* + 1. that Lender shall promptly notify the Relevant Facility Agent and the Intercreditor Agent upon becoming aware of that event;
		2. upon the Intercreditor Agent notifying the Borrower, each Available Commitment of that Lender will be immediately cancelled; and
		3. to the extent that the Lender's participation has not been transferred pursuant to paragraph (a)(ii) of Clause 29.4 (*Replacement of Lender*), the Borrower shall repay that Lender's participation in the Loans made to the Borrower within [•] Business Days after the Intercreditor Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Intercreditor Agent [(being no earlier than the last day of any applicable grace period permitted by Applicable Law)].
	1. [[100]](#footnote-101)Mandatory prepayment – Compensation
		1. The Borrower shall apply all Compensation (other than Performance Liquidated Damages) received by it in prepayment of the Loans on the first Interest Payment Date falling at least [three] Business Days after the date of receipt of any such amount[, where such amount (together with the aggregate amounts of any other Compensation received by it over the previous 12 calendar months, whether or not in respect of the same events or circumstances) is equal to or greater than [•] (or its equivalent in any currency or currencies)].
		2. Subject to paragraphs (c) and (e) below, the Borrower shall apply all Performance Liquidated Damages received by it in prepayment of the Loans on the first Interest Payment Date falling at least [three] Business Days after the date of receipt of any such amount to the extent required to restore the Ratios for each Calculation Date up to the Final Maturity Date to at least [●]/[the levels required at Financial Close].
		3. No prepayment of an amount shall be required under paragraph (b) above where the amount received constitutes Performance Liquidated Damages and the Borrower has satisfied each of the following conditions:
			1. within [three] Business Days of its receipt of such amount, it has notified the Intercreditor Agent that it intends to reinvest such amount in the Project; and
			2. within [30] days of receipt of such amount, it has delivered to the Intercreditor Agent a reinvestment plan, approved by the Intercreditor Agent acting on the advice of the Technical Adviser (such approved plan, a "**Reinvestment Plan**"), for reinvestment of such amount into the Project so that:
				1. the event or circumstance that gave rise to such payment is remedied; and
				2. following such remedy, the Ratios for each Calculation Period ending after the date of that remedy up to the Final Maturity Date are at least equal to [•]/[the Ratios set out in the most recent Financial Report delivered by the Borrower before the occurrence of the event or circumstance that gave rise to such payment]/[the Ratios required as at Financial Close][[101]](#footnote-102),

**provided that** any such amount received by the Borrower in excess of the amount required to be reinvested into the Project pursuant to the Reinvestment Plan shall be applied towards prepayment in accordance with paragraph (b) above.

* + 1. The Borrower shall procure that each Reinvestment Plan is promptly and diligently implemented and on a [monthly/quarterly basis] report on the progress made against such plan to the Intercreditor Agent and the Technical Adviser.
		2. If (i) the Borrower fails to deliver a Reinvestment Plan in accordance with paragraph (c)(ii) above or (ii) the Reinvestment Plan delivered by the Borrower to the Intercreditor Agent is not approved by the Intercreditor Agent, the Performance Liquidated Damages shall be applied in prepayment in accordance with paragraph (b) above [on the first Interest Payment Date falling after the date that the Intercreditor Agent gives notice to the Borrower].
	1. Mandatory prepayment – Relevant Insurance Proceeds
		1. Subject to paragraph (b) below, the Borrower shall apply the Relevant Insurance Proceeds received by it in prepayment of the Loans [and to pay any due Hedging Termination Costs resulting from such prepayment,] on the first Interest Payment Date falling at least [three] Business Days after the date of receipt of any such amount to the extent required to restore the Ratios for each Calculation Date up to the Final Maturity Date to at least [●]/[the levels required at Financial Close].[[102]](#footnote-103)
		2. No prepayment of an amount shall be required under paragraph (a) above where the Borrower has satisfied each of the following conditions:
			1. [the aggregate amount of the Relevant Insurance Proceeds or value of the damage to the Project to which such Relevant Insurance Proceeds relate is not more than [•] (or its equivalent in any currency or currencies);]
			2. within [30] days of [receipt of]/[the events giving rise to] such Relevant Insurance Proceeds, the Borrower has delivered to the Intercreditor Agent a reinstatement plan, and such plan is approved by the Intercreditor Agent acting on the advice of the Technical Adviser (such approved plan, the "**Reinstatement Plan**");
			3. in the reasonable opinion of the Intercreditor Agent (following consultation with the [Insurance Adviser] and the [Technical Adviser]), the damaged facilities or property can be repaired, reinstated or replaced in accordance with the Reinstatement Plan within time limits imposed under the Project Documents and such Relevant Insurance Proceeds (when aggregated with any other funds then available to the Borrower and committed to such repair, reinstatement or replacement) are sufficient to do so;
			4. the contractual arrangements to effect such repair, reinstatement or replacement are satisfactory to the Intercreditor Agent; and
			5. following such repair, reinstatement or replacement, the Ratios for each Calculation Period ending after the date of such repair, reinstatement and replacement as to the Final Maturity Date are at least equal to [•]/[the Ratios set out in the most recent Financial Report delivered by the Borrower before the occurrence of the event or circumstance that gave rise to such payment]/[the Ratios required as at Financial Close][[103]](#footnote-104),

**provided that** any such amount received by the Borrower in excess of the amount required to repair, reinstate or replace all or part of the Project pursuant to the Reinstatement Plan shall be applied towards prepayment in accordance with paragraph (a) above.

* + 1. The Borrower shall procure that each Reinstatement Plan is promptly and diligently implemented and, on a [monthly/quarterly basis], report on the progress made against such plan to the Intercreditor Agent and Technical Adviser.
		2. If (i) the Borrower fails to deliver a Reinstatement Plan in accordance with paragraph (b)(ii) above or (ii) the Reinstatement Plan delivered by the Borrower to the Intercreditor Agent is not approved by the Intercreditor Agent, the Performance Liquidated Damages shall be applied in prepayment in accordance with paragraph (b) above [on the first Interest Payment Date falling after the date that the Intercreditor Agent gives notice to the Borrower].
	1. *[Insert other mandatory prepayment events[[104]](#footnote-105)]*
	2. Automatic Cancellation

All undrawn Commitments in respect of a Facility shall be cancelled in full at close of business on the last day of the Availability Period for such Facility.

* 1. Voluntary cancellation
		1. The Borrower may, if it gives the Intercreditor Agent not less than [•] Business Days' (or such shorter period as the Intercreditor Agent may agree) prior notice, cancel the whole or any part (being a minimum amount of [*insert currency*][•]) of [the][an] Available Facility[[105]](#footnote-106). Any cancellation of [the][an] Available Facility under this Clause 5.6 shall reduce the Commitments of the Lenders rateably under that Facility.
		2. The Borrower may not make any cancellation under paragraph (a) above prior to the Project Completion Date unless it has demonstrated to the reasonable satisfaction of the Intercreditor Agent that, immediately following such cancellation:
			1. there will not be a Funding Shortfall;
			2. the Project Completion Date will occur on or before the [Scheduled Project Completion Date]; and
			3. no Default is continuing or would arise as a result of such cancellation.
		3. [The Borrower shall pay to each Lender under the Facility to which the cancellation relates, no later than the time that it cancels any Facility in whole or part under paragraph (a) above, a cancellation fee in the amount set out below:

| **Time cancellation made** | **Cancellation fee** |
| --- | --- |
| Prior to [*insert date*] | [•] per cent. ([•]%) of the amount of that Lender's Commitments cancelled |
| On or after [*insert end date from above row*] | [•] per cent. ([•]%) of the amount of that Lender's Commitments cancelled][[106]](#footnote-107) |

* 1. Voluntary prepayment
		1. The Borrower may, if it gives the Intercreditor Agent not less than [•] Business Days' (or such shorter period as the Intercreditor Agent may agree) prior notice, prepay the whole or any part of any Loans (but, if in part, being an amount that reduces the amount of the Loans made by each Lender by a minimum amount of [•]) from funds standing to the credit of the [Operating Account in accordance with the [Onshore/Offshore] Accounts Agreement][[107]](#footnote-108).
		2. A Loan may only be prepaid under paragraph (a) above:
			1. if such prepayment is made following the Project Completion Date[[108]](#footnote-109); and
			2. [if such prepayment is to be made prior to the Project Completion Date, if the Borrower has demonstrated to the reasonable satisfaction of the Intercreditor Agent that, immediately following such prepayment:
				1. there will not be a Funding Shortfall;
				2. the Project Completion Date will occur on or before the [Scheduled Project Completion Date]; and
				3. no Default is continuing or would arise as a result of such prepayment,]

[unless the prepayment is of the whole of the Loans under all Facilities in connection with a refinancing of all Facilities and all Available Facilities are cancelled in full and all other amounts due and payable to the Secured Parties under the Finance Documents are paid no later than the date of that prepayment].

* + 1. [The Borrower shall pay to each Lender under the Facility to which the prepayment relates, no later than the time that it is makes any prepayment of any Loans under paragraph (a) above, a prepayment fee in the amount set out below:

| **Time prepayment made** | **Prepayment fee** |
| --- | --- |
| Prior to [*insert date*] | [•] per cent. ([•]%) of the Loans prepaid to that Lender |
| On or after [*insert end date from above row*] | [•] per cent. ([•]%) of the Loans prepaid to that Lender][[109]](#footnote-110) |

* 1. [Right of cancellation and repayment in relation to a single Lender
		1. If:
			1. any sum payable to any Lender by the Borrower is required to be increased under paragraph (a) of Clause 9.2 (*Tax gross-up*); or
			2. any Lender claims indemnification from the Borrower under Clause 9.3 (*Tax indemnity*) or Clause 10.1 (*Increased Costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Intercreditor 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, provided in each case it has demonstrated to the reasonable satisfaction of the Intercreditor Agent that immediately following such repayment:

* + - * 1. there will not be a Funding Shortfall;
				2. the Project Completion Date will occur on or before the [Scheduled Project Completion Date]; and
				3. no Default is continuing or would arise as a result of such repayment, cancellation or replacement.
		1. On the satisfaction of the conditions set out in paragraph (a) above (as notified to the Borrower and that Lender by the Intercreditor Agent), the Available Commitment(s) of that Lender shall be immediately reduced to zero.
		2. On the last day of the Interest Period which ends after the Intercreditor Agent has received notice under paragraph (a) above, the Borrower shall repay that Lender's participation in that Loan together with all interest and other amounts accrued under the Finance Documents and that Lender's corresponding Commitment shall be immediately cancelled in the amount of the participations repaid.
	1. Right of cancellation in relation to a Defaulting Lender
		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 Intercreditor Agent [•] Business Days' notice of cancellation of each Available Commitment of that Lender provided in each case it has demonstrated to the reasonable satisfaction of the Intercreditor Agent that immediately following such cancellation:
			1. there will not be a Funding Shortfall;
			2. the Project Completion Date will occur on or before the [Scheduled Project Completion Date]; and
			3. no Default is continuing or would arise as a result of such cancellation.
		2. On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.
		3. The Intercreditor Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.
	2. Restrictions[[110]](#footnote-111)
		1. Any notice of cancellation or prepayment given by any Party under this Clause 5 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.
		2. Any prepayment under this Agreement and the relevant Facility Agreement shall be made together with (i) any Hedging Termination Costs; and (ii) accrued interest on the amount prepaid and, subject to any Break Costs and any prepayment or cancellation fee specified in this Agreement or the relevant Facility Agreement, without other premium or penalty.
		3. The Borrower may not reborrow or request a Utilisation for any part of a Facility which is prepaid.
		4. The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
		5. No amount of the Total Commitments cancelled under this Agreement or the relevant Facility Agreement may be subsequently reinstated.
		6. If the Intercreditor Agent receives a notice under this Clause 5 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
		7. If all or part of any Lender's participation in a Loan under a Facility is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of that Facility will be deemed to be cancelled on the date of repayment or prepayment.
		8. [Subject to paragraph (a) above, any Prepayment made under this Clause 5 [(other than Clause 5.1 (*Mandatory prepayment – Illegality*)] will be applied *pro rata* among the Facilities and the cancellation of the Available Commitments under this Clause 5 [(other than Clause 5.9 (*Right of cancellation in relation to a Defaulting Lender*))] will take effect *pro rata* among the Lenders.]
	3. Application of prepayments

The Lenders under the relevant Facility [that have requested a prepayment], shall apply any prepayment under:

* + 1. paragraph (a) of Clause 5.2 (*Mandatory prepayment – Compensation*), in inverse order of maturity against the outstanding principal instalments under the relevant Facilities;
		2. paragraph (b) of Clause 5.2 (*Mandatory prepayment – Compensation*) and Clause 5.3 (*Mandatory prepayment – Relevant Insurance Proceeds*), in the minimum amount required to ensure that the Ratios meet the requirement set out in paragraph (b) of Clause 5.2 (*Mandatory prepayment – Compensation*) or, as the case may be, paragraph (a) of Clause 5.3 (*Mandatory prepayment – Relevant Insurance Proceeds*), *pro rata* across the outstanding principal instalments under the relevant Facilities;
		3. Clause 5.7 (*Voluntary prepayment*), in [inverse order of maturity against]/[*pro rata* across] the outstanding principal instalments under the relevant Facilities; and
		4. [*insert other prepayment events*].

**SECTION 4
COSTS OF UTILISATION**

1. Interest
	1. Calculation of interest

Interest on each Loan shall be calculated and paid in the manner set out in the Facility Agreement under which the Loan was made.[[111]](#footnote-112)

* 1. Default interest
		1. If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is [•] per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Intercreditor Agent (acting reasonably). Any interest accruing under this Clause 6.2 shall be immediately payable by the Borrower on demand by the Intercreditor Agent.
		2. If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
			1. the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
			2. the rate of interest applying to the overdue amount during that first Interest Period shall be [•] per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
		3. Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
	2. Notification of rates of interest

The Intercreditor Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

* 1. Break Costs
		1. The Borrower shall, within [three] Business Days of demand by a 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.
		2. Each Lender shall, as soon as reasonably practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.
1. Interest Periods[[112]](#footnote-113)
	1. Interest Periods
		1. Subject to this Clause 7.1, the Interest Period for each Loan shall be [six] Months (or any other period agreed between the Borrower and the Intercreditor Agent).
		2. Each Interest Period for a Loan shall start on its Utilisation Date or (if already made) on the last day of its preceding Interest Period and shall end on the next Interest Payment Date.
		3. An Interest Period for a Loan shall not extend beyond the Final Maturity Date.
	2. 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 not).

* 1. Consolidation and division of Loans

If two or more Interest Periods end on the same date, those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

1. Fees[[113]](#footnote-114)[[114]](#footnote-115)
	1. Arrangement fee

The Borrower shall pay to each Mandated Lead Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

* 1. Intercreditor Agent Fee

The Borrower shall pay to the Intercreditor Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

* 1. Facility Agent Fee

The Borrower shall pay to each Facility Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

* 1. Offshore Security Agent Fee

The Borrower shall pay to the Offshore Security Agent (for its own account) a security agency fee in the amount and at the times agreed in a Fee Letter.

* 1. Onshore Security Agent Fee

The Borrower shall pay to the Onshore Security Agent (for its own account) a security agency fee in the amount and at the times agreed in a Fee Letter.

* 1. Account Bank Fee

The Borrower shall pay to each Account Bank (for its own account) an account banking fee in the amount and at the times agreed in a Fee Letter.

* 1. Commitment Fee

The Borrower shall pay to each Lender of a Facility a commitment fee in the amount and at the times agreed in the relevant Facility Agreement.

**SECTION 5
ADDITIONAL PAYMENT OBLIGATIONS**

1. Tax Gross Up and Indemnities[[115]](#footnote-116)
	1. Definitions
		1. In this Agreement:

"**Tax Credit**" means a credit against, relief or remission for, or repayment of any Tax.

"**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.

"**Tax Payment**" means either the increase in a payment made by the Borrower to a Finance Party under Clause 9.2 (*Tax gross-up*) or a payment under Clause 9.3 (*Tax indemnity*).

* + 1. Unless a contrary indication appears, in this Clause 9 a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.
	1. Tax gross-up
		1. All payments to be made by the Borrower to any Finance Party under the Finance Documents shall be made free and clear of and without any Tax Deduction unless the Borrower is required to make a Tax Deduction, in which case the sum payable by the Borrower (in respect of which such Tax Deduction is required to be made) shall be increased to the extent necessary to ensure that such Finance Party receives a sum net of any deduction or withholding equal to the sum which it would have received had no such Tax Deduction been made or required to be made.
		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 Intercreditor Agent accordingly. Similarly, a Lender shall notify the Intercreditor Agent on becoming so aware in respect of a payment payable to that Lender. If the Intercreditor Agent receives such notification from a Lender it shall notify the Borrower.
		3. 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.
		4. 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 Intercreditor 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.
	2. Tax indemnity
		1. Without prejudice to Clause 9.2 (*Tax gross-up*), if any Finance Party is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for the purposes of Tax to be received or receivable by such Finance Party whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against any Finance Party, the Borrower shall, within [three] Business Days of demand of the Intercreditor Agent, promptly indemnify the Finance Party which suffers a loss or liability as a result against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith, **provided that** this Clause 9.3 shall not apply to:
			1. any Tax imposed on and calculated by reference to the net income actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for the purposes of Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which such Finance Party is incorporated;
			2. any Tax imposed on and calculated by reference to the net income of the Facility Office of such Finance Party actually received or receivable by such Finance Party (but, for the avoidance of doubt, not including any sum deemed for the purposes of Tax to be received or receivable by such Finance Party but not actually receivable) by the jurisdiction in which its Facility Office is located; or
			3. a FATCA Deduction required to be made by a Party.
		2. A Finance Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Intercreditor Agent of the event which will give, or has given, rise to the claim, following which the Intercreditor Agent shall notify the Borrower.
		3. A Finance Party shall, on receiving a payment from the Borrower under this Clause 9.3, notify the Intercreditor Agent.
	3. Tax Credit

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

* + 1. a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
		2. that Finance Party has obtained and utilised 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.

* 1. Stamp taxes

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

* 1. Indirect tax
		1. All amounts set out or expressed in a Finance Document to be payable by any Party to a Finance Party shall be deemed to be exclusive of any Indirect Tax. If any Indirect Tax is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration for that supply) an amount equal to the amount of the Indirect Tax.
		2. Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all Indirect Tax incurred by that Finance Party in respect of those costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to a credit or repayment in respect of the Indirect Tax.
	2. FATCA Information
		1. Subject to paragraph (c) below, each Party shall, within [ten] Business Days of a reasonable request by another Party:
			1. confirm to that other Party whether it is:
				1. a FATCA Exempt Party; or
				2. not a FATCA Exempt Party;
			2. 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
			3. 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.
		2. If a Party confirms to another Party pursuant to paragraph (a)(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.
		3. Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
			1. any law or regulation;
			2. any fiduciary duty; or
			3. any duty of confidentiality.
		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 paragraphs (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above 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.
		5. [If the Borrower is a US Tax Obligor or the Intercreditor Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within [ten] Business Days of:
			1. where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
			2. where the Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, the relevant Transfer Date; or
			3. where the Borrower is not a US Tax Obligor, the date of a request from the Intercreditor Agent,

supply to the Intercreditor Agent:

* + - * 1. a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
				2. any withholding statement or other document, authorisation or waiver as the Intercreditor Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
		1. The Intercreditor Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
		2. If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Intercreditor Agent by a Lender pursuant to paragraph (e) 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 Intercreditor Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Intercreditor Agent). The Intercreditor Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.
		3. The Intercreditor Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Intercreditor Agent shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.][[116]](#footnote-117)
	1. FATCA Deduction
		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.
		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 and the Intercreditor Agent and the Intercreditor Agent shall notify the other Finance Parties.
1. Increased Costs
	1. Increased Costs
		1. Subject to Clause 10.3 (*Exceptions*), the Borrower shall, within [three] Business Days of a demand by the Intercreditor 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:
			1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement; [or]
			2. compliance with any law or regulation made after the date of this Agreement[; or
			3. the implementation or application of, or compliance with, Basel III [or CRD IV] or any law or regulation that implements or applies Basel III [or CRD IV][[117]](#footnote-118).]
		2. In this Agreement:
			1. "**Increased Costs**" means:
				1. a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
				2. an additional or increased cost; or
				3. a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates 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;

* + - 1. ["**Basel III**" means:
				1. the agreements 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" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
				2. 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, as amended, supplemented or restated; and
				3. any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"; and]
			2. ["**CRD IV**" means:
				1. 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
				2. 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.][[118]](#footnote-119)
	1. Increased cost claims
		1. A Finance Party (other than the Intercreditor Agent) intending to make a claim pursuant to Clause 10.1 (*Increased Costs*) shall notify the Intercreditor Agent of the event giving rise to the claim, following which the Intercreditor Agent shall promptly notify the Borrower.
		2. Each Finance Party (other than the Intercreditor Agent) shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of its Increased Costs.
	2. Exceptions
		1. Clause 10.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:
			1. attributable to a Tax Deduction required by law to be made by the Borrower;
			2. attributable to a FATCA Deduction required to be made by a Party;
			3. compensated for by Clause 9.3 (*Tax indemnity*) (or would have been compensated for under Clause 9.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (a) of Clause 9.3 (*Tax indemnity*) applied); or
			4. attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
		2. In this Clause 10.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 9.1 (*Definitions*).
1. Other Indemnities
	1. Currency indemnity
		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**"), the Borrower shall, as an independent obligation, within [three] Business Days of demand, indemnify each Secured 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.
		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.
	2. Other indemnities
		1. The Borrower shall, within [three] Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by that Secured Party as a result of:
			1. the occurrence of any Event of Default;
			2. a failure by an Obligor to pay any amount due under a Finance Document on its due date, including, any cost, loss or liability arising as a result of the sharing and redistribution provisions of the Finance Documents;
			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 or the relevant Facility Agreement (other than by reason of default or negligence by that Secured Party alone);
			4. a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower;
			5. an indemnity provided by a Secured Party in a Finance Document to an Agent or an Account Bank (other than to the extent any such cost, loss or liability as a result of such an indemnity arises by reason of that Secured Party's gross negligence or wilful misconduct);
			6. [the failure or alleged failure by the Borrower to carry out the Project in accordance with the E&S Standards;]
			7. [the information produced or approved by the Borrower being or being alleged to be misleading and/or deceptive in any respect;]
			8. any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Obligor, or with respect to the transactions contemplated or financed under this Agreement;
			9. [unwinding any funding arrangements as a result of prepayment, acceleration or cancellation of any Loan (or part of a Loan);] or
			10. exercising any rights under any Security Document or any Direct Agreement.
		2. The Borrower shall promptly indemnify each Secured Party and each of their respective Affiliates and each officer and employee of each Secured Party and their respective Affiliates, successors and permitted assigns (collectively, the "**Indemnified Persons**") from and against any cost, loss or liability incurred by that Indemnified Person in connection with or arising out of the Project or the funding of the Project, including any E&S Claim (all of the foregoing, collectively, the "**Indemnified Liabilities**"), **provided that** the Borrower shall have no obligation under this Clause 11.2 to any such Indemnified Person with respect to Indemnified Liabilities arising from the gross negligence or wilful misconduct of any such Indemnified Person.
2. Mitigation by the Finance Parties
	1. Mitigation
		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 Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 5.1 (*Mandatory prepayment – Illegality*), Clause 9 (*Tax Gross Up and Indemnities*) or Clause 10 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
		2. Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.
	2. Limitation of liability
		1. The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 12.1 (*Mitigation*).
		2. A Finance Party is not obliged to take any steps under Clause 12.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.
3. Costs and Expenses
	1. Transaction expenses

The Borrower shall promptly on demand pay each Finance Party the amount of all costs and expenses (including legal fees) [reasonably][properly] incurred by any of them (and, in the case of a Security Agent, by any Receiver or Delegate) in connection with:

* + 1. the negotiation, preparation, printing, execution, implementation, translation, syndication, perfection and registration of the Finance Documents and any other document referred to in the Finance Documents;
		2. the protection of the Secured Parties' interests under the Finance Documents;
		3. the review and negotiation of any Project Document and any other Project Document executed after the Signing Date and, in each case, any amendment thereto or consent or waiver in respect thereof;
		4. (following consultation with the Borrower, and having regard to the cost and the expertise of the advice required) administration of the Finance Documents and the release of the Security under the Security Documents after the Final Maturity Date;
		5. any Default;
		6. any report prepared by, or review, audit, validation or valuation conducted by, or other services contemplated by the Finance Documents and provided by, the Advisers or any other adviser or consultant in relation to the Project, **provided that**, other than where a Default is continuing or an event is likely to result in a Material Adverse Effect, the scope of work of such Adviser's or any other adviser or consultant in relation to the Project shall be approved by the Borrower (such approval not to be unreasonably withheld or delayed);
		7. the giving of any legal opinions required by such Finance Party under the Finance Documents;
		8. any Site visit made in accordance with Clause 15.8 (*Access*) or any Finance Document; and
		9. any other Finance Documents executed after the date of this Agreement.
	1. Amendment costs

If the Borrower requests an amendment, waiver or consent, the Borrower shall, within [three] Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred by that Finance Party (and in the case of a Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement[[119]](#footnote-120).

* 1. Enforcement and preservation costs

The Borrower shall, within [three] Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by that Secured Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document and the Transaction Security and any proceedings instituted by or against a Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

* 1. Other costs

The Borrower shall, within [three] Business Days of demand, pay to each Finance Party all other fees, costs and expenses which the Borrower has agreed in writing to reimburse.

* 1. Advisers
		1. The Borrower acknowledges the appointment of each Adviser and the scope of work set out in the terms of their respective appointments.
		2. The Borrower shall, within [three] Business Days of demand by the Intercreditor Agent, pay to the Intercreditor Agent the amount of all fees, costs and expenses of each Adviser appointed pursuant to this Clause 13.5 ‎‎(subject to any separate fee arrangement that the Borrower has agreed in writing with such Adviser).
		3. In addition to any existing Advisers, any Finance Agent may, at the cost of the Borrower and (unless a Default is continuing) with the prior written approval of the Borrower, from time to time appoint (and dismiss) market, technical, model, legal, tax, insurance, social and environmental or other advisers or accountants (or modify the scope of work of any Adviser) in connection with:
			1. any Finance Document or information to be delivered by the Borrower under any Finance Document;
			2. any breach by the Borrower of its obligations under the Transaction Documents;
			3. responding to, evaluating, negotiating or complying with any request from the Borrower for an amendment, waiver or consent; or
			4. any steps necessary or desirable in connection with any Default or any proposal for remedying or otherwise resolving any Default.
	2. Experts

The Borrower shall, within [three] Business Days of demand by the Intercreditor Agent, pay to the Intercreditor Agent the amount of all fees, costs and expenses of each Expert appointed pursuant to each Resolution Procedure.

**SECTION 6
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

1. Representations[[120]](#footnote-121)
	1. Representations and warranties[[121]](#footnote-122)

The Borrower makes the representations and warranties set out in this Clause 14 to each Finance Party on the date of this Agreement.[[122]](#footnote-123)

* 1. Status
		1. It is a [limited liability company], duly incorporated and validly existing under the law of [*its jurisdiction of incorporation*]. (Non-repeating)[[123]](#footnote-124)
		2. It has the power to own its assets and carry out the Project and its business as contemplated in the Transaction Documents. (Non-repeating)[[124]](#footnote-125)
	2. Binding obligations
		1. Each Transaction Document to which it is a party has been duly executed and delivered by it.
		2. Subject to the Legal Reservations and, in the case of any Security Document, the applicable Perfection Requirements, the obligations expressed to be assumed by it in each Transaction Document to which it is party are legal, valid, binding and enforceable obligations.[[125]](#footnote-126)
	3. Non-conflict with other obligations[[126]](#footnote-127)

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents to which it is party do not and will not conflict with:

* + 1. any Applicable Laws or any Required Authorisation in any material respect;
		2. its constitutional documents; or
		3. any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.
	1. Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

* 1. Authorisations
		1. Subject to the Legal Reservations and the applicable Perfection Requirements, all Required Authorisations have been obtained or effected and are in full force and effect [(or will be obtained or effected prior to [the date it enters into the relevant Transaction Document])].
		2. To the best of its knowledge there are no facts or circumstances which could reasonably be expected to lead to:
			1. any Required Authorisation obtained or effected being revoked; or
			2. any Required Authorisation not being obtained, renewed or effected when required.
	2. Governing law and enforcement

Subject to the Legal Reservations:

* + 1. the choice of governing law of each Transaction Document will be recognised and enforced in each Relevant Jurisdiction;
		2. the express submission by it to the dispute resolution forums contemplated by the Transaction Documents to which it is a party is a legal, valid and binding submission to their jurisdiction; and
		3. any judgment obtained in the jurisdiction specified in each Transaction Document and (if applicable) any award obtained in an arbitration forum to which it has submitted will be recognised and enforced in each Relevant Jurisdiction.
	1. Compliance

It has performed its obligations in accordance with and observed (and the Project complies with) all Compliance Standards in all [material] respects.

* 1. Insolvency

No:

* + 1. corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 18.7 (*Insolvency proceedings*); or
		2. creditors' process described in Clause 18.8 (*Creditors' process*),

has been taken or threatened in respect of it or any of its assets and none of the circumstances described in Clause 18.6 (*Insolvency*) applies to it.

* 1. No default or other adverse event
		1. No Event of Default and, on the Signing Date and the date of Financial Close, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
		2. It is not in breach of any provision of any Transaction Document and is not aware of any outstanding material breach by any other party of any provision of any such document to which it is a party, and it has not received any notice that any person has disputed, repudiated or disclaimed liability under any such document to which it is a party or evidenced an intention to do so.
		3. No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute):
			1. a default under any other agreement or instrument which is binding on it or to which its assets are subject [which has or is reasonably likely to have a Material Adverse Effect];[[127]](#footnote-128) or
			2. a termination right (however described) or Force Majeure in connection with the Project.
	2. Taxation
		1. It has duly and punctually paid and discharged all Taxes imposed upon it or its assets within the time period allowed without incurring penalties (except to the extent that (i) payment is being contested in good faith, (ii) it has maintained adequate reserves for those Taxes and (iii) payment can be lawfully withheld). (Non-repeating)
		2. No claims or investigations by any Tax authority are being or are reasonably likely to be made or conducted against it which are reasonably likely to result in a liability of or claim against it to pay any material amount of, or in respect of, Tax.
		3. For Tax purposes, it is resident only in [*insert jurisdiction*].
		4. All Tax returns required to have been filed by it or on its behalf under any Applicable Law have been filed when due (including any extensions granted) and contain the information required by Applicable Law to be contained in them.
		5. It is not required to make any Tax Deduction (as defined in Clause 9.1 (*Definitions*)) from any payment it may make under any Finance Document. (Non-repeating)
		6. Subject to the Legal Reservations, under the law of each Relevant Jurisdiction it is not necessary that the [Transaction]/[Finance][[128]](#footnote-129) 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 [Transaction]/[Finance] Documents or the transactions contemplated by them except for complying with the applicable Perfection Requirements which will be made and/or paid promptly after the date of the relevant [Transaction]/[Finance] Document. (Non-repeating)[[129]](#footnote-130)
	3. Business
		1. It has not undertaken or had an interest in any trading, business or other activity other than as contemplated by the Transaction Documents or incidental to the Project.
		2. It has no material rights against, or obligations to, any person other than under the Transaction Documents to which it is party and any transactions that they expressly contemplate.
		3. Each transaction or arrangement that it has entered into with any person is on an arm's length basis.
	4. Subsidiaries

It does not have any Subsidiaries and it does not legally or beneficially own or hold any equity or ownership interests (or instruments convertible into an equity or ownership interest) of any person. (Non-repeating)

* 1. Assets
		1. It has good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary or desirable to carry out the Project. (Non-repeating)[[130]](#footnote-131)
		2. It has not sold or granted (or agreed to sell or grant) any right of pre-emption over, or any lease or tenancy of or otherwise disposed of any of its interests in any of the Secured Property, other than as permitted in Clause 17.14 (*Disposals*). (Non-repeating)[[131]](#footnote-132)
		3. It legally and beneficially owns (subject only to Transaction Security) all Real Property required to carry out the Project at the Site. (Non-repeating) [[132]](#footnote-133)
		4. It is the absolute legal and beneficial owner of the assets over which it purports to grant Security.
		5. In entering into, and exercising its rights and performing its obligations under, each Finance Document, it does not act as trustee or agent for any other person.
	2. *Pari passu* ranking

Subject to the Legal Reservations, its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally. (Non-repeating)

* 1. Intellectual Property[[133]](#footnote-134)
		1. It owns or has the legal right to use on an arm's length basis and free from any Security all Intellectual Property that is necessary or desirable to carry out the Project and its business.
		2. It has taken all necessary action (including payments of fees and the making of all registrations) to safeguard, maintain in full force and effect, use, and preserve its ability to enforce all Intellectual Property owned or used by it.
		3. Its ownership or use of the Intellectual Property does not infringe any rights of any third party.
		4. It is not aware of any adverse circumstance relating to the validity, subsistence or use of any Intellectual Property owned or used by it [which has or is reasonably likely to have a Material Adverse Effect].
	2. Shares
		1. As at the date of this Agreement, the [Sponsors][Shareholders] together Control it, and legally and beneficially own fully paid shares in its share capital in the following proportions:

| **[Sponsor][Shareholder]** | **Percentage ownership** |
| --- | --- |
| [  ] | [  ] |

(Non-repeating)

* + 1. All its shares are subject to the Transaction Security, are fully paid and are not subject to any option, warrant, trust, right of redemption, pre-emption, conversion or disposal or similar rights. Its constitutional documents do not and could not restrict or inhibit any transfer of those shares on creation or on enforcement of the Transaction Security.
		2. No person other than a [Sponsor][Shareholder] (and the [Onshore Security Agent][Offshore Security [Trustee][Agent]] under any Transaction Security) has any rights (including voting and dividend rights), benefits and interests in respect of or derived from its shares.
		3. It has not granted to any person any securities convertible into its share capital or granted any rights to call for issuance of further shares in its capital.
	1. Security
		1. No Security or Quasi-Security exists over all or any of its present or future assets other than any Security or Quasi-Security permitted under Clause 17.13 (*Negative pledge*).
		2. Subject to the Legal Reservations and any applicable Perfection Requirements, the Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* ranking Security.
		3. Each Security Document to which it is a party validly creates, as Security for the Secured Obligations, the Security which is expressed to be created over the Secured Property by that Security Document[ and evidences the Security it is expressed to evidence].
	2. Financial Indebtedness

It has no Financial Indebtedness other than as permitted by this Agreement.

* 1. No proceedings
		1. No litigation, arbitration, expert determination, alternative dispute resolution or administrative proceedings or investigations of or before any court, tribunal, arbitral body, agency or other relevant Authority which, if adversely determined, are reasonably likely to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it (or against its directors) or in relation to the Project.
		2. No judgment or order of a court, tribunal, arbitral body, agency or other relevant Authority or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief) been made against it or its assets (or against its directors) or in relation to the Project.
	2. Anti-corruption, counter-terrorism financing, anti-money laundering[[134]](#footnote-135)
		1. It has conducted its business and operations and carried out the Project in compliance with Anti-Corruption Laws and laws relating to the financing of terrorism, money laundering or similar activities and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.
		2. [It has not, nor [to the best of its knowledge and belief (having made due and careful enquiry)] has any agent, director, employee or officer of the Borrower made or received, or directed or authorised any other person to make or receive, any offer, payment or promise to pay, of any money, gift or other thing of value, directly or indirectly, to or for the use or benefit of any person, where this violates or would violate, or creates or would create liability for it or any other person under, any Anti-Corruption Laws or laws relating to the financing of terrorism, money laundering or similar activities.]
		3. [[Save as disclosed in writing to the Intercreditor Agent prior to the date of this Agreement [or in accordance with paragraph (a) of Clause 15.13 (*[Anti-corruption information, counter-terrorism financing, anti-money laundering*),]/[it is not, nor [to the best of its knowledge and belief (having made due and careful enquiry)] is any agent, director, employee or officer of the Borrower] being investigated by any agency, or party to any proceedings, in each case in relation to any Anti-Corruption Laws or laws relating to the financing of terrorism, money laundering or similar activities.]
		4. It has not, nor [to the best of its knowledge and belief (having made due and careful enquiry)] has any agent, director, employee or officer of the Borrower] made any improper gifts for the purpose of influencing public officials and it has not been involved in the financing of terrorism, money laundering or similar activities.
	3. Sanctions[[135]](#footnote-136) [[136]](#footnote-137)

It is not, and none of its Affiliates is, and (to its knowledge) none of its and its Affiliates' directors, officers, agents or employees is, currently a designated target of, or is otherwise a subject of, Sanctions.

* 1. E&S compliance
		1. It has performed and observed (and the Project complies with), in all material respects, all E&S Standards, E&S Authorisations and E&S Documents and all other material covenants, conditions, restrictions or agreements directly or indirectly concerned with any contamination, pollution or waste or the release or discharge of any toxic or hazardous substance in connection with any real property which is or was at any time owned, leased or occupied by it or on which it has conducted any activity. (Non-repeating)
		2. [The E&S Documents are in compliance with the E&S Standards and the E&S Authorisations in all material respects.][[137]](#footnote-138) (Non-repeating)
		3. [*Any additional provisions relating to compliance of the Project and the E&S Documents with the E&S Standards, and on the status of E&S Authorisations required to be obtained, to be advised by the E&S Adviser following E&S due diligence.*]
	2. E&S Claims
		1. No E&S Claim has been commenced or is threatened against the Project or (to the best of its knowledge and belief (having made due and careful enquiry)) any Major Project Participant [where that claim would be reasonably likely, if determined against it or (as applicable) the Project or that Major Project Participant, to have a Material Adverse Effect].
		2. It is not aware of any event or circumstance likely to give rise to any E&S Claim described in paragraph (a) above.
	3. Transaction Documents
		1. Copies of the Transaction Documents have been delivered to the Intercreditor Agent and such copies are true, complete and accurate and have not been amended, novated, assigned (other than pursuant to a Security Document) or otherwise modified, other than as disclosed to the Intercreditor Agent.
		2. The Transaction Documents contain all terms of the material contractual arrangements relating to the Project.
		3. Its constitutional documents, the Shareholders Agreement[, each Shareholder Loan Agreement] and each Finance Document to which both the Borrower and the [Sponsors][Shareholders] are party contain all the material terms of the arrangements between the Borrower and the [Sponsors][Shareholders] and their Affiliates.[[138]](#footnote-139)
	4. Information[[139]](#footnote-140)
		1. [Any factual information provided by an Obligor for the purposes of the Information Memorandum or other factual information provided by an Obligor to a Finance Party or any Adviser in connection with the Project was true and accurate in all material respects, was not misleading in any material respect and did not omit any material facts, in each case as at the date it was provided or as at the date (if any) at which it is stated. (Non-repeating) [[140]](#footnote-141)][[141]](#footnote-142)
		2. The Financial Model has been prepared in good faith and on the basis of Assumptions which were reasonable as at the date it was prepared and is consistent with the budgets supplied under this Agreement.
		3. The financial projections, opinions, estimates and forecasts contained in the Information Memorandum have been prepared on the basis of recent historical information and on the basis of reasonable assumptions. (Non-repeating)
		4. All written information [(other than the Information Memorandum)][[142]](#footnote-143) (including any document, certificate, notice, or request provided under the Finance Documents) supplied by it is true, complete and accurate in all material respects as at the date it was given and is not misleading in any respect, and any projections, opinions, estimates and forecasts contained in such written information have been prepared on the basis of recent historical information and on the basis of reasonable assumptions.
	5. Financial statements
		1. Its Original Financial Statements were prepared in accordance with GAAP consistently applied [unless expressly disclosed to the Intercreditor Agent in writing to the contrary before the date of this Agreement]. (Non-repeating)[[143]](#footnote-144)
		2. Its Original Financial Statements fairly represent its financial condition as at the end of the relevant financial year and operations during the relevant financial year [unless expressly disclosed to the Intercreditor Agent in writing to the contrary before the date of this Agreement]. (Non-repeating)
		3. There has been no material adverse change in its business or financial condition since [the date on which its Original Financial Statements are stated to have been prepared].[[144]](#footnote-145) (Non-repeating)
	6. Insurance
		1. It is in compliance with all of its obligations with respect to insurance under the Transaction Documents to which it is a party.
		2. [All Insurances which are required to have been effected are in full force and effect, and no event or circumstance has occurred (including any omission to disclose any fact) which could validly entitle an insurer in respect of any of such Insurances to terminate, vitiate, rescind or otherwise avoid or reduce its liability under any such Insurances.][[145]](#footnote-146)
	7. Private and commercial acts
		1. Its execution of the Transaction Documents to which it is or will be party constitutes, and its exercise of its rights and performance of its obligations under those Transaction Documents will constitute, private and commercial acts done and performed for private and commercial purposes.
		2. In any proceedings taken in a Relevant Jurisdiction in relation to the Transaction Documents, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.
	8. No Force Majeure

No Force Majeure [for a period lasting at least [●] days (whether or not consecutive)] has occurred under any Project Document. [(Non-repeating)] [[146]](#footnote-147)

* 1. Other Project-related matters
		1. [*Any additional provisions relating to legal matters to be advised by the Lenders' Legal Adviser(s) following legal due diligence.*]
		2. [*Any additional provisions relating to technical matters specific to the Project, or relating more generally to projects in this sector, to be advised by the Technical Adviser following technical due diligence.*][[147]](#footnote-148)
	2. Repetition
		1. Each representation and warranty in this Clause 14 is a "Repeating Representation" other than any representation and warranty that is immediately followed by the expression "(Non-repeating)"[[148]](#footnote-149).
		2. The Repeating Representations are deemed to be made by the Borrower to each Finance Party (by reference to the facts and circumstances then existing) on Financial Close, the date of each Utilisation Request, each Utilisation Date and the first day of each Interest Period.
1. Information Undertakings

The undertakings in this Clause 15 remain in force from the date of this Agreement for as long as any amount is outstanding under the Finance Documents or any Commitment is in force.

* 1. Financial statements

The Borrower shall supply to the Intercreditor Agent in sufficient copies for all the Finance Parties:

* + 1. as soon as the same become available, but in any event by the date falling [•] days after the end of each of its financial years, the audited consolidated financial statements of [the Borrower][each Obligor] for that financial year; and
		2. as soon as the same become available, but in any event by the date falling [•] days after the end of each half of each of its financial years, the unaudited consolidated financial statements of the Borrower for that financial half year; [and]
		3. [as soon as the same become available, but in any event by the date falling [•] days after the end of each [quarter of each of its financial years]/[month], the unaudited consolidated financial statements (including cumulative management accounts for the financial year to date) of the Borrower for that period.]
	1. Requirements as to financial statements
		1. Each set of financial statements delivered by the Borrower pursuant to Clause 15.1 (*Financial statements*) shall be certified by two directors of such person as giving a true and fair view (as the case of audited financial statements) or as fairly representing (in the case of the audited financial statements) its financial condition as at the date at which those financial statements were drawn up.[[149]](#footnote-150)
		2. The Borrower shall procure that each set of the financial statements delivered pursuant to paragraph (a) of Clause 15.1 (*Financial statements*) shall:
			1. be audited by the Auditor (in the case of the Borrower) or (in any other case) an auditor;
			2. in the case of the Borrower, [reported on by the Auditor in the form agreed by the Borrower and the Intercreditor Agent prior to the Signing Date]/[signed by the Auditor]; and
			3. in the case of the Borrower's financial statements, include a statement by the Borrower of all transactions between the Borrower and each of its Affiliates, if any, during the financial year, and a certification by the Auditor that those transactions were on the basis of arm's length arrangements.
		3. [[150]](#footnote-151)[The Borrower shall procure that each set of financial statements delivered pursuant to Clause 15.1 (*Financial statements*) is prepared using GAAP.]/ **OR**
		4. The Borrower shall procure that each set of its financial statements delivered pursuant to Clause 15.1 (*Financial statements*) is prepared using GAAP and accounting practices and financial reference periods consistent with those applied in the preparation of its Original Financial Statements unless, in relation to any set of financial statements, it notifies the Intercreditor Agent that there has been a change in GAAP, the accounting practices or reference periods, and the Auditor delivers to the Intercreditor Agent:
			1. a description of any change necessary for those financial statements to reflect GAAP, accounting practices and reference periods upon which its Original Financial Statements were prepared; and
			2. sufficient information, in form and substance as may be reasonably required by the Intercreditor Agent, to enable the Lenders to:
				1. determine whether any relevant provision of any Finance Document has been complied with following such change; and
				2. make an accurate comparison between the financial position indicated in those financial statements and [its Original Financial Statements] [its recent audited financial statements, delivered to the Intercreditor Agent under this Agreement prior to such change].
			3. [If the Borrower notifies the Intercreditor Agent of a change in accordance with paragraph (i) above, then the Borrower and Intercreditor Agent shall enter into negotiations in good faith with a view to agreeing:
				1. whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Agreement; and
				2. if so, any amendments to this Agreement which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms,

and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.]

Any reference in this Agreement to "those financial statements" shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.]

* + 1. [The Borrower shall (at its expense), upon the request of the Intercreditor Agent and on reasonable notice, permit the Intercreditor Agent to communicate directly with the Auditor concerning the financial position of the Borrower and shall ensure that the Auditor is authorised to discuss the Borrower's financial position with the Intercreditor Agent and to disclose any information the Intercreditor Agent may reasonably request.]
	1. Construction Budgets[[151]](#footnote-152)
		1. The Original Construction Budget shall be the current Construction Budget until updated in accordance with this Clause 15.3.
		2. The Borrower may deliver to the Intercreditor Agent from time to time during the Construction Period a draft revised construction budget, and shall do so if the total Project Costs projected to be paid or payable during the Construction Period exceed by [five] per cent. [(5%)] or more the total Project Costs projected to be paid or payable during the Construction Period in the [current Construction Budget][Original Construction Budget].
		3. Each draft revised construction budget shall be prepared substantially in the form of the Original Construction Budget.
		4. Each Construction Budget (including the Original Construction Budget) shall set out Project Costs that have been incurred to date (if any), projections for Project Costs to be paid in each remaining calendar month during the Construction Period (including the calendar month in which it is delivered) and the sources of funding to be used to pay such Project Costs.
		5. [Any proposed draft revised construction budget delivered under paragraph (b) above shall become the current Construction Budget only if approved in writing by the Intercreditor Agent and after incorporating any amendments requested or required by the Intercreditor Agent (in consultation with the Technical Adviser). If the Intercreditor Agent approves part but not all of a proposed draft revised construction budget, in respect of those portions of such draft revised construction budget that have not been approved, the amounts set forth for such portions in the current Construction Budget shall apply with respect to such portions until such time as the unapproved portions of such draft revised construction budget are approved by the Intercreditor Agent.][[152]](#footnote-153)
		6. [The Intercreditor Agent may challenge any draft revised construction budget delivered under paragraph (b) above within [30] days of its delivery. Any draft revised construction budget not challenged by that date shall become the current Construction Budget.
		7. If any draft revised construction budget is challenged under paragraph (f) above and not resolved between the Borrower and the Intercreditor Agent within [five] Business Days, the matter shall be referred to the Resolution Procedure, and the construction budget as determined pursuant to that procedure shall become the current Construction Budget. Until such matter is resolved, the then current Construction Budget shall continue to apply.]
	2. O&M Budgets
		1. The Original O&M Budget shall be the current O&M Budget until updated in accordance with this Clause 15.4.
		2. On the date falling [•] days prior to the start of each calendar year falling (in whole or in part) within the Operating Period, the Borrower shall deliver to the Intercreditor Agent a draft O&M budget for the immediately following calendar year, and shall also promptly do so if at any point in the Operating Period (i) the total Operating Costs paid or payable or projected to be paid or payable during any calendar month to which the current O&M Budget relates exceeds by [five] per cent. ([5]%) or more the total Operating Costs projected to be paid or payable during that calendar month in the current O&M Budget or [(ii) there is or will be a variance (positive or negative) in the actual Operating Costs paid or payable in any [six] month period in the then current calendar year by [five] per cent ([5]%) or more of the total Operating Costs projected to be paid or payable in that [six] month period, as contemplated in the Financial Model].
		3. Each draft O&M budget shall be prepared substantially in the form of the Original O&M Budget.
		4. Each O&M Budget (including the Original O&M Budget) shall set out projections (for each calendar month of the budget period) of the Operating Costs and any other operating expenditures payable by it in each month during such period, together with the Assumptions on which such projections are based.
		5. [Any proposed draft O&M budget delivered under paragraph (b) above shall become the current O&M Budget only if approved in writing by the Intercreditor Agent and after incorporating any amendments requested or required by the Intercreditor Agent (in consultation with the Technical Adviser). If the Intercreditor Agent approves part but not all of a proposed draft O&M budget, in respect of those portions of such proposed draft O&M budget that have not been approved, the amounts set forth for such portions in the current O&M Budget shall apply with respect to such portions until such time as the unapproved portions of such proposed draft O&M budget are approved by the Intercreditor Agent. Notwithstanding the foregoing, but without prejudice to the Borrower's obligation to deliver the amended O&M Budget to the Intercreditor Agent and the requirements of paragraph (b)(ii) above, where the proposed amendment to the then current O&M Budget relates only to the reallocation of all or a portion of the amount in respect of a particular line item from one month to another month within that O&M Budget, then such amended O&M Budget shall become effective without the need for the Intercreditor Agent's approval.][[153]](#footnote-154)
		6. [The Intercreditor Agent may challenge any draft O&M budget delivered under paragraph (b) above within [30] days of its delivery [*include any exceptions*]. Any draft O&M budget not challenged by that date shall become the current O&M Budget.
		7. If any draft O&M budget is challenged under paragraph (f) above and not resolved between the Borrower and the Intercreditor Agent within [five] Business Days, the matter shall be referred to the Resolution Procedure, and the O&M budget as determined pursuant to that procedure shall become the current O&M Budget. Until such matter is resolved, the then current O&M Budget shall continue to apply.]
	3. Construction reports

By [•] in each calendar [month/quarter] (where such date falls within the Construction Period), the Borrower shall deliver to the Intercreditor Agent a report [in the agreed form] for the calendar [month/quarter] having most recently ended, setting out or addressing:

* + 1. a description in reasonable detail of the work carried out on the Project during such reporting period (including under the Construction Contract and any related infrastructure or facilities associated with the Project not otherwise covered under the Construction Contract);
		2. the stage of construction achieved by the end of that reporting period and any delay in achieving that stage by comparison with the construction schedule set out in the Construction Contract;
		3. an updated estimate of the Project Completion Date (and if such estimate differs from the Scheduled Project Completion Date, reasons for the difference);
		4. a description of any material disputes or proceedings (whether actual or threatened) relating to the Project during such reporting period;
		5. any Force Majeure or other event having or that might reasonably be expected to have a [Material Adverse Effect]/[material adverse impact] on the Project that occurred during such reporting period (including any site, labour or supply chain, technical, or Authorisations issues);
		6. any suspension of work and/or localised stop work orders (whether initiated by parties under the Construction Contract or by the relevant Authorities) to the Project during such reporting period;
		7. any (i) accidents or emergencies or (ii) other events or circumstances occurring during such reporting period which might have a material adverse impact on the construction schedule set out in the Construction Contract;
		8. the current status of construction of the Project's ancillary facilities and associated infrastructure whether performed under the Construction Contract or otherwise (if any);
		9. status, developments or issues relating to the Compliance Standards (including status of any action required under any E&S Document);
		10. a comparison of the actually incurred Project Costs and funding used to meet such Project Costs against the projections for those items in the then current Construction Budget over the reporting period (and the reasons for any discrepancy between the actual and projected amounts);[[154]](#footnote-155)
		11. any requested change orders or material additional cost requests, a forecast of remaining Project Costs and any Funding Shortfall;
		12. [any progress reports delivered to the Borrower by the Construction Contractor in respect of the relevant period;]
		13. a copy of any Insurances, Authorisations or material notices received by the Borrower during that period under or in relation to any Project Document;
		14. details of any factors that have or could reasonably be expected to have a Material Adverse Effect (not otherwise reported on); and
		15. such other information concerning the Borrower and the Project as may be reasonably requested by the Intercreditor Agent or the Technical Adviser.
	1. O&M reports

By [•] in each calendar [month/quarter] (where such date falls within the Operating Period), the Borrower shall deliver to the Intercreditor Agent a report [in the agreed form] for the calendar [month/quarter] having most recently ended, setting out or attaching:

* + 1. a description, in reasonable detail, of the operation and maintenance activities of the Project during such reporting period (including under the O&M Contract and any related infrastructure or facilities associated with the Project or equipment forming part of the Project which is not otherwise covered under O&M Contract);
		2. [the level of production of the Plant, consumption of [Fuel][Feedstock] and sales to Offtaker[s] (including quantity and price) during such reporting period];
		3. a description of any major repairs to and maintenance of the Project undertaken by the Borrower (or its contractors) during such period;
		4. a description of any material disputes or proceedings (whether actual or threatened) relating to the Project during such reporting period;
		5. any Force Majeure or other event having or that might reasonably be expected to have a [Material Adverse Effect]/[material adverse impact] on the Project that occurred during such reporting period (including any site, labour, supply, offtake, technical or Authorisations issues);
		6. any suspension of work under the O&M Contract during such reporting period;
		7. any accidents or emergencies at the Project site during such reporting period;
		8. the current status of operation and maintenance of the Project's ancillary facilities (if any);
		9. status, developments or issues relating to the Compliance Standards (including status of any action required under any E&S Document);
		10. a breakdown of all Operating Costs expended (including any costs in respect of Major Maintenance paid) during such reporting period, working capital requirements, and Revenue and/or Compensation and/or Insurance Proceeds received during such reporting period;
		11. a comparison of the actually incurred Operating Costs paid by it against the projections of those items in the then current O&M Budget and the reporting period (and the reasons for any discrepancy between the actual and projected amounts); [[155]](#footnote-156)
		12. [any progress reports delivered to the Borrower by the O&M Contractor in respect of the relevant period;]
		13. a copy of any Insurances, Authorisations or material notices received by the Borrower during that period under or in relation to any Project Document;
		14. details of any factors that have or could reasonably be expected to have a Material Adverse Effect (not otherwise reported on); and
		15. such other information concerning the Borrower and the Project as may be reasonably requested by the Intercreditor Agent or the Technical Adviser.
	1. E&S matters
		1. By [•] and [•] in each calendar year, the Borrower shall deliver to the Intercreditor Agent (copied to the Technical Adviser) a report for the calendar [half-year] having most recently ended, confirming compliance in all material respects with the E&S Documents and E&S Standards in respect of the Project [and the Associated Facilities] or, as the case may be, detailing any non-compliance in any material respect, and setting out the action being taken to ensure compliance.
		2. The Borrower shall take all reasonable steps to assist the Technical Adviser to verify to the Finance Parties the contents of each report delivered by the Borrower in accordance with paragraph (a) above within [30] days of the receipt of such report by the Technical Adviser.
		3. The Borrower shall, as soon as possible but no later than [three] days after its occurrence, notify the Intercreditor Agent of any incident or accident at the Project [or the Associated Facilities] or change in the operations of the Project [or the Associated Facilities] which has or is reasonably likely to have a material adverse impact on the Environment or the Social Fabric or a material part thereof (including explosions, spills or accidents which result in death, serious or multiple injury or major pollution) specifying, in each case, the nature of the incident or accident and the on-site and off-site impacts arising or likely to arise from such incident or accident.
		4. The Borrower shall, as soon as possible but no later than [three] days after becoming aware of its occurrence, notify the Intercreditor Agent of:
			1. the details of any material E&S Claim which is current, threatened or pending against it or the Project [or the Associated Facilities] or against any other counterparty to any Project Document;
			2. any facts or circumstances which will or are reasonably likely to result in any material E&S Claim being commenced or threatened against the Borrower or any other counterparty to any Project Document; and
			3. any termination, cancellation, suspension, revocation or modification of any E&S Authorisation.
		5. Within [30] days of any notification by the Borrower under paragraph (c) or (d) above, it shall deliver to the Intercreditor Agent a plan to address the events or circumstances referred to in that notification, and it shall procure that such plan is implemented (and shall keep the Intercreditor Agent informed of the ongoing implementation of such plan).
		6. The Borrower will notify the Intercreditor Agent promptly of any proposed changes to the scope, design, implementation or operation of the Project [or the Associated Facilities] that are likely to cause an adverse change in the environmental or social risks or impacts of the Project [or the Associated Facilities].
		7. [*Any additional provisions relating to compliance of the Project and the E&S Documents with the E&S Standards, and on the status of E&S Authorisations required to be obtained, to be advised by the E&S Adviser following E&S due diligence*.]
	2. [[156]](#footnote-157)Access

[The Borrower shall (at its expense), upon the request of the Intercreditor Agent or any Finance Party and on reasonable notice, permit the Intercreditor Agent and any Finance Party, its advisors, and their Representatives during normal office hours to:

* + 1. visit any of the sites and premises where the business of the Borrower is conducted;
		2. inspect the Project and any of the Borrower's sites, facilities, plants and equipment; and
		3. have access to those employees, agents, and workers of the Borrower who have or may have knowledge of matters with respect to which the Intercreditor Agent or Finance Party seeks information,

onup to [●] occasion(s) per calendar year before the Project Completion Date and on up to [●] occasion(s) per calendar year after the Project Completion Date, and in addition when a Default is continuing, **provided that** in each case such Intercreditor Agent, Finance Party, advisor and Representative (as the case may be) complies with the health, safety, insurance, security, confidentiality, legal and/or other requirements under Applicable Law.][[157]](#footnote-158)

* 1. Insurance

The Borrower shall deliver to the Intercreditor Agent and the Insurance Adviser all such information and documentation required under Schedule 6 (*Insurance*) at the times and in the manner required therein.

* 1. [Copies of material information between the Borrower and Major Project Participants

The Borrower shall promptly (and in any event within [three] Business Days of its delivery or receipt, as applicable) deliver to the Intercreditor Agent a copy of any material document, notice report or information delivered between it and any Major Project Participant under the Project Documents.]

* 1. [Presentations

Once in every financial year, [or more frequently if requested to do so by the Intercreditor Agent if the Intercreditor Agent reasonably suspects a Default is continuing or may have occurred or may occur], at least two [directors] of the Borrower (one of whom shall be the chief financial officer or equivalent) must give a presentation to the Finance Parties about the on-going business and financial performance of the Borrower and/or the Project.]

* 1. Other Project-related information
		1. The Borrower shall promptly (and in any event within [three] Business Days of becoming aware of it) notify the Intercreditor Agent of any:
			1. notice of termination or default or non-compliance (howsoever described) under, or any event giving any party thereto a right to terminate or revoke, or any event that may affect (including any denial, refusal or non-renewal of any Required Authorisation), or termination of, or any amendments to or modifications of, or request for a waiver, forbearance or extension of time, [in each case that has or is reasonably likely to have a [Material Adverse Effect]/[material adverse impact] on the Project or any Major Project Participant], or any other material notices issued under or in respect of:
				1. any Project Document; or
				2. any Required Authorisation;
			2. Force Majeure under any Project Document, or abandonment, suspension, localised stop work orders or shut down (other than scheduled shutdowns) of the Project (in whole or in any material part), whether initiated by parties to the Project or the relevant Authorities, [in each case where such event or circumstance has or is reasonably likely to have a [Material Adverse Effect]/[material adverse impact] on the Project];
			3. significant emergency or accident or event affecting the Environment or Social Fabric, in the case affecting the Project or any [Major Project Participant];
			4. material change to, or any cancellation, termination, suspension or non-renewal of, or any other material notices issued under, any of the Insurances;
			5. new or renewed Insurances effected after the date of this Agreement (and shall provide copies and related cover notes of any such Insurances to the Intercreditor Agent at the same time);
			6. incurrence of any Operating Costs not included in the Budget for the relevant period but which relates directly to remedying the occurrence of an emergency at the Project endangering the health and/or safety of others or the Environment;
			7. introduction of or any change in (or in the interpretation, administration or application of) any Applicable Law made after the Signing Date that has or is reasonably likely to have a material effect on the Project or any Major Project Participant;
			8. [loss or damage to all or any part of its assets if the initial estimated cost of repair is greater than [ ] (or its equivalent in any other currency or currencies) or the loss or damage (irrespective of the amount involved) has or is reasonably likely to have a Material Adverse Effect;
			9. occurrence of any event for which Compensation is payable and the amount of any Compensation payable or received by it;
			10. change in the status of an Obligor or the composition of the shareholders of an Obligor after the Signing Date;] [and]
			11. event or circumstance which has or is reasonably likely to have a Material Adverse Effect or a [material effect on the Project].
			12. [*Any additional provisions relating to legal matters to be advised by the Lenders' Legal Adviser(s) following legal due diligence.*]
			13. [*Any additional provisions relating to technical matters specific to the Project, or relating more generally to projects in this sector, to be advised by the Technical Adviser following technical due diligence.*]
		2. The Borrower shall supply to the Intercreditor Agent (in sufficient copies for all the Finance Parties, if the Intercreditor Agent so requests):
			1. all documents dispatched by the Borrower to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
			2. promptly upon becoming aware of them, the details of any:
				1. litigation, arbitration, expert determination, alternative dispute resolution or administrative proceedings or investigation which are current, threatened or pending against it (or against its directors), the Project or any other Obligor [and which might, if adversely determined, have a Material Adverse Effect];
				2. judgment or order of a court, arbitral tribunal or other tribunal or any order, determination, or sanction of any Authority which is made against it or its assets (or against its directors, the Project or any other Major Project Participant)[, and which might, if adversely determined, have a Material Adverse Effect]; and
				3. actual or proposed change of Control of the Borrower that is likely to occur (whether as a result of a change in the amounts of Equity provided to the Borrower by the [Sponsors][Shareholders] or another person, any assignment or other transfer of any Equity or other interests in the Borrower, or otherwise);
			3. promptly upon request from any Security Agent, any information that any Security Agent may reasonably require relating to the Secured Property or the compliance by any Obligor with any Security Document;
			4. promptly, such further information regarding the Project or the financial condition, business and operations of it[, any Obligor] or a person's compliance with the terms of any Project Document or Authorisation, as any Finance Party (through the Intercreditor Agent) may reasonably request; and
			5. promptly, notice of any change in the duly authorised representatives of the Borrower [or any Obligor] signed by a director or company secretary of such entity accompanied by specimen signatures of the new duly authorised representatives.
	2. [Anti-corruption information, counter-terrorism financing, anti-money laundering

Unless such disclosure would constitute a breach of any Applicable Law, the Borrower shall supply to the Intercreditor Agent (in sufficient copies for all the Finance Parties, if the Intercreditor Agent so requests):

* + 1. promptly upon becoming aware of them, the details of any actual or potential violation by, or creation of liability for, the Borrower or any of its agents, directors, employees or officers (or any counterparty of any such persons in relation to any transaction contemplated by a Transaction Document) or in relation to any Anti-Corruption Laws or laws relating to the financing of terrorism, money laundering or similar activities, or of any investigation or proceedings relating to the same;
		2. copies of any correspondence delivered to, or received from, any regulatory authorities in relation to any matter referred to in paragraph (a) above at the same time as they are dispatched or promptly upon receipt (as the case may be); and
		3. promptly upon request by any Finance Party (through the Intercreditor Agent), such further information relating to any matter referred to in paragraphs (a) and (b) above as that Finance Party may reasonably require.]
	1. Notification of default
		1. The Borrower shall notify the Intercreditor Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless it is aware that a notification has already been provided by another Obligor).
		2. Promptly upon a request by the Intercreditor Agent, the Borrower shall supply to the Intercreditor Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).
	2. Advisers

The Borrower acknowledges that the Advisers may be required under their respective mandates to provide periodic reports, advice and opinions to the Finance Parties in connection with or relating to the Project and/or any Transaction Document, and it shall take all reasonable steps to cooperate with such Advisers in their preparation of those reports, advice and opinions (including furnishing in reasonable detail information relating to the implementation and operation of the Project during the relevant reporting period).

* 1. "Know your customer" checks[[158]](#footnote-159)
		1. If:
			1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
			2. any change in the status of an Obligor or the composition of the shareholders of an Obligor after the date of this Agreement; or[[159]](#footnote-160)
			3. a proposed assignment or transfer by a Finance Party of any of its rights and obligations under this Agreement or any other Finance Documents to a party that is not a Finance Party prior to such assignment or transfer,

obliges the Intercreditor Agent or any other Finance Party[[160]](#footnote-161) (or, in the case of paragraph (iii) above, any prospective new Finance Party) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Intercreditor Agent or any other Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Intercreditor Agent (for itself or on behalf of any other Finance Party) or any Finance Party (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Finance Party) in order for the Intercreditor Agent, such Finance Party or, in the case of the event described in paragraph (iii) above, any prospective new Finance Party to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all Applicable Laws pursuant to the transactions contemplated in the Finance Documents.

* + 1. Each Finance Party shall promptly upon the request of the Intercreditor Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Intercreditor Agent (for itself) in order for the Intercreditor Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all Applicable Laws pursuant to the transactions contemplated in the Finance Documents.
1. Financial Model, Assumptions, Updated Base Case and Financial Reports
	1. Financial Model
		1. The Borrower shall maintain the Financial Model for the purpose of preparing calculations and forecasts [(including each Updated Base Case)] in accordance with this Agreement.
		2. The Borrower and the Intercreditor Agent shall each retain one copy of the Financial Model as revised from time to time.
		3. The Borrower shall not make any [structural] changes to the Financial Model without the Intercreditor Agent's prior written consent.
		4. Each of the Borrower and the Intercreditor Agent may propose structural changes to the Financial Model (**provided that** in the case of the Intercreditor Agent, for the purposes only to correct any error or deficiency or to adjust any formula, logic or methodology for making calculations in accordance with the Finance Documents) and any such proposals shall be accompanied by the reasons for such proposals.
		5. If the Borrower and the Intercreditor Agent agree on any proposed changes to the Financial Model, it shall be updated accordingly and, if the Intercreditor Agent so requires, shall be re-audited by the Model Auditor.
	2. Updated Base Case
		1. The Original Base Case shall be the current Base Case until updated in accordance with this Clause 16.2.
		2. The Borrower shall produce and deliver to the Intercreditor Agent a draft revised Base Case using the Financial Model (each such revised Base Case, once agreed or determined in accordance with this Clause 16.2, an "**Updated Base Case**") not less than [●] Business Days before each Calculation Date (other than each Repayment Date).
		3. The Borrower will ensure that, as at the delivery of any draft revised Base Case to the Intercreditor Agent:
			1. all the factual information set out in such draft revised Base Case is true, complete and accurate in all material respects and has been compiled in good faith and with due care and attention; and
			2. all projections, forecasts, estimates and opinions made by it in such draft revised Base Case were made in good faith and prepared on the basis of the values attributed to the Assumptions (as updated), and it was reasonable for it to attribute those values.
		4. The Borrower shall, promptly upon request, deliver to the Intercreditor Agent such information as the Intercreditor Agent may reasonably require in connection with its review of the draft revised Base Case.
		5. The Intercreditor Agent may challenge the draft revised Base Case and, if it does so:
			1. the Intercreditor Agent and the Borrower shall discuss (for a period not to extend beyond [●] Business Days prior to the Calculation Date to which the Updated Base Case relates) any changes required to the draft revision to the Base Case; and
			2. if the Borrower and the Intercreditor Agent are unable to agree on any changes required to the draft revised Base Case, the matter shall be referred to the Resolution Procedure and resolved on or prior to [●] Business Days prior to the Calculation Date to which the Updated Base Case relates, and the revised Base Case as determined pursuant to that procedure shall become the Updated Base Case with effect on and from the Calculation Date in respect of which it was delivered and shall be conclusive (absent manifest error). Until such matter is resolved, [the Intercreditor Agent's requirements in relation to such draft revised Base Case shall prevail].
		6. If the Intercreditor Agent has not challenged the draft revised Base Case proposed by the Borrower within [●] Business Days of its receipt of that draft revised Base Case, that draft revised Base Case shall become the Updated Base Case.[[161]](#footnote-162)
	3. Assumptions
		1. At least [•] Business Days prior to the date on which the Updated Base Case is required to be delivered to the Intercreditor Agent pursuant to Clause 16.2 (*Updated Base Case*), the Borrower shall:
			1. update the relevant Assumptions in good faith; and
			2. deliver to the Intercreditor Agent:
				1. the proposed updated relevant Assumptions; and
				2. a description of any material change to the value of any such updated Assumptions when compared with the value of the Assumptions used to prepare the then current Base Case, giving reasonable details of, and where reasonably available, supporting information for, the reasons for the change.
		2. The Updated Base Case shall reflect the updated relevant Assumptions in the manner set out [below]:

[*Insert protocol for (i) selecting the relevant Assumptions to be updated and (ii) the mechanics of updating the Assumptions – these will include financing, technical, and economic assumptions. In particular, which party provides the assumptions and how they should be determined and at what time.*][[162]](#footnote-163)

* + 1. The Intercreditor Agent may challenge any Assumptions that the Borrower proposes to update, or that it believes the Borrower should have updated, at any time within [●] Business Days of its receipt of the proposed updated Assumptions. If the Intercreditor Agent challenges any Assumptions that the Borrower proposes to update, or that it believes the Borrower should have updated:
			1. the Intercreditor Agent and the Borrower shall discuss (for a period not to extend beyond [●] Business Days prior to the Calculation Date any changes required to the Assumptions; and
			2. if the Borrower and the Intercreditor Agent are unable to agree on the updated Assumptions, the matter shall be referred to the Resolution Procedure and resolved on or prior to [●] Business Days prior to the Calculation Date to which the Assumptions relate, and the updated Assumptions as determined pursuant to that procedure shall become the updated Assumptions with effect on and from the Calculation Date in respect of which the updated Assumptions were delivered and shall be conclusive (absent manifest error). Until such matter is resolved, [the Intercreditor Agent's requirements in relation to such Assumptions shall prevail].
		2. If the Intercreditor Agent has not challenged the proposed updated Assumptions or requested that other Assumptions should have been updated by the Borrower within [●] Business Days of its receipt of the proposed updated Assumptions from the Borrower, the updated Assumptions proposed by the Borrower shall be used for the purposes of producing the Updated Base Case in accordance with Clause 16.2 (*Updated Base Case*).[[163]](#footnote-164)
	1. Financial Report
		1. No later than [ ] Business Days [before][after] each Calculation Date, the Borrower shall deliver to the Intercreditor Agent a draft Financial Report.
		2. Each draft Financial Report shall:
			1. contain a calculation of each Ratio as at the relevant Calculation Date;
			2. attach the Updated Base Case and a list of all Assumptions on which it is based;
			3. specify any amount permitted under the Cash Waterfall to be transferred from the Operating Account to the Distribution Account and [confirm][certify] that the Distribution Tests have been met in respect of such transfer; and
			4. set out, for the purposes of each Ratio set out below, reasonable details of the nature and amounts of the items set opposite it:

| **Ratio** | **Information** |
| --- | --- |
| Historic DSCR | Revenue and Available Cashflow actually received by it during the Calculation Period ending on [that Calculation Date] (taking into account any permitted Equity Cure in accordance with paragraph (d) of Clause 18.2 (*Immediate Events of Default*)).Project Costs, Operating Costs and Debt Service payable or paid by it during that Calculation Period. |
| Projected DSCR | Revenue and Available Cashflow projected to be received by it for [the][each] Calculation Period commencing on the date falling after [that Calculation Date].Project Costs, Operating Costs and Debt Service projected to be payable by it during that Calculation Period. |
| [LLCR | Revenue and Discounted Cashflow for Debt Service projected to be received by it from [that Calculation Date] until the Final Maturity Date.Project Costs, Operating Costs and Debt Service projected to be payable by it from [that Calculation Date] until the Final Maturity Date.] |

* + 1. Each draft Financial Report shall be substantially in the form of Schedule 3 (*Form of Financial Report*) (or otherwise in form and substance satisfactory to the Intercreditor Agent) and the contents of that draft Financial Report shall be consistent with the Updated Base Case and the Budget for the period to which that Financial Report relates.
		2. The Intercreditor Agent may challenge the draft Financial Report (but not Assumptions or Updated Base Case to the extent they have already been agreed or determined) and if it does so:
			1. the Intercreditor Agent and the Borrower shall discuss for a period of not more than [●] Business Days any changes required to the draft Financial Report; and
			2. if the Borrower and Intercreditor Agent are unable to agree on any changes required to the draft Financial Report, the matter shall be referred to the Resolution Procedure and resolved on or prior to [●] Business Days prior to the Calculation Date to which the Financial Report relates, and the Financial Report as determined pursuant to that procedure shall become the Financial Report with effect on and from the date for which it was delivered and shall be conclusive (absent manifest error). Until such matter is resolved, [the Intercreditor Agent's requirements in relation to such draft Financial Report shall prevail].
		3. If the Intercreditor Agent has not challenged the draft Financial Report within [●] Business Days of its receipt, the draft Financial Report as proposed by the Borrower shall become the Financial Report.[[164]](#footnote-165)
		4. [On each Calculation Date]/[Within [●] Business Days of each Calculation Date], the Borrower shall deliver to the Intercreditor Agent a finalised Financial Report, taking into account any updates to the information provided in the draft Financial Report delivered for that period under paragraph (b) above (as well as any other changes to that draft Financial Report agreed between the Intercreditor Agent and the Borrower).
	1. Financial testing

Each of the Ratios shall be tested by reference to the then current finalised Financial Report delivered to the Intercreditor Agent in accordance with this Clause 16.

1. General Undertakings[[165]](#footnote-166)

The undertakings in this Clause 17 remain in force from the date of this Agreement for as long as any amount is outstanding under the Finance Document or any Commitment is in force.

* 1. Status

The Borrower shall maintain at all times its:

* + 1. status as a [limited liability company], duly incorporated and validly existing under the law of [*its* *jurisdiction of incorporation*]; and
		2. its power, authority and right to conduct its business, own its assets, implement the Project and perform its obligations under the Transaction Documents.
	1. Authorisations

Subject to the Legal Reservations and the applicable Perfection Requirements, the Borrower shall promptly:

* + 1. obtain, comply with and do all that is necessary to maintain in full force and effect;
		2. implement the Project in compliance with; and
		3. supply certified copies to the Intercreditor Agent of,

each Required Authorisation.

* 1. Compliance[[166]](#footnote-167)

The Borrower shall comply, and shall ensure that the Project is implemented in accordance with, and complies with, all Compliance Standards in all [material] respects.

* 1. Taxation

The Borrower shall:

* + 1. duly and punctually pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties (except to the extent that (i) such payment is being contested in good faith, (ii) adequate reserves are being maintained for those Taxes and (iii) such payment can be lawfully withheld);
		2. ensure that all Tax returns required to be filed by it or on its behalf under any Applicable Law are filed when due (including any extensions granted) and contain the information required by Applicable Law to be contained in them; and
		3. maintain its tax residence in [*insert jurisdiction*] and not become resident in any other jurisdiction.
	1. Business

The Borrower shall not engage in, carry on, or have any interest in, any business or activity other than:

* + 1. the development, ownership, design, engineering, construction, operation, management and maintenance of the [Plant];
		2. any business or activity associated with the Project; or
		3. as permitted by the Finance Documents.
	1. Mergers, Acquisitions and Investments

The Borrower shall not:

* + 1. enter into any amalgamation, demerger, merger, consolidation, or corporate reconstruction or any analogous arrangement;
		2. enter into any joint venture, shareholders agreement, partnership, profit sharing, royalties agreement, or analogous arrangement; or
		3. create any Subsidiaries or purchase or acquire any shares or have any legal or beneficial ownership interest (or instrument convertible into a legal or beneficial ownership interest) in any person except as expressly permitted under the Finance Documents.
	1. Assets

The Borrower shall:

* + 1. maintain and preserve all of its assets that are required for the carrying out of the Project and its business, in good working order and condition, ordinary wear and tear excepted;
		2. maintain good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets required to carry out the Project and the assets subject to the Security created pursuant to any Security Documents, free from all Security except the Security created pursuant to, or permitted by, the Finance Documents; and
		3. not sell or grant (or agree to sell or grant) any right of pre-emption over, or any lease or tenancy of, or otherwise dispose of, any of its interests in any of the Secured Property, other than as permitted in Clause 17.14 (*Disposals*).
	1. *Pari passu* ranking

Subject to the Legal Reservations, the Borrower shall ensure that at all times its obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except for claims mandatorily preferred by laws applying to companies generally.

* 1. Security

The Borrower shall:

* + 1. promptly (and in the case of registrations, within any applicable timelines), execute and provide all such assurances, and do all such acts and things, as any Security Agent may reasonably require:
			1. for registering any Security Documents and for perfecting or protecting the Transaction Security; and
			2. if the Security Documents have become enforceable, for facilitating the realisation of all or any part of the Secured Property and the exercise of all powers, authorities and discretions vested in any Security Agent or in any receiver of all or any part of those assets;
		2. promptly execute all transfers, conveyances, assignments and releases of the assets subject to the Transaction Security, whether to any Security Agent or to its nominees, and give all notices, orders and directions which any Security Agent may reasonably think expedient in relation thereto; [and]
		3. take or cause to be taken all reasonable action required of it or necessary under Applicable Law to preserve, maintain, register and perfect the Transaction Security as valid, enforceable and perfected Security in favour of the Secured Parties under the Security Documents enjoying the ranking contemplated in the Security Documents[; [and]]
		4. [*other requirements for ongoing Security updates to be included if required*].
	1. Real Property[[167]](#footnote-168)

The Borrower shall:

* + 1. legally and beneficially own at all times (subject only to the Transaction Security) all Real Property required to carry out the Project at the Site;
		2. supply to any Security Agent on demand any information in relation to its Real Property that such Security Agent reasonably requires;
		3. repair and keep in good and substantial repair to the reasonable satisfaction of each Security Agent all buildings, trade and other fixtures, plant, machinery and chattels at any time (and, prior to a Default, on reasonable notice) forming part of the Secured Property and when necessary replace such items with others of similar quality and value;
		4. not at any time without the prior written consent of a Security Agent (i) effect, carry out or permit any demolition, reconstruction or rebuilding of or any structural alteration or material change in the use of the Real Property, or (ii) sever or unfix or remove any of the fixtures, fittings, plant or machinery (other than its stock in trade or work in progress) on or in the Secured Property (except for the purpose and in the course of making necessary repairs to that item or of replacing that item with new or improved models or substitutes);
		5. observe and perform all restrictive and other covenants, stipulations and obligations now or at any time affecting any of its Real Property to the extent that they are subsisting and capable of being enforced;
		6. ensure that adequate security arrangements are in place to protect all Real Property (to the extent reasonably practicable) from events of terrorism and sabotage; and
		7. duly and diligently enforce all restrictive or other covenants, stipulations and obligations benefiting any of its Real Property and not waive, release or vary (or agree so to do) the obligations of any other party thereto.
	1. Intellectual Property[[168]](#footnote-169)
		1. The Borrower shall:
			1. ensure that it has available, by the appropriate time for the Project to be implemented in accordance with the Transaction Documents, all rights with respect to Intellectual Property and all other rights and interests required for the lawful design, unimpeded construction and operation of the Project and for the conduct of its business as necessary from time to time; and
			2. take all necessary action to obtain, safeguard and maintain in full force and preserve its ability to enforce the rights referred to in paragraph (a)(i) above, including complying with all laws and contractual provisions to which it is subject as registered proprietor, beneficial owner, user, licensor or licensee, making all registrations and paying all renewal fees, licence fees or other outgoings which are necessary for that purpose.
		2. Upon becoming aware, promptly notify the Intercreditor Agent of any infringement or threatened or suspected infringement of or any challenge to the validity of any Intellectual Property owned by or licenced to it, supply the Intercreditor Agent with all information in its possession relating thereto and take all action as is reasonably open to it (including enforcement action) to prevent third parties infringing any such Intellectual Property.
	2. Shares

The Borrower shall:

* + 1. ensure that its shares are subject at all times to the Transaction Security, are fully paid and are not subject to any option, warrant, trust, right of redemption, pre-emption, conversion or disposal or similar rights. It shall ensure that its constitutional documents do not and could not restrict or inhibit any transfer of those shares on creation or on enforcement of the Transaction Security;
		2. only issue shares in its capital in accordance with the Shareholder Contribution and Sponsor Support Agreement;
		3. ensure that no person other than a [Sponsor][Shareholder] has any rights (including voting and dividend rights), benefits or interests in respect of or derived from its shares;
		4. not grant to any person any securities convertible into its share capital or any rights to call for issuance of further shares in its capital; and
		5. not reduce, cancel, buy back, repay, purchase or redeem any of its share capital [except from the application of funds standing to the credit of the Distribution Account in accordance with all Applicable Laws and the provisions of the Finance Documents].
	1. Negative pledge

In this Clause 17, "**Quasi-Security**" means an arrangement or transaction described in paragraph (b) below.

* + 1. The Borrower shall not create or permit to subsist any Security over any of its assets.
		2. The Borrower shall not:
			1. sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or reacquired by it;
			2. sell, transfer or otherwise dispose of any of its receivables on recourse terms;
			3. enter into any arrangement 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
			4. enter into 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.

* + 1. Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:
			1. the Transaction Security;
			2. any netting or set-off arrangement entered into by the Borrower under the Finance Documents;
			3. [any payment or close out netting or set-off arrangement pursuant to Schedule 8 (*[Hedging*);]
			4. any lien arising by operation of law and in the ordinary course of trading (and not arising as a result of any default or omission by it) and which does not adversely affect the carrying out of the Project;
			5. 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 it 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 it; or
			6. [*insert others*].[[169]](#footnote-170)
	1. Disposals
		1. The Borrower shall not enter 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 any asset in whole or in part.
		2. Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
			1. of [*insert relevant offtake products/ project output and any other permitted disposals*] in accordance with the Project Documents[[170]](#footnote-171);
			2. for cash on arm's length terms of any surplus, obsolete, redundant, defective or worn-out assets and which:
				1. have been replaced by assets of the same or greater value or in respect of which the Borrower has entered into a contractual arrangement to replace such asset as soon as reasonably practicable after its disposal; or
				2. which are not necessary or desirable for the operation or maintenance of the Project;
			3. of any asset which is expressly permitted under or required pursuant to the Finance Documents;
			4. [*insert others*]; or[[171]](#footnote-172)
			5. which is otherwise approved in writing by the Intercreditor Agent.
	2. Loans and Guarantees
		1. The Borrower shall not make any loans, grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily assume any liability, whether actual or contingent, in respect of any obligation of any person.
		2. Paragraph (a) above does not apply to:
			1. any credit provided or advance payment made in the ordinary course of business under and in accordance with the express terms of any Project Document to which it is party, or otherwise any trade credit provided under normal trade terms and in the ordinary course of business to its creditworthy suppliers and customers which trade credit does not exceed 90 days in length (including extensions thereof);
			2. any loan, credit, guarantee or indemnity required to be given or made in any Finance Document;
			3. [loans or investments made with moneys standing to the credit of the Distribution Account];
			4. [*insert others*]; or
			5. any other loan, credit, guarantee or indemnity which is otherwise approved in writing by the Intercreditor Agent.
	3. Restricted Payments
		1. The Borrower shall not pay, make or declare any Restricted Payment other than from amounts standing to the credit of the Distribution Account, and shall not declare any Restricted Payment in excess of amounts standing to the credit of the Distribution Account on the date of that declaration.
		2. The Borrower shall not pay or transfer any amount into the Distribution Account, except during the period from a Repayment Date to the date falling [30] Business Days after that Repayment Date, and only **provided that**:
			1. each of the following tests (the "**Distribution Tests**") are met on that Repayment Date and the date of such transfer:
				1. the [Project Completion Date]/[Financial Completion Date] has occurred;
				2. the First Repayment Date under the Term Loan A Facility has occurred and the Borrower has paid all Debt Service due on such date [from cash generated by the Project];
				3. on the most recent Calculation Date:

after all Assumptions required to have been updated in accordance with Clause 16.3 (*Assumptions*) have been agreed or determined and the Updated Base Case has been agreed or determined in accordance with Clause 16.2 (*Updated Base Case*); and

the Financial Report required in respect of such Calculation Date has been delivered and approved or determined in accordance with Clause 16.4 (*Financial Report*) demonstrates that each of the Ratios has met the required level of such Ratio set out in the table below;

| **Ratio** | **Required level** |
| --- | --- |
| Historic DSCR | At least [ ]:1.0 |
| [Projected DSCR | At least [ ]:1.0][[172]](#footnote-173) |
| [LLCR | At least [ ]:1.0] |

* + - * 1. no Default is continuing or would result from the making of the relevant Restricted Payment (or transfer into the Distribution Account);
				2. the Balance of the DSRA is at least equal to the DSRA Required Balance[, and the Balance of the MRA is at least equal to the MRA Required Balance];
				3. the Borrower has made all mandatory prepayments then outstanding under the Finance Documents;
				4. such Restricted Payment is permitted by Applicable Law; and
				5. [*insert others*];
			1. the amount so transferred may not exceed the lower of (A) the amount standing to the credit of the Operating Account on that Repayment Date (after effecting all payments with a higher priority in the Cash Waterfall) and (B) the amount standing to the credit of the Operating Account on the date of such transfer.
		1. [Paragraphs (a) and (b) above do not apply to any Restricted Payment made pursuant to Clause 3.4 (*[Equity true-up*).]
	1. Indebtedness[[173]](#footnote-174)
		1. The Borrower shall not incur, create or permit to subsist or have outstanding any Financial Indebtedness or enter into any agreement or arrangement whereby it is entitled to incur, create or permit to subsist any Financial Indebtedness.
		2. Paragraph (a) above does not apply to:
			1. any Financial Indebtedness arising under the Finance Documents [or any Shareholder Loans];[[174]](#footnote-175)
			2. [*insert any other permitted Financial Indebtedness*]; or
			3. any Financial Indebtedness which is otherwise approved in writing by the Intercreditor Agent.
	2. [Anti-corruption, counter-terrorism financing, anti-money laundering
		1. The Borrower shall not directly or indirectly use the proceeds of the Facilities for any purpose which would breach any Anti-Corruption Laws or laws relating to the financing of terrorism, money laundering or similar activities.
		2. The Borrower shall:
			1. conduct its business and operations and carry out the Project in compliance with applicable Anti-Corruption Laws and laws relating to the financing of terrorism, money laundering or similar activities;
			2. maintain policies and procedures designed to promote and achieve compliance with all applicable Anti-Corruption Laws and laws relating to the financing of terrorism, money laundering or similar activities;
			3. take all responsible and prudent steps to ensure that each of its agents, directors, employees and officers comply with such applicable Anti-Corruption Laws and laws relating to the financing of terrorism, money laundering or similar activities;
			4. not, nor shall it permit any agent, director, employee or officer of the Borrower to, make or receive, or direct or authorise any other person to make or receive, any offer, payment or promise to pay, of any money, gift or other thing of value, directly or indirectly, to or for the use or benefit of any person, where this violates or would violate, or creates or would create liability for it or any other person under, any Anti-Corruption Laws or laws relating to the financing of terrorism, money laundering or similar activities; and
			5. immediately notify the Intercreditor Agent if it or any agent, director, employee or officer of it is being investigated by any agency, or party to any proceedings, in each case in relation to any Anti-Corruption Laws and laws relating to the financing of terrorism, money laundering or similar activities.][[175]](#footnote-176)
	3. [Sanctions

The Borrower shall not, directly or indirectly, use the proceeds of the Facilities (or lend, contribute or otherwise make available such proceeds to any person):

* + 1. to fund or facilitate any activities or business of, with or related to (or otherwise make funds available to or for the benefit of) any person who is a designated target of or who is otherwise the subject of Sanctions; or
		2. in any manner or for any purpose:
			1. that is prohibited by Sanctions:
				1. applicable to any Party or any of its Affiliates; or
				2. under the law governing any [Transaction Document]/[Finance Document]; or
			2. that would result in a violation of Sanctions by any Party or any of its Affiliates.][[176]](#footnote-177)
	1. E&S Compliance[[177]](#footnote-178)
		1. The Borrower shall comply in all [material] respects with, and shall carry out the Project in compliance with, all E&S Standards, E&S Authorisations, E&S Documents [and the E&S Management Systems], obtain and maintain any E&S Authorisations and take all reasonable steps in anticipation of known or expected future changes to or obligations under the same.
		2. The Borrower shall procure that the E&S Documents are in compliance in all [material] respects with the E&S Standards and the E&S Authorisations at all times and shall not amend any E&S Document without the prior written consent of the Intercreditor Agent.
		3. The Borrower shall at all times maintain and implement each of the E&S Management Plan, the E&S Action Plan and the Stakeholder Engagement Plan in all [material] respects, and promptly update them as and when required (in each case with the Intercreditor Agent's prior written consent) [in order to carry out the Project at all times in compliance with all E&S Standards, E&S Authorisations and E&S Documents in all material respects.][[178]](#footnote-179)
		4. The Borrower shall ensure that [summaries of] the E&S Assessment Documents:
			1. are accessible and available online in accordance with the Performance Standards;
			2. are made readily available to Stakeholders, in the local language(s) and in a culturally appropriate manner; and
			3. shall take into account and reflect the result of all Stakeholder Engagement Processes, including any actions agreed resulting from such processes.
		5. The Borrower shall not carry out any activities or take any actions in relation to the Project [or the Associated Facilities] that may cause material adverse environmental or social risks or impacts until the relevant plans, measures or actions in respect of such activities or actions in relation to the Project [or the Associated Facilities] have been completed in accordance with the E&S Management Plan, the E&S Action Plan and the Stakeholder Engagement Plan.
		6. The Borrower shall carry out periodic assessments and Stakeholder Engagement Processes in accordance with the Stakeholder Engagement Plan, and propose changes, for approval by the Intercreditor Agent, to the E&S Documents, as appropriate, in accordance with the findings of such assessments and Stakeholder Engagement Processes.
		7. [The Borrower undertakes to decommission the Project in accordance with, and when required by, the terms of the Decommissioning Plan.]
		8. [*Any additional provisions relating to compliance of the Project and the E&S Documents with the E&S Standards, and on the status of E&S Authorisations required to be obtained, to be advised by the E&S Adviser following E&S due diligence.*]
	2. Relationships with others
		1. The Borrower shall ensure that all the material terms of the arrangements between the Borrower and the [Obligors] and their Affiliates are contained only in its constitutional documents, the Shareholders Agreement[, each Shareholder Loan Agreement] and each Finance Document to which both the Borrower and the [Obligors] are party.[[179]](#footnote-180)
		2. The Borrower shall not have any material rights against, or obligations to, any person other than under the Transaction Documents and any transactions that they expressly contemplate.
		3. The Borrower shall ensure that each agreement, transaction or arrangement that it enters into or has entered into with or for the benefit of any person (including any disposal to that person) is made in the ordinary course of business, for full value and on an arm's length basis.
	3. Project Documents
		1. The Borrower shall not enter into any contract or arrangement to carry out the Project in whole or part other than the Project Documents.[[180]](#footnote-181)
		2. The Borrower shall:
			1. duly and punctually perform and comply [in all material respects] with its obligations under;
			2. use its best endeavours to maintain and preserve the validity and enforceability of; and
			3. take all reasonable steps to preserve and enforce all its [material] rights and pursue any claims and remedies under,

each Project Document to which it is a party (other than any Project Document that has been Discharged), where failure to do so (other than in respect of [the Construction Contract, the Supply Contract, the O&M Contract, [any][the] Offtake Contract [or [*insert others*]]), is not reasonably likely to have a Material Adverse Effect].

* + 1. The Borrower shall not terminate or repudiate, or allow the termination of, any:
			1. Project Document [except any Project Document (other than the Construction Contract, the Supply Contract[s], the O&M Contract, [each][the] Offtake Contract [and [*insert others*]]) where it has been Replaced]; or
			2. Required Authorisation [unless such action is required by any Applicable Law].
		2. The Borrower shall not, and shall not agree to, amend, vary, novate, supplement, modify, suspend, waive or release any term or condition under any:
			1. Project Document (including by issuing or accepting a change order under any Project Document, other than any Minor Change Order); or
			2. Required Authorisation [(unless such action is required by any Applicable Law)].
		3. The Borrower shall not assign, transfer, novate or delegate (in whole or in part), nor consent to the assignment, transfer, novation or delegation (in whole or in part), of any of its or any Major Project Participant’s rights or obligations under a Project Document (other than pursuant to a Security Document).
		4. The Borrower shall not waive, settle, release or make any compromise of any claim under any Project Document in an amount exceeding [•] (or its equivalent in any currency or currencies).
		5. [If the Borrower's exercise of any Discretion is reasonably likely to result in a Material Adverse Effect or a [material effect on the Project], the Borrower shall provide the Intercreditor Agent with at least [10] Business Days' prior notice of its exercise of that Discretion, and shall exercise that Discretion in accordance with any instructions that the Intercreditor Agent gives to it during that period. If the Intercreditor Agent does not give to the Borrower any instructions by the end of that period, the Borrower may exercise that Discretion in accordance with the Transaction Documents.][[181]](#footnote-182)
		6. The Borrower shall take all reasonable steps to mitigate the impact of any default or Force Majeure under any Project Document.
	1. Project expenditure
		1. The Borrower shall not incur:
			1. any Project Costs other than (A) Budgeted Project Costs, (B) Project Costs not included in the Budget for the relevant period but for which the Intercreditor Agent has given its prior written consent, [and (C) Project Costs not exceeding [•] per cent. ([•]%) of the Budgeted Project Costs in aggregate]; or
			2. any Operating Costs other than (A) Budgeted Operating Costs, (B) Operating Costs not included in the Budget for the relevant period but for which the Intercreditor Agent has given its prior written consent, (C) Operating Costs not included in the Budget for such period but which relates directly to remedying the occurrence of an emergency at the Project endangering the health and/or safety of others or the Environment [and (D) Operating Costs not exceeding [•] per cent. ([•]%) of the Budgeted Operating Costs in aggregate].
		2. The Borrower shall maintain proper books, accounts, records and procedures in relation to its business and undertaking sufficient to record and monitor the progress of the Project and to identify the assets, works and services financed by the Facilities, and retain for at least one calendar year after the [Project Completion Date]/[Financial Completion Date] all records evidencing expenditure on the Project.
	2. Insurance

The Borrower shall obtain, maintain and comply with the Insurances at all times and in all respects in accordance with the requirements of Schedule 6 (*Insurance*).

* 1. Accounts

The Borrower shall:

* + 1. not open and maintain any accounts other than the Accounts; and
		2. comply at all times in all respects with the requirements of each Accounts Agreement.
	1. Construction, operation and maintenance of the Project

The Borrower shall ensure that the construction, testing, operation and maintenance of the Project is promptly and diligently carried out (and, in the case of the construction, completed) in each case, in accordance with the Required Authorisations (and any conditions set out therein), the Transaction Documents and the Compliance Standards.

* 1. Project Completion

The Borrower shall use its best efforts to achieve the Project Completion Date by the Scheduled Project Completion Date.

* 1. Delay
		1. If the Borrower or the Intercreditor Agent (acting reasonably in conjunction with the Technical Adviser) anticipates or determines at any time that the Project Completion Date is reasonably likely to be delayed, or the Project Completion Date has in fact been delayed, by more than [ ] beyond the Scheduled Project Completion Date, the Borrower shall prepare a detailed report on the causes of such delay (and for any subsequent incremental increase in such delay), the recommended actions and mitigants to address such delay and a timetable for implementing such actions and mitigants. The Borrower shall provide such report to Intercreditor Agent and the Technical Adviser within [ ] days of the date on which the Borrower has, or could reasonably be expected to have, knowledge of such delay or is otherwise notified by the Intercreditor Agent.
		2. Upon receipt of the report referred to in paragraph (a) above, the Technical Adviser shall review the report and provide a written opinion to the Intercreditor Agent. If the Technical Adviser confirms in its written opinion, in consultation with the Intercreditor Agent, that the following requirements are met:
			1. the Borrower is likely to achieve the Project Completion Date on or before the Longstop Date;
			2. the recommended actions and mitigants in the report include all appropriate and commercially reasonable measures to avoid any additional delay in the Project achieving the Project Completion Date; and
			3. the proposed timetable for implementing such actions and mitigants is reasonably likely to avoid any additional delay in the Project achieving the Project Completion Date,

the report shall be deemed approved (such approved report, the "**Delay Action Report**"). If the Technical Adviser, in its reasonable opinion, believes that the requirements set out above are not met, the Technical Adviser shall notify the Borrower promptly [and paragraph (c) of Clause 18.15 (*Project-related Events of Default*) shall apply][[182]](#footnote-183).

* + 1. The Borrower shall comply with all actions identified in the Delay Action Report, in accordance with the timetable therein, and shall promptly provide such updates on progress and access to the Project as the Technical Adviser may reasonably require to monitor compliance with such Delay Action Report.
	1. Funding Shortfall
		1. If the Borrower or the Intercreditor Agent (acting reasonably in conjunction with the Technical Adviser) determines at any time that a Funding Shortfall is reasonably likely to exist on or after the date of the initial Utilisation Request, the Borrower shall, within [ ] days from and including the date of such determination, deliver an initial plan to the Intercreditor Agent setting forth in reasonable detail the Borrower’s plan, including all actions to be taken by it, to rectify, avoid and eliminate such potential or actual Funding Shortfall and a timetable for doing so.
		2. Within [ ] days from and including the date of delivery of such initial plan, the Borrower shall deliver to the Intercreditor Agent, a final plan in form and substance satisfactory to the Intercreditor Agent setting forth in reasonable detail the Borrower’s final plan, including all actions to be taken by it to rectify, avoid and eliminate such potential or actual Funding Shortfall and a timetable for doing so.
		3. The Borrower shall implement the final plan referred to in paragraph (b) above in accordance with its terms, including meeting any progress milestones and eliminating the potential or actual Funding Shortfall by the dates stipulated therein.
	2. Settlement of claims

The Borrower shall not, and shall not agree to, waive, settle or compromise any disputes, claims, litigation, arbitration or administrative proceedings to which it is a party for an amount in excess of [●] (or its equivalent in any other currency or currencies) without the consent of the Intercreditor Agent.

* 1. Abandonment

The Borrower shall not abandon, mothball, decommission, cancel, suspend or withdraw from the Project or any part thereof.

* 1. Other Project-related matters
		1. [*Any additional provisions relating to legal matters to be advised by the Lenders' Legal Adviser(s) following legal due diligence.*]
		2. [*Any additional provisions relating to technical matters specific to the Project, or relating more generally to projects in this sector, to be advised by the Technical Adviser following technical due diligence.*]
	2. Restricted changes

The Borrower shall not change, or allow any change to, any of the following without the Intercreditor Agent's prior written consent (acting reasonably):

* + 1. its financial year end;
		2. its constitutional documents (other than in respect of minor administrative matters or as required under Applicable Law);
		3. [the Shareholders Agreement];
		4. the rights attaching to its shares; or
		5. its Auditor (by way of replacement, dismissal or otherwise), except this paragraph (e) shall not apply to the extent that such restriction on changing its Auditor is prohibited by Applicable Law.
	1. Access

The Borrower shall:

* + 1. on request of the Intercreditor Agent, provide the Intercreditor Agent and any Security Agent with any information the Intercreditor Agent or Security Agent may reasonably require about the Borrower's business and affairs, the Secured Property and its compliance with the terms of the Transaction Documents; and
		2. permit each Security Agent, the Intercreditor Agent and their respective representatives, delegates, professional advisers and contractors, free access at all reasonable times and on reasonable notice, at the cost of the Borrower, to (i) the Borrower's offices, (ii) inspect and take copies and extracts from the books, accounts and records of the Borrower and (iii) view the Site and the Secured Property (without becoming liable as mortgagee in possession).
	1. [Hedging
		1. The Borrower shall enter into and maintain in full force and effect Hedging Agreements in accordance with, and otherwise implement Hedge Transactions required by and comply with, the provisions of Schedule 8 (*[Hedging*).
		2. Except as provided in paragraph (a) above, no other Hedge Transactions shall be undertaken by the Borrower.
		3. At or before the time that the Borrower enters into any Hedging Agreement with a Hedging Bank, the Borrower shall ensure that the counterparty accedes as a Hedging Bank to the Security Trust and Intercreditor Deed in accordance with the terms of those documents.]
	2. No immunity

The Borrower shall not claim for itself or any of its assets any right of immunity from set-off, suit, judgment, execution, attachment or other legal process in any proceedings taken in respect of any Finance Document to which it is a party.

* 1. [Syndication

The Borrower shall provide reasonable assistance to the Mandated Lead Arrangers in [the preparation of the Information Memorandum and] the primary syndication of the Facilities (including by making senior management available for the purpose of making presentations to, or meeting, potential lending institutions) and will comply with all reasonable requests for information from potential syndicate members prior to completion of syndication.][[183]](#footnote-184)

1. Events of Default[[184]](#footnote-185)

Each of the events or circumstances set out in the following sub-clauses of this Clause 18 (other than Clause 18.23 (*Acceleration*)) is an Event of Default.

* 1. Non-payment

[The Borrower]/[Any Obligor][[185]](#footnote-186) does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

* + 1. its failure to pay is caused by:
			1. administrative or technical error; or
			2. a Disruption Event; and
		2. [payment is made within:
			1. (in the case of paragraph (a)(i) above) [three] Business Days of its due date; or
			2. (in the case of paragraph (a)(ii) above) [three] Business Days of its due date.]/

**OR**

[payment is made within [•] Business Days of its due date.]

* 1. Immediate Events of Default
		1. Subject to paragraph (d) below, on any Calculation Date, the Historic DSCR is less than [ ].
		2. The proceeds of any Utilisation are not applied in accordance with the terms of the Finance Documents.
		3. Any [Sponsor][Shareholder] does not comply at any time with its obligations (if any) under the Shareholder Contribution and Sponsor Support Agreement, or any event or circumstance occurs resulting in a [Sponsor][Shareholder] no longer meeting the requirements of the Shareholder Contribution and Sponsor Support Agreement applicable to it, relating to:
			1. transfer or ownership of any shares in the Borrower;
			2. Control of the Borrower; or
			3. subordination of its claims against the Borrower to the claims of the Finance Parties.
		4. 1. If an Event of Default under paragraph (a) above has occurred or would occur on any Calculation Date (or would occur but for this paragraph (d)) in respect of any Calculation Period, the Borrower may prevent such Default or cure such Event of Default by procuring the contribution of additional Equity (excluding Base Equity) by the Shareholders and/or the Sponsors to the Borrower (the amount of such additional Equity, the "**Cure Amount**") by way of cash proceeds in accordance with the terms of the Shareholder Contribution and Sponsor Support Agreement (the "**Equity Cure**").
			2. Upon the receipt of the Cure Amount by the Borrower[[186]](#footnote-187):
				1. the Historic DSCR shall be calculated or re-calculated as if [*insert the manner in which Equity Cure should be applied*] by an amount equal to the Cure Amount on each of the first day of such Calculation Period and the immediately following Calculation Period; and
				2. if the Historic DSCR for such Calculation Period or Calculation Date (as calculated or recalculated in accordance with sub-paragraph (A) above) is at least [ ], any Default or Event of Default under paragraph (a) above shall be deemed to have been cured.
			3. A Cure Amount may only be applied for the purpose of preventing or effecting a cure of any Default or Event of Default arising from the Historic DSCR being less than [ ] if each of the following conditions is satisfied:
				1. the Borrower notifies the Intercreditor Agent of its intention to procure an Equity Cure on or prior to the date falling [•] days from the relevant Calculation Date;
				2. the Borrower receives the Cure Amount on or prior to the date falling [•] days from the relevant Calculation Date;
				3. Cure Amounts may not be applied on more than [•] occasions over the life of the Facilities to prevent or effect a cure of any Default or Event of Default arising from the Historic DSCR being less than [ ];
				4. a Cure Amount may not be applied for the purpose of preventing or effecting a cure of any Default or Event of Default arising from the Historic DSCR being less than [ ] in respect of [•] consecutive Calculation Periods; and
				5. no Restricted Payments shall be made or declared in respect of any Calculation Date for which an Equity Cure was made.
		5. [       ][[187]](#footnote-188).
	2. Other obligations
		1. A Major Project Participant does not comply with any provision of the Transaction Documents (other than those referred to in Clause 18.1 (*Non-payment*), Clause 18.2 (*Immediate Events of Default*), paragraph (a) of Clause 18.13 (*Transaction Security*) or Clause 18.17 (*Insurance*)).
		2. No Event of Default under paragraph (a) above will occur if the failure to comply is:
			1. capable of remedy and:
				1. in the case of a Finance Document, is remedied within [10] Business Days; or
				2. in the case of any Project Document, is remedied within [•] Business Days,

of the earlier of (1) the Intercreditor Agent giving notice to the Borrower and (2) the Borrower becoming aware of the failure to comply; or[[188]](#footnote-189)

* + - 1. [in the case of a Project Document (other than [the Construction Contract, the Supply Contract, the O&M Contract, [any][the] Offtake Contract [or [*insert others*]]), not reasonably likely to have a Material Adverse Effect.]
	1. Misrepresentation
		1. Any representation or statement made or deemed to be made by a Major Project Participant in the Transaction Documents (other than under Clause 14.28 (*Insurance*)) or any other document delivered by or on behalf of any Major Project Participant under or in connection with any Transaction Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.
		2. No Event of Default under paragraph (a) above will occur if the representation or statement made or deemed to be made is
			1. capable of remedy and:
				1. where it relates to any Finance Document, is remedied within [•] Business Days; or
				2. where it relates to any Project Document, is remedied within [•] Business Days,

of the earlier of (1) the Intercreditor Agent giving notice to the Borrower and (2) the Borrower becoming aware of the failure to comply[; or

* + - 1. in the case of a Project Document (other than [the Construction Contract, the Supply Contract, the O&M Contract, [any][the] Offtake Contract [or [*insert others*]]), not reasonably likely to have a Material Adverse Effect].
	1. Cross default
		1. Any Financial Indebtedness of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]] is not paid when due nor within any originally applicable grace period.
		2. Any Financial Indebtedness of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]] is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
		3. Any commitment for any Financial Indebtedness of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]] is cancelled or suspended by a creditor of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]] as a result of an event of default (however described).
		4. Any creditor of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]] becomes entitled to declare any Financial Indebtedness of any [Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]] due and payable prior to its specified maturity as a result of an event of default (however described).
		5. No Event of Default will occur under this Clause 18.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than:
			1. [•] for [*insert* *Major Project Participant, Borrower, Sponsor, or Shareholder*] (or its equivalent in any other currency or currencies); or
			2. [•] for [*insert* *Major Project Participant, Borrower, Sponsor, or Shareholder*] (or its equivalent in any other currency or currencies).
	2. Insolvency[[189]](#footnote-190)
		1. [A Major Project Participant]/[The Borrower, any Sponsor [or any Shareholder]]:
			1. is unable or admits inability to pay its debts as they fall due;
			2. [is deemed to, or is declared to, be unable to pay its debts under applicable law;]
			3. suspends or threatens to suspend making payments on any of its debts; or
			4. by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
		2. The value of the assets of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]] is less than its liabilities (taking into account contingent and prospective liabilities).
		3. A moratorium is declared in respect of any indebtedness of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]].
	3. Insolvency proceedings
		1. Any corporate action, legal proceedings or other procedure or step is taken in relation to:
			1. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, judicial management, provisional supervision or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]];
			2. a composition, compromise, assignment or arrangement with any creditor of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]];
			3. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, judicial manager, provisional supervisor or other similar officer in respect of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]] or any of its assets; or
			4. enforcement of any Security over any assets of [any Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]],

or any analogous procedure or step is taken in any jurisdiction.

* + 1. Paragraph (a) above shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within [•] days of commencement.
	1. Creditors' process

Any expropriation, attachment, sequestration, distress or execution [or any analogous process in any jurisdiction] affects any asset or assets of [a Major Project Participant]/[the Borrower, any Sponsor [or any Shareholder]] having an aggregate value of at least:

* + 1. [•] for [*insert* *Major Project Participant, Borrower, Sponsor, or Shareholder*] (or its equivalent in any other currency or currencies); or
		2. [•] for [*insert* *Major Project Participant, Borrower, Sponsor, or Shareholder*] (or its equivalent in any other currency or currencies).
	1. Final judgment
		1. Any Major Project Participant fails to comply with any final judgment, final decree, final award or final order made against it by any Authority, other than where its liability under that judgment, decree, award or order is in an amount less than:
			1. [•] for [*insert* *Major Project Participant, Borrower, Sponsor, or Shareholder*] (or its equivalent in any other currency or currencies); or
			2. [•] for [*insert* *Major Project Participant, Borrower, Sponsor, or Shareholder*] (or its equivalent in any other currency or currencies).
		2. For the purposes of paragraph (a) above, a judgment, decree, award or order is taken to be final even though an appeal may be pending against it or it may still be subject to appeal.
	2. Unlawfulness or invalidity
		1. It is or becomes unlawful for a Major Project Participant to perform any of its obligations under the Transaction Documents, or any such obligations or any Transaction Security created or expressed to be created or evidenced by the Security Documents are not or cease to be (or are alleged by a Major Project Participant not to be) legal, valid, binding and enforceable, or otherwise cease to be effective [or any subordination created under the Subordination Agreement is or becomes unlawful or invalid].
		2. Any obligation or obligations of any Major Project Participant under any Finance Document is or are not, or cease to be, legal, valid, binding, enforceable or effective or is or are alleged by a party to it (other than a Finance Party) to be ineffective.
		3. No Event of Default under this Clause 18.10 will occur if the circumstance only relates to any Transaction Document where it has been Discharged.
	3. Termination or repudiation
		1. Any Transaction Document is terminated (or an irrevocable notice of termination has been issued in accordance with the terms thereunder), cancelled, rescinded prior to its originally stated maturity or not renewed upon its expiry.
		2. A Major Project Participant repudiates a Transaction Document [or any of the Transaction Security] or evidences an intention to repudiate a Transaction Document [or any of the Transaction Security].
		3. No Event of Default under paragraph (a) or (b) above will occur if the event or circumstance only relates to any Transaction Document where it has been Discharged [or, in respect of a Project Document:
			1. such event or circumstance has not had, or would not result in, a Material Adverse Effect in the opinion of the Intercreditor Agent; or
				1. the relevant event or circumstance is remedied within [*insert cure period*]; or

the Borrower has demonstrated to the satisfaction of the Intercreditor Agent that it will (by itself or through the Major Project Participant) procure an acceptable substitute in respect of the affected party (other than the Borrower) to discharge the relevant obligations or liabilities on terms and within such period acceptable to the Intercreditor Agent; and

the Borrower or the Major Project Participant procures such substitute in the period required by the Intercreditor Agent].

* 1. Governmental intervention, nationalisation or expropriation

By or under the authority of any government or other Authority:

* + 1. [the management of the Borrower is wholly or partially displaced or the authority of the Borrower in the conduct of its business is wholly or partially curtailed;]
		2. any of the issued shares of the Borrower or the whole or any part of its revenues or assets is seized, nationalised, expropriated or compulsorily acquired; or
		3. any restriction is placed on:
			1. the conversion of any currency in which the Project revenues are denominated into the currency in which any amount due to a Finance Party under the Finance Documents is denominated; or
			2. the payment or transfer to a Finance Party (or to an Agent or other Finance Party on its behalf in accordance with the Finance Documents) of any amount due to it under the Finance Documents.
	1. Transaction Security
		1. Any Obligor fails to perform or comply with any of the obligations assumed by it in the Security Documents.[[190]](#footnote-191)
		2. At any time, any of the Transaction Security is or becomes unlawful or is not, or ceases to be legal, valid, binding or enforceable or otherwise ceases to be effective.
		3. At any time, any of the Transaction Security fails to have first ranking priority or is subject to any prior ranking or *pari passu* ranking Security.
	2. [Ownership of the Borrower[[191]](#footnote-192)

The Borrower ceases to be under the Control of [*insert name of controlling entity*] **OR** [*insert name of controlling entity*] ceases to own [•] per cent. of the issued share capital of the Borrower.]**[[192]](#footnote-193)**

* 1. Project-related Events of Default
		1. Any abandonment, suspension, localised stop work orders or shut down (other than scheduled shutdowns) of the Project (in whole or in any material part) whether initiated by the Borrower, any Major Project Participants or the relevant Authorities, in each case for a period lasting at least [120] days (in each case, whether or not consecutive).
		2. The Project is destroyed (in whole or in any material part) and is not reasonably likely to be reinstated under a Reinvestment Plan so as to meet the current financial and technical projections for the Project set out in the Budget and the Base Case and to satisfy the other requirements of the Transaction Documents.
		3. The [Project Completion Date]/[Financial Completion Date] has not occurred [or, in the [reasonable] opinion of the Technical Adviser, will not occur] by the Longstop Date and the Technical Adviser (in its reasonable opinion) believes that the requirements of a Delay Action Report have not been met[[193]](#footnote-194).
	2. Authorisations

Any Required Authorisation:

* + 1. is not in full force and effect (whether through failure to obtain, revocation, cancellation, termination or otherwise) at any time when required; or
		2. is modified in any way that is reasonably likely to have a Material Adverse Effect.
	1. Insurance
		1. The Borrower fails to comply with all of its obligations with respect to insurance under the Transaction Documents to which it is a party.
		2. Any of the Insurances which are required to be effected is not or ceases to be in full force and effect.
		3. An event or circumstance has occurred (including any omission to disclose any fact) which could validly entitle an insurer in respect of any of the Insurances which are required to be effected to terminate, rescind or otherwise avoid or reduce its liability under any such Insurances.
	2. Good title to assets

The Borrower ceases to have good, valid and marketable title to, or valid leases or licences of, or all appropriate Authorisations to use, the assets required to carry out the Project.

* 1. E&S matters
		1. [Any E&S Claim is commenced against the Borrower or the Project that is reasonably likely to result in a Material Adverse Effect.][[194]](#footnote-195)
		2. [*Any additional provisions relating to compliance of the Project and the E&S Documents with the E&S Standards, and on the status of E&S Authorisations required to be obtained, to be advised by the E&S Adviser following E&S due diligence*.][[195]](#footnote-196)
	2. [Declared company

[A Major Project Participant] is declared by the Minister for Finance of Singapore to be a company to which Part IX of the Companies Act applies.]

* 1. Material adverse change

Any event or circumstance occurs which the Intercreditor Agent reasonably believes might have a [Material Adverse Effect]/[material adverse effect on the ability of a Major Project Participant to perform or comply with its obligations under the Transaction Documents].

* 1. Other Project-related matters
		1. [*Any additional provisions relating to legal matters to be advised by the Lenders' Legal Adviser(s) following legal due diligence.*]
		2. [*Any additional provisions relating to technical matters specific to the Project, or relating more generally to projects in this sector, to be advised by the Technical Adviser following technical due diligence.*]
	2. Acceleration

[On and at any time after the occurrence of an Event of Default [which is continuing][[196]](#footnote-197) the Intercreditor Agent may, and shall if so directed by the Instructing Parties:

* + 1. by notice to the Borrower:
			1. without prejudice to the participation of any Lender in any Loans then outstanding:
				1. suspend all or any part of the Available Commitments;
				2. cancel each Available Commitment of each Lender, whereupon each such Available Commitment shall immediately be cancelled and the Facility[ies] shall immediately cease to be available for further utilisations; or
				3. cancel any part of any Commitment (and reduce such Commitment accordingly), whereupon the relevant part shall immediately be cancelled (and the relevant Commitment shall be immediately reduced accordingly); and/or
			2. declare that all or part of the Loans, 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
			3. declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Intercreditor Agent on the instructions of its Instructing Parties; and/or
		2. set-off and apply all amounts standing to the credit of any Account (other than the Distribution Account) towards the payment of any amounts outstanding under the Finance Documents in the order of priority set out in clause [ ] of the Security Trust and Intercreditor Deed;
		3. give notice to the Account Banks that (i) an Event of Default has occurred and give any instructions to (or instruct the Security Agents to give any directions to) the Account Banks in accordance with the Finance Documents or (ii) the Security Agents are therefore entitled to give directions under any Security Document, including without limitation, to block the Accounts;
		4. instruct the Security Agents to enforce the Transaction Security created pursuant to the Security Documents; and/or
		5. exercise, or direct any Security Agent to exercise, any and all other contractual and legal rights of the Finance Parties under the Finance Documents.

**SECTION 7
CHANGES TO PARTIES**

1. Changes to the Lenders
	1. Assignments and transfers by the Lenders[[197]](#footnote-198)[[198]](#footnote-199)

Subject to this Clause 19, a Lender (the "**Existing Lender**") may:

* + 1. assign any of its rights; or
		2. transfer by novation any of its rights and obligations,

to another bank or financial institution or to a trust, fund 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**").

* 1. Conditions of assignment or transfer[[199]](#footnote-200)[[200]](#footnote-201)
		1. [[201]](#footnote-202)[Except where a Facility Agreement provides that no consent of the Borrower is required for an assignment or transfer by an Existing Lender, the consent of the Borrower is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is:
			1. to another Lender or an Affiliate of any Lender;
			2. if the Lender is a fund, to a fund which is a Related Fund of that Lender;
			3. made at a time when an Event of Default is continuing[; or
			4. to any entity identified on the Pre-Approved New Lender List].
		2. The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent [five] Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower within that time.] /
		3. [An Existing Lender shall consult with the Borrower for no more than [•] days before it may make an assignment or transfer unless the assignment or transfer is:
			1. to another Lender or an Affiliate of any Lender;
			2. to a fund which is a Related Fund of that Existing Lender; or
			3. made at a time when an Event of Default is continuing.]
		4. An assignment or transfer by an Existing Lender shall be subject to any conditions to assignment or transfer set out in the Facility Agreement under which it is Lender.
		5. An assignment will only be effective on:
			1. receipt by the Intercreditor Agent and the Relevant Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Intercreditor Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender;
			2. performance by the Intercreditor Agent and the Relevant Facility Agent of all necessary "know your customer" or other similar checks under all Applicable Laws in relation to such assignment to a New Lender, the completion of which the Intercreditor Agent and that Facility Agent shall promptly notify to the Existing Lender and the New Lender; and
			3. satisfaction of any other conditions to such assignment set out in the relevant Facility Agreement.
		6. A transfer will only be effective if the procedure set out in Clause 19.5 (*Procedure for transfer*) is complied with.
		7. If:
			1. a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
			2. 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 9 (*Tax Gross Up and Indemnities*) or] Clause 10 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under [that Clause]/[those Clauses] 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 paragraph (g) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facilities].

* + 1. Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Intercreditor Agent and the Relevant Facility 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 or assignment 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.
	1. Assignment or transfer fee
		1. Subject to paragraph (b) below, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Intercreditor Agent (for its own account) a fee of [•].
		2. No fee is payable pursuant to paragraph (a) above if:
			1. the Intercreditor Agent agrees that no fee is payable; or
			2. the assignment or transfer is made by an Existing Lender to an Affiliate of that Existing Lender.
	2. Limitation of responsibility of Existing Lenders
		1. Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
			1. the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;
			2. the financial condition of any Obligor;
			3. the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
			4. the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

* + 1. Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
			1. 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 and any other person in connection with its participation in the Finance Documents and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document; and
			2. 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.
		2. Nothing in any Finance Document obliges an Existing Lender to:
			1. accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 19; or
			2. support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.
	1. Procedure for transfer
		1. Subject to the conditions set out in Clause 19.2 (*Conditions of assignment or transfer*) and any other conditions to such transfer set out in the relevant Facility Agreement, a transfer is effected in accordance with paragraph (c) below when the Intercreditor Agent and the Relevant Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. Each of the Intercreditor Agent and the Relevant Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate 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 Certificate.
		2. Each of the Intercreditor Agent and the Relevant Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all Applicable Laws in relation to the transfer to such New Lender.
		3. [Subject to Clause 19.9 (*[Pro rata interest settlement*], on]/[On] the Transfer Date:
			1. to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security, the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**")[[202]](#footnote-203);
			2. the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
			3. the New Lender and the other Finance Parties (other than the Existing Lender) shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Existing Lender and the other Finance Parties shall each be released from further obligations to each other under the Finance Documents; and
			4. the New Lender shall become a Party as a "**Lender**".
	2. Procedure for assignment
		1. Subject to the conditions set out in Clause 19.2 (*Conditions of assignment or transfer*), an assignment may be effected in accordance with paragraph (c) below when each of the Intercreditor Agent and the Relevant Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. Each of the Intercreditor Agent and the Relevant Facility Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment 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 Assignment Agreement.
		2. Each of the Intercreditor Agent and the Relevant Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all Applicable Laws in relation to the assignment to such New Lender.
		3. [Subject to Clause 19.9 (*[Pro rata interest settlement*],] on the Transfer Date:
			1. the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
			2. the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the "**Relevant Obligations**") and expressed to be the subject of the release in the Assignment Agreement; and
			3. the New Lender shall become a Party as a "**Lender**" and will be bound by obligations equivalent to the Relevant Obligations.[[203]](#footnote-204)
		4. Lenders may utilise procedures other than those set out in this Clause 19.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 19.5 (*Procedure for transfer*), to obtain a release by each Obligor from the obligations owed to each Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in Clause 19.2 (*Conditions of assignment or transfer*).
	3. Copy of Transfer Certificate, Assignment Agreement to Borrower

The Intercreditor Agent shall, as soon as reasonably practicable after it (and the Relevant Facility Agent) has executed a Transfer Certificate or an Assignment Agreement send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

* 1. [Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 19.8, each Lender may without consulting with or obtaining consent from any Obligor at any time charge, assign 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:

* + 1. any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
		2. any charge, assignment 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,

except that no such charge, assignment or Security shall:

* + - 1. release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
			2. require any payments to be made by any Obligor 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.]
	1. [*Pro rata* interest settlement
		1. If, in respect of any Facility, the Relevant Facility Agent has notified the Lenders under that Facility that it is able to distribute interest payments on a "*pro rata* basis" to Existing Lenders and New Lenders under that Facility then (in respect of any transfer pursuant to Clause 19.5 (*Procedure for transfer*) or any assignment pursuant to Clause 19.6 (*Procedure for assignment*) 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):
			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 falls at six Monthly intervals after the first day of that Interest Period); and
			2. the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
				1. when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
				2. the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 19.9, have been payable to it on that date, but after deduction of the Accrued Amounts.
		2. In this Clause 19.9 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.
		3. An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 19.9 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether 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.]
1. Accession of New Agent or Account Bank
	* 1. If any Agent or an Account Bank resigns under the Finance Documents, its resignation shall only be effective when the Intercreditor Agent (or, where the Intercreditor Agent is resigning, each Facility Agent) has received an Accession Certificate duly completed and executed by that Agent's or Account Bank's successor.
		2. The Intercreditor Agent (or, where the Intercreditor Agent is resigning, each Facility Agent) shall as soon as reasonably practicable after receipt by it of a duly completed and executed Accession Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement execute that Accession Certificate.
		3. Upon the appointment of a successor, the resigning Agent or Account Bank shall be discharged from any further obligation in its capacity as that Agent or (as applicable) Account Bank in respect of the Finance Documents, **provided that** such resignation shall be without prejudice to any undischarged liabilities which that Agent or (as applicable) Account Bank may have incurred as a result of its appointment and acting as such prior to its resignation. Its successor and each of the other parties to the Finance Documents shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party to the Finance Documents in that capacity.
2. Changes to the Borrower

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

**SECTION 8
THE FINANCE PARTIES**

1. Role of the Mandated Lead Arranger
	1. Role of each Mandated Lead Arranger

Except as specifically provided in the Finance Documents, no Mandated Lead Arranger has any obligations of any kind to any other Party under or in connection with any Finance Document.

* 1. No fiduciary duties
		1. Nothing in any Finance Document constitutes any Mandated Lead Arranger as a trustee or fiduciary of any other person.
		2. No 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.
	2. Business with the Obligors

Each Mandated Lead Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any Obligor.

* 1. Rights and discretions

Notwithstanding any other provision of any Finance Document to the contrary, no 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.

* 1. Responsibility for documentation

No Mandated Lead Arranger is responsible or liable for:

* + 1. the adequacy, accuracy or completeness of any information (whether oral or written) supplied by any Finance Agent, any Mandated Lead Arranger, an Obligor or any other person in or in connection with any Transaction Document or the Information Memorandum or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
		2. the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security; or
		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 relating to insider dealing or otherwise.
	1. Exclusion of liability

Nothing in this Agreement shall oblige any Mandated Lead Arranger to carry out:

* + 1. any "know your customer" or other checks in relation to any person; or
		2. any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender [or for any Affiliate of any Lender],

on behalf of any Lender and each Lender confirms to 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 any Mandated Lead Arranger.

* 1. Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to each Mandated Lead Arranger 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:

* + 1. the financial condition, status and nature of each Obligor and other Major Project Participants;
		2. the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document and, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
		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 Transaction Document, the Transaction Security, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
		4. the adequacy, accuracy or completeness of the Information Memorandum and any other information provided by any Agent, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
		5. the right or title of any person in or to, or the value or sufficiency of any part of the Secured Property, the priority of any of the Transaction Security or the existence of any Security affecting the Secured Property.
1. Conduct of Business by the Finance Parties

No provision of this Agreement will:

* + 1. interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
		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
		3. oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.
1. [Sharing, Payment Mechanics, Set-Off, [Parallel Debt] and Application of Proceeds

The Parties acknowledge and agree to the terms relating to:

* + 1. sharing among the Finance Parties, set out in the Security Trust and Intercreditor Deed;
		2. payment mechanics, set out in the Security Trust and Intercreditor Deed;
		3. set-off, set out in the Security Trust and Intercreditor Deed;
		4. [parallel debt, set out in the Security Trust and Intercreditor Deed];
		5. application of proceeds, set out in the Security Trust and Intercreditor Deed,

which shall apply as if set out herein in full.][[204]](#footnote-205)

**SECTION 9
ADMINISTRATION**

1. Notices
	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 or letter.

* 1. Addresses[[205]](#footnote-206)

The 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:

* + 1. in the case of each Party on the date of this Agreement, that identified with its name in Schedule 13 (*Notices*)[[206]](#footnote-207); and
		2. in the case of any person becoming a Party after the date of this Agreement, that notified in writing to the Intercreditor Agent on or prior to the date on which it becomes a Party; and

or any substitute address or fax number or department or officer as the Party may notify to the Intercreditor Agent (or the Intercreditor Agent may notify to the other Parties, if a change is made by the Intercreditor Agent) by not less than [five] Business Days' notice.

* 1. Delivery
		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:
			1. if by way of fax, when received in legible form; or
			2. 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 25.2 (*Addresses*), if addressed to that department or officer.

* + 1. Any communication or document to be made or delivered to an Agent will be effective only when actually received by that Agent and then only if it is expressly marked for the attention of the department or officer identified with its name in Schedule 13 (*Notices*) (or any substitute department or officer as the Intercreditor Agent shall specify for this purpose).
		2. All notices from or to the Borrower shall be sent through (if the notice is from a Lender) the Relevant Facility Agent or (otherwise) the Intercreditor Agent.
		3. All notices to a Lender from a Security Agent shall be sent through the Intercreditor Agent.
		4. Any communication or document which becomes effective, in accordance with paragraphs (a) to ‎(d)‎ above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.
	1. Notification of address and fax number

Promptly upon changing its address or fax number, the Intercreditor Agent shall notify the other Parties.

* 1. Communication when Finance Agent is Impaired Agent[[207]](#footnote-208)

If a Finance Agent is an Impaired Agent, the Parties may, instead of communicating with each other through that Finance Agent, communicate with each other directly and (while that Finance Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by that Finance Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement of that Finance Agent has been appointed.

* 1. Electronic communication
		1. Any communication or document to be made or delivered by one Party to another under or in connection with the Finance Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
			1. notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
			2. notify each other of any change to their address or any other such information supplied by them by not less than [five] Business Days' notice.
		2. Any such electronic communication or delivery as specified in paragraph (a) above to be made between the Borrower and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
		3. Any such electronic communication or delivery as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made or delivered by a Party to an Agent only if it is addressed in such a manner as that Agent shall specify for this purpose.
		4. Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
		5. Any reference in a Finance Document to a communication or a document being delivered being sent or received shall be construed to include that communication or document being made available in accordance with this Clause 25.6.
	2. Direct electronic delivery by the Borrower

The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to a Lender by delivering that information directly to that Lender in accordance with Clause 25.6 (*Electronic communication*) to the extent that Lender and the Intercreditor Agent agree to this method of delivery.

* 1. English language
		1. Any notice given under or in connection with any Finance Document must be in English.
		2. All other documents provided under or in connection with any Finance Document must be:
			1. in English; or
			2. if not in English, and if so required by the Intercreditor Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.
1. Calculations and Certificates
	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.

* 1. 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.

* 1. Day count convention[[208]](#footnote-209)

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 and a year of [360/365] days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

1. 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.

1. Remedies and Waivers

No failure to exercise, nor any delay in exercising, on the part of any Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of any Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall 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 not exclusive of any rights or remedies provided by law.

1. Amendments and Waivers
	1. Required consents
		1. Subject to paragraph (b) below, any term of this Agreement may be amended or waived only with the consent of the Intercreditor Agent and the Borrower and any such amendment or waiver will be binding on all Parties.
		2. Any condition precedent to the making of a Utilisation set out in Clause 3.2 (*Further conditions precedent*) or Schedule 2 (*Conditions Precedent*) may be waived only with the consent of the Intercreditor Agent (and the consent of the Borrower shall not be required).
		3. The Intercreditor Agent may effect, on behalf of any Finance Party, any amendment or waiver of any term of this Agreement permitted by this Clause 29.
		4. Any waiver of any term of a Finance Document other than this Agreement may be amended or waived only in accordance with the terms of that Finance Document or (as the case may be) the Security Trust and Intercreditor Deed.
	2. Security Trust and Intercreditor Deed
		1. The Borrower acknowledges that that the Intercreditor Agent acts on the instructions of the Instructing Parties pursuant to the Security Trust and Intercreditor Deed, to which the Borrower is not party.
		2. [Any amendment to the Security Trust and Intercreditor Deed that changes the voting requirements relating to the Instructing Parties who instruct the Intercreditor Agent shall only be made with the Borrower's prior written consent (not to be unreasonably withheld or delayed).]
	3. [Disenfranchisement of Defaulting Lenders
		1. For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
			1. the number or percentage of Lenders constituting the Instructing Parties; or
			2. whether:
				1. any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the relevant Facility; or
				2. the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents,

that Defaulting Lender's Commitment under the relevant Facility will be reduced by the amount of its Available Commitment under the relevant 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.

* + 1. For the purposes of this Clause 29.3, the Intercreditor Agent may assume that the following Lenders are Defaulting Lenders:
			1. any Lender which has notified the Intercreditor Agent that it has become a Defaulting Lender;
			2. any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) [or (c)][[209]](#footnote-210) 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 Intercreditor Agent) or the Intercreditor Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.][[210]](#footnote-211)

* 1. Replacement of Lender[[211]](#footnote-212)
		1. If:
			1. any Lender becomes a Non-Consenting Lender (as defined in paragraph (d) below); or
			2. [the Borrower] becomes obliged to repay any amount in accordance with Clause 5.1 (*Mandatory prepayment – Illegality*) or to pay additional amounts pursuant to Clause 10.1 (*Increased Costs*), Clause 9.2 (*Tax gross-up*) or Clause 9.3 (*Tax indemnity*) to any Lender,

then the Borrower may, on [•] Business Days' prior written notice to the Intercreditor 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 19 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**"), which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause ‎19 (*Changes to the Lenders*) 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 Utilisations and all accrued interest [(to the extent that the Intercreditor Agent has not given a notification under Clause ‎19.9 (*[Pro rata interest settlement*))], Break Costs and other amounts payable in relation thereto under the Finance Documents.

* + 1. The replacement of a Lender pursuant to this Clause 29.4 shall be subject to the following conditions:
			1. the Borrower shall have no right to replace any Agent;
			2. neither the Intercreditor Agent nor the Lender shall have any obligation to the Borrower to find a Replacement Lender;
			3. in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than [•] after the date on which that Lender is deemed a Non-Consenting Lender;
			4. in no event shall the Lender replaced under this Clause 29.4 be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents; and
			5. the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all Applicable Laws in relation to that transfer.
		2. A Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Intercreditor Agent and the Borrower when it is satisfied that it has complied with those checks.
		3. [In the event that:
			1. the Borrower or the Intercreditor 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;
			2. the consent, waiver or amendment in question requires the approval of all the Lenders; and
			3. Lenders whose Commitments aggregate more than [•] per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than [•] per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a "**Non-Consenting Lender**".][[212]](#footnote-213)

* 1. [Replacement of a Defaulting Lender
		1. The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving [•] Business Days' prior written notice to the Intercreditor 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 19 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under the Finance Documents to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Borrower, and 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 19 (*Changes to the Lenders*) [for a purchase price in cash payable at the time of transfer which is either:
			1. in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest [(to the extent that the Intercreditor Agent has not given a notification under Clause 19.9 ([*Pro rata interest settlement*)),] [Break Costs and other amounts payable in relation thereto under the Finance Documents; or
			2. in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrower and which does not exceed the amount described in paragraph (a)(i) above].
		2. Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:
			1. the Borrower shall have no right to replace any Agent;
			2. neither any Finance Party nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
			3. the transfer must take place no later than [10] Business Days[[213]](#footnote-214) after the notice referred to in paragraph (a) above;
			4. 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
			5. the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all Applicable Laws in relation to that transfer to the Replacement Lender.
		3. The Defaulting Lender shall perform the checks described in paragraphs (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Intercreditor Agent and the Borrower when it is satisfied that it has complied with those checks.][[214]](#footnote-215)
1. Confidentiality
	1. Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 30.2 (*Disclosure of Confidential Information*) [and Clause 30.3 (*[Disclosure to numbering service providers*)], and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

* 1. Disclosure of Confidential Information

Any Finance Party and its officers (as defined in the Banking Act) may disclose:

* + 1. to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors,[[215]](#footnote-216) partners and Representatives[[216]](#footnote-217) such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information 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 the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
		2. to any person:[[217]](#footnote-218)
			1. to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
			2. with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
			3. appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
			4. who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraphs (b)(i) or (b)(ii) above;
			5. 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;[[218]](#footnote-219)
			6. 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;
			7. [who is a person, or who belongs to a class of persons, specified in the second column of the Third Schedule to the Banking Act in accordance with the terms thereof;]
			8. [to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 19.8 ([*Security over Lenders' rights*)][[219]](#footnote-220);
			9. who is a Party;
			10. who is an Adviser; or
			11. with the consent of the Borrower,

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

* + - * 1. in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
				2. in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
				3. in relation to paragraphs (b)(v), (b)(vi) [and (b)(vii)][[220]](#footnote-221) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; [and]
		1. to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential 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 ofconfidentiality undertaking agreed between the Borrower and the relevant Finance Party;
		2. to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower [if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information]; and
		3. to any investor or potential investor in a securitisation (or similar transaction of broadly equivalent economic effect) of that Finance Party's rights or obligations under the Finance Documents, the size and term of the Facilities and the name[s] of the [Borrower][Obligors][[221]](#footnote-222).

Nothing in this Clause is to be construed as constituting an agreement between any Obligor and any Finance Party for a higher degree of confidentiality than that prescribed in Section 47 of, and in the Third Schedule to, the Banking Act.

* 1. [Disclosure to numbering service providers
		1. Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or the Borrower the following information:
			1. details of the Project and parties to the Transaction Documents;
			2. name, country of domicile and place of incorporation of the Borrower;
			3. date of this Agreement;
			4. Clause 33 (*Governing Law*);
			5. the names of the Agents and the Mandated Lead Arrangers;
			6. date of each amendment and restatement of this Agreement;
			7. amounts of, and names of, the Facilities (and any tranches);
			8. amount of Total Commitments;
			9. currency or currencies of the Facilities;
			10. type of the Facilities[[222]](#footnote-223);
			11. ranking of the Facilities;
			12. the Final Maturity Date for the Facilities;
			13. changes to any of the information previously supplied pursuant to paragraphs (i) to (xii) above; and
			14. such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

* + 1. The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
		2. The Borrower represents that none of the information set out in paragraphs (i) to (xiv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
		3. [The Intercreditor Agent shall notify the Borrower and the other Finance Parties of:
			1. the name of any numbering service provider appointed by the Intercreditor Agent in respect of this Agreement, the Facilities and/or the Borrower; and
			2. the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or the Borrower by such numbering service provider.][[223]](#footnote-224)]
	1. [Personal Data Protection Act]

[…][[224]](#footnote-225)

* 1. Entire agreement

This Clause 30 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

* 1. Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

* 1. Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

* + 1. of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 30.2 (*Disclosure of Confidential Information*) 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
		2. upon becoming aware that Confidential Information has been disclosed in breach of this Clause 30.
	1. Continuing obligations

The obligations in this Clause 30 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of [12] months from the earlier of:

* + 1. the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
		2. the date on which such Finance Party otherwise ceases to be a Finance Party.
1. [Contractual Recognition of Bail-In[[225]](#footnote-226)
	* 1. Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:
			1. any Bail-In Action in relation to any such liability, including (without limitation):
				1. a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
				2. a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
				3. a cancellation of any such liability; and
			2. a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.
		2. In this Clause 31:
2. "**Article 55 BRRD**" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.
3. "**Bail-In Action**" means the exercise of any Write-down and Conversion Powers.
4. "**Bail-In Legislation**" means:
	1. in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time [; and
	2. in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation].
5. "**EEA Member Country**" means any member state of the European Union, Iceland, Liechtenstein and Norway.
6. "**EU Bail-In Legislation Schedule**" means the document described as such and published by the Loan Market Association (or any successor person) from time to time.
7. "**Resolution Authority**" means any body which has authority to exercise any Write-down and Conversion Powers.
8. "**UK Bail-In Legislation**" means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).
9. "**Write-down and Conversion Powers**" means:
	1. in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule[;
	2. in relation to any other applicable Bail-In Legislation:
		1. any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
		2. any similar or analogous powers under that Bail-In Legislation]; and
	3. in relation to any UK Bail-In Legislation:
		1. any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and
		2. any similar or analogous powers under that UK Bail-In Legislation.]
10. Counterparts

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

**SECTION 10
GOVERNING LAW AND ENFORCEMENT**

1. Governing Law

This Agreement is governed by Singapore law.

1. Enforcement[[226]](#footnote-227) [[227]](#footnote-228)
	1. [Jurisdiction
		1. The courts of Singapore have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity) (a "**Dispute**").
		2. The Parties agree that the courts of Singapore are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
		3. Notwithstanding paragraphs (a) and (b) above, any Finance Party [or Secured Party] may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties [and Secured Parties] may take concurrent proceedings in any number of jurisdictions.][[228]](#footnote-229)

**OR**

**[Arbitration**

(a) Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (a "**Dispute**"), shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this Clause 34.1.

(b) The seat of the arbitration shall be [Singapore].

(c) The tribunal shall consist of [one/three][[229]](#footnote-230) arbitrators.

(d) The language of the arbitration shall be [English].][[230]](#footnote-231)

* 1. Service of process

The Borrower agrees that the documents which start any proceedings in relation to any Finance Document, and any other documents required to be served in connection with those proceedings, may be served on it by being delivered to [[the Borrower]/[*other person with a registered office in Singapore*] at] [its registered office or place of business in Singapore]/[*insert other address in Singapore*], or to such other address in Singapore as the Borrower may specify by notice in writing to the Intercreditor Agent. Nothing in this paragraph shall affect the right of any Finance Party to serve process in any other manner permitted by law. This Clause applies to proceedings in Singapore and proceedings elsewhere.

* 1. Waiver of Immunity

The Borrower waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

* + 1. the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
		2. the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its assets and revenues.
	1. [Central Bank

These waivers extend to the property of [•] central bank which the Borrower accepts and agrees is its property.][[231]](#footnote-232)

* 1. Resolution Procedure[[232]](#footnote-233)

If any matter is referred to the Resolution Procedure under the Finance Documents, the following procedure shall apply to resolve the matter, and such procedure shall not constitute a Dispute for so long as it is continuing in accordance with this Clause 34.5:

* + 1. The Borrower and the Intercreditor Agent shall discuss the challenged matter in good faith for a period not exceeding [five] Business Days (or any longer period as the Borrower and the Intercreditor Agent agree) with a view to agreeing the challenged matter. If at the end of that period the Borrower and the Intercreditor Agent have:
			1. reached an agreement on the challenged matter, the Intercreditor Agent shall notify the Borrower of such agreement in writing and such notification shall (absent manifest error) be final and conclusive with respect to the challenged matter; or
			2. not reached an agreement on the challenged matter, the challenged matter shall be referred to a person appointed in accordance with paragraph (b) below (an "**Expert**") for determination in accordance with the remainder of this Clause 34.5.
		2. The Expert shall be:
			1. a person having appropriate expertise with respect to, but no interest in the outcome of, the challenged matter referred to it;
			2. appointed in accordance with paragraph (c) below; and
			3. given terms of reference determined by the Intercreditor Agent (acting in consultation with the Borrower) stating the reason for which the relevant referral is being made to it.  The Borrower and the Intercreditor Agent may each provide the Expert with whatever supporting evidence they think appropriate and shall provide the Expert with such supporting evidence as is requested by the Expert.
		3. The Expert shall be appointed in accordance with the following procedure:
			1. The Intercreditor Agent shall issue a notice in writing to the Borrower to nominate a proposed Expert and reserve Expert to be appointed.
			2. If the Borrower does not agree to appoint the proposed Expert or the reserve Expert nominated by the Intercreditor Agent within [three] Business Days of the notice in writing of the nomination of the Expert by the Intercreditor Agent, the Borrower and the Intercreditor Agent shall discuss in good faith for a period not exceeding [five] Business Days (or any longer period as the Borrower and the Intercreditor Agent agree) with a view to agreeing the appointment.
			3. If an agreement is not reached on the appointment after the end of the period referred to in paragraph (c)(ii) above, the Borrower may issue a notice in writing to the Intercreditor Agent to nominate up to three alternative Experts within [three] Business Days from the end of such period.
			4. The Intercreditor Agent may select from any of the alternative Experts nominated by the Borrower within [three] Business Days of the notice in writing of the nomination of the Expert by the Borrower.
			5. If the Intercreditor Agent does not agree to appoint any of the alternative Experts nominated by the Borrower within [three] Business Days of the notice in writing of the nomination of the Expert by the Borrower, the Intercreditor Agent or the Borrower may request the President for the time being of the International Centre for Expertise (the International Chamber of Commerce) [or an equivalent independent and internationally recognised body to appoint an Expert][[233]](#footnote-234), **provided that** such person has, prior to the date of such appointment, confirmed in writing to the Borrower and the Intercreditor Agent that it has no conflict in acting as an Expert, has no interest in the outcome of the challenged matter and will remain neutral and impartial at all times when considering such referral.
		4. An Expert shall:
			1. not be bound to choose either the proposal made by the Borrower or that made by the Intercreditor Agent but shall be free to make its own reasonable determination of the point referred to it;
			2. act as an expert in determining the matter referred to it and not as an arbitrator; and
			3. give its decision as soon as practicable and, in any event, no later than [15] Business Days[[234]](#footnote-235) after the date of receipt of its terms of reference from the Intercreditor Agent (acting in consultation with the Borrower).
		5. At all times during a dispute but prior to the decision of an Expert pursuant to this Clause 34.5, the Assumptions, calculations or other determinations made by the Intercreditor Agent shall prevail for the purposes of any calculations to be made under the Finance Documents, **provided that** any Default that is continuing solely due to a calculation based on Assumptions that are the subject of a challenge under this Clause 34.5 (and which would not have occurred or be continuing if the relevant calculation had been based on Assumptions determined by the Borrower) shall be deemed not to be continuing until such time as the dispute relating to the relevant Assumptions is resolved in accordance with this Clause 34.5. The Expert's decision (when received) shall apply retrospectively to the relevant date to the extent that such decision was not available on that date.
		6. An Expert's determination shall (absent manifest error) be final and binding on all the Parties in respect of the subject matter referred to it. Any challenge to the Expert's determination on the ground of manifest error shall constitute a Dispute and be resolved in the manner set out in Clause 34.1 (*[Jurisdiction]*/*[Arbitration]*).
		7. Once an Expert has reached a decision on the challenged matters, the Borrower shall update any documents or information previously delivered by it to the Intercreditor Agent to reflect the outcome of that determination.
		8. The costs of any reference to an Expert will be borne by the Borrower, subject to the terms of reference agreed pursuant to this Clause 34.5.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of this Agreement.

1. Original Lenders
	1. Term Loan A Facility

| **Name of Original Term Loan A Facility Lender** | **Term Loan A Facility Commitment** |
| --- | --- |
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|  |  |
|  |  |

* 1. [[ ] Facility

| **Name of Original [ ] Facility Lender** | **[ ] Facility Commitment** |
| --- | --- |
|  |  |
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|  |  |
|  |  |

]

1. Conditions Precedent

| **No.** | **Condition precedent** |
| --- | --- |
| *Transaction Documents* |
|  | An original of each of the following Finance Documents:1. this Agreement;
2. each Accounts Agreement;
3. each Direct Agreement;
4. each Facility Agreement;
5. each Fee Letter;
6. [each Hedging Agreement;]
7. each Security Document;
8. the Security Trust and Intercreditor Deed;
9. the Shareholder Contribution and Sponsor Support Agreement;
10. [each Shareholder Loan Agreement;]
11. the Subordination Agreement; and
12. [*others*],

and each other Finance Document (if any) executed prior to Financial Close, in each case duly executed and in full force and effect. |
|  | A copy of each of the following Project Documents:[[235]](#footnote-236)1. each Construction Contract;
2. the O&M Contract;
3. [each][the] Supply Contract;
4. [each][the] Offtake Contract;
5. the Shareholders Agreement; and
6. [*others*],

and each other Project Document (if any) executed prior to Financial Close, in each case duly executed and in full force and effect. |
|  | Evidence that all taxes, stamp duties, notary fees, registration fees or other Taxes with respect to the Transaction Documents (if any) have been paid. |
|  | A copy of any other Authorisation or other document, opinion or assurance which the Intercreditor Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity, enforceability, perfection or admissibility in evidence in any Relevant Jurisdiction of any Transaction Document, in each case in full force and effect.[[236]](#footnote-237) |
| *Corporate approvals* |
|  | A certificate of each Major Project Participant (signed by its director) dated on or after the date of this Agreement:1. certifying that each copy document relating to it specified in this Schedule is correct, complete and in full force and effect as at the date of that certificate;
2. (in the case of the Borrower) confirming that borrowing the Total Commitments would not cause any borrowing or similar limit binding on it to be exceeded;
3. (in the case of each [Sponsor][Shareholder]) confirming that performing its obligations under the Shareholder Contribution and Sponsor Support Agreement would not cause any guaranteeing or similar limit binding on it to be exceeded; and
4. setting out or attaching a specimen of the signature of each person authorised by each resolution referred to below.
 |
|  | A copy of the up-to-date constitutional documents of each [Major Project Participant]. |
|  | A copy of a resolution(s) of the board of directors [(and in addition, if required for any Major Project Participant, the members)] of each Major Project Participant:1. approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute the Transaction Documents to which it is a party,
2. authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf, and
3. authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request [and Selection Notice][[237]](#footnote-238)) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.
 |
| *Legal opinions* |
|  | A legal opinion of the Lenders' Legal Adviser[s] addressed to the Mandated Lead Arrangers in respect of (among other things) the enforceability of the Finance Documents and validity of security governed by [*jurisdiction*] law[[238]](#footnote-239). |
|  | A legal opinion of the [Borrower's] Legal Adviser[s] addressed to the Mandated Lead Arrangers in respect of (among other things) the capacity and authority of each Obligor to enter into the Finance Documents to which it is a party. |
|  | [A legal opinion of the Borrower's Legal Adviser[s] addressed to the Mandated Lead Arrangers in respect of (among other things) the enforceability of the Project Documents under the laws of [*jurisdiction*].][[239]](#footnote-240) |
|  | [A legal opinion of the Borrower's Legal Adviser[s] addressed to the Mandated Lead Arrangers in respect of (among other things) the capacity and authority of each [Major Project Participant] to enter into the Project Documents to which it is a party.][[240]](#footnote-241) |
| *Financial Statements* |
|  | The Original Financial Statements of [the Borrower][and each [Sponsor/Shareholder/Major Project Participant]. |
| *Payments and funding* |
|  | The [Equity which is required to be contributed by Financial Close in accordance with the terms of the Shareholder Contribution and Sponsor Support Agreement has been contributed in full] to the Borrower.  |
|  | Evidence that all Fees and Costs then due from the Borrower (including legal fees and costs) have been paid or will be paid [by/before] the first Utilisation Date from proceeds of the [Term Loan A Facility][[241]](#footnote-242). |
| *Model and Ratio compliance* |
|  | The Original Financial Model, approved by the Model Auditor. |
|  | The Original Base Case and the list of Assumptions to be used in the Original Base Case agreed between the Borrower and the Intercreditor Agent (in consultation with the Technical Adviser). |
|  | The Initial Financial Report containing the items that are required for each Financial Report as set out in Clause 16.4 (*Financial Report*), showing compliance with the following Ratios: (i) Projected DSCR on each Calculation Date at least equal to [ ]:1.0 and (ii) LLCR on that date at least equal to [ ]:1.0. |
| *Budgets and reports[[242]](#footnote-243)* |
|  | The Original Construction Budget for the Construction Period containing the items that are required for each Construction Budget as set out in Clause 15 (*Information Undertakings*), approved by the Technical Adviser. |
|  | [A form of O&M Budget][The Original O&M Budget] for the Operating Period containing (to the extent projections are then available) the items that are required for each O&M Budget as set out in Clause 15 (*Information Undertakings*), approved by the Technical Adviser. |
|  | Each Construction Report that is required to be delivered prior to Financial Close. |
|  | Each E&S Report that is required to be delivered prior to Financial Close. |
|  | The form of O&M Report has been agreed with the Technical Adviser. |
|  | A report from the E&S Adviser:1. on the compliance of the Project and the Associated Facilities, the E&S Documents [and the E&S Management Systems] with the E&S Standards;
2. on the status of E&S Authorisations required to be obtained prior to Financial Close; and
3. confirming that the E&S Action Plan is capable of bringing the Project [and Associated Facilities] into compliance with E&S Standards (or indicating that there are justified deviations from the E&S Standards).
 |
|  | A report from the Insurance Adviser on compliance with the Schedule 6 (*Insurance*). |
|  | A report from the Model Auditor on the Financial Model and the Original Base Case. |
|  | A report from the Technical Adviser reviewing technical and operational aspects of the Project. |
|  | A report from the Lenders' Legal Adviser[s] setting out legal due diligence in respect of the Project. |
| *Security* |
|  | All Authorisations and other actions necessary or desirable for the effectiveness, attachment, perfection and first ranking of the Transaction Security have been effected or performed. |
|  | Delivery to the Security Agent of any item that is required under any Security Document to be delivered to the Security Agent prior to Financial Close. |
|  | All deeds, documents and ancillary papers relating to the Borrower's Real Property and the Site including site surveys, counterpart leases, licences, and any other deeds or documents necessary or desirable to assist each Security Agent to enforce the Transaction Security.[[243]](#footnote-244) |
| *Other Project-related conditions precedent* |
|  | A copy of each Authorisation that is required to be obtained by Financial Close under the Transaction Documents, the Compliance Standards and/or Schedule 5(*Authorisations*) (whichever is the earliest), in each case unconditional (or if conditional, together with evidence that the conditions have been satisfied or waived) and in full force and effect. |
|  | Each E&S Document, confirmed by the E&S Adviser to be in compliance with the E&S Standards. |
|  | [Evidence that the Borrower has conducted an Informed Consultation and Participation Process in respect of the Project.]/[Evidence that an initial Stakeholder Engagement Process has been undertaken.] |
|  | [A copy of the Decommissioning Plan.] |
|  | [Schedule 6 (*Insurance*) agreed between the Borrower and the Intercreditor Agent (acting on the advice of the Insurance Adviser).] |
|  | Copies of each policy of Insurance required to be effected during the Construction Period under Schedule 6 (*Insurance*), each endorsed with the form of Lenders' endorsement and applicable loss payee clause set out in Schedule 6 (*Insurance*) (or any other form acceptable to the Intercreditor Agent) and confirmed by the Insurance Adviser to be in full force and effect. |
|  | A Broker's Letter of Undertaking acceptable to the Intercreditor Agent in respect of the Insurances. |
|  | [Certified copies of each Hedging Agreements that have been entered into prior to Financial Close.] |
|  | Evidence that each of the Accounts has been opened, and account details of each Account. |
|  | Evidence of appointment of the Borrower's Auditor. |
|  | A copy of each Adviser's duly executed mandate letter (however described) for its scope of work up to Financial Close, and any additional mandate of any Adviser required by the Finance Parties for its scope of work after Financial Close. |
| * + 1.
 | Evidence that any process agent referred to in Clause 34.2 (*Service of process*) and other Finance Documents entered into prior to Financial Close has accepted its appointment. |
|  | [*Any additional conditions precedent relating to legal matters to be advised by the Lenders' Legal Adviser[s] following legal due diligence*.] |
|  | [*Any additional conditions precedent relating to technical matters specific to the Project to be advised by the Technical Adviser following technical due diligence*.] |

1. Form of Financial Report

To: [*insert name of Intercreditor Agent*] as Intercreditor Agent

From: [*Name of Borrower*] (the "**Borrower**")

Dated: [*insert date*]

**Financial Report**

**[*insert name of Borrower*] – Common Terms Agreement**

**dated [               ] (the "Agreement")**

* + 1. We refer to the Agreement. This is a Financial Report. Terms defined in the Agreement have the same meaning in this Financial Report unless given a different meaning in this Financial Report.
		2. We attach the Updated Base Case and set out below a list of all Assumptions on which the Updated Base Case is based:

[*Insert Assumptions.*]

* + 1. We confirm that, as at the Calculation Date falling on [*insert* date]:
			- 1. each of the Ratio as at such date is at the level set out in the table below.

| **Ratio** | **Level** |
| --- | --- |
| [Historic DSCR] | [  ]:1.0 |
| [Projected DSCR] | [  ]:1.0 |
| [LLCR] | [  ]:1.0 |

* + - * 1. the amount permitted under the Cash Waterfall to be transferred from the Operating Account to the Distribution Account is [ ] and the Distribution Tests have been met in respect of such transfer;
				2. for the purposes of each Ratio referred to in paragraph (a) above, set out below are details of the nature and amounts of the items set opposite it:

|  |  |
| --- | --- |
| [For the purposes of the Historic DSCR] | [*Insert details of:**Revenue and Available Cashflow actually received by it during the Calculation Period ending on [that Calculation Date] (taking into account any permitted Equity Cure in accordance with paragraph* (d)  *of Clause 18.2 (Immediate Events of Default)) of the Agreement)**Project Costs, Operating Costs and Debt Service payable or paid by it during that Calculation Period*] |
| [For the purposes of the Projected DSCR] | [*Insert details of:**Revenue and Available Cashflow projected to be received by it for [the][each] Calculation Period commencing on the date falling after [that Calculation Date].**Project Costs, Operating Costs and Debt Service projected to be payable by it during that Calculation Period*] |
| [For the purposes of the LLCR] | [*Insert details of:**Revenue and Discounted Cashflow for Debt Service projected to be received by it from [that Calculation Date] until the Final Maturity Date**Project Costs, Operating Costs and Debt Service projected to be payable by it from [that Calculation Date] until the Final Maturity Date*] |

**Borrower**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as Borrower | ) |   |
|  |  | Signature |

1. Form of Technical Adviser Certificate

To: [*insert name of Intercreditor Agent*] as Intercreditor Agent

From: [*Name of Technical Adviser*] (the "**Technical Adviser**")

Dated: [*insert date*]

**Technical Adviser Certificate**

[***insert name of Borrower*] – Common Terms Agreement**

**dated** [**] (the "Agreement")**

* + 1. We refer to the Agreement. This is a Technical Adviser Certificate. Terms defined in the Agreement have the same meaning in this Technical Adviser Certificate unless given a different meaning in this Technical Adviser Certificate.
		2. We confirm that:
			- 1. the Borrower has delivered all reports to be provided by the Borrower under Clause 15.5 (*Construction reports*) of the Agreement;
				2. [the use of proceeds of the proposed Utilisation under the Utilisation Request dated [ ] is in accordance with the most recent Construction Budget and are for the payment of Project Costs incurred [or expected to be incurred in the next 90 days] or such amount will be used to make the payments contemplated in paragraph (b), paragraph (c) or paragraph (d) of Clause 2.1 (*Purpose*) of the Agreement;
				3. each of the construction milestones set out in the Construction Budget has been achieved to date;
				4. we are not aware of the existence of any Funding Shortfall; and
				5. we are not aware of any reason why the [Project Completion Date]/[Financial Completion Date] will not be achieved on or before the Longstop Date.

**Technical Adviser**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as Technical Adviser | ) |   |
|  |  | Signature |

1. Authorisations

| **Authorisation** | **Dated/To be obtained by** |
| --- | --- |
| [  ] | [Dated [  ]]/[To be obtained by [  ]] |
|  |  |
|  |  |
|  |  |
|  |  |

1. Insurance[[244]](#footnote-245)
2. Broker's Letter of Undertaking

To: [*insert name of Intercreditor Agent*] acting as Intercreditor Agent for the Finance Parties (each as defined in the Common Terms Agreement referred to below)

* + 1. We act as [insurance broker]/[reinsurance broker] to [*insert name of Borrower*] (the "**Borrower**") with respect to the [insurances]/[reinsurances] referred to in this letter, which relate to the Project as outlined in the Common Terms Agreement (as defined below). We have been requested by the Borrower to provide you with certain confirmations relating to such [insurances]/[reinsurances].
		2. Unless otherwise defined in this letter, capitalised terms used in this letter shall have the meaning given to them in the common terms agreement dated [•] between, among others, you and the Borrower (the "**Common Terms Agreement**").
		3. We confirm that:
			- 1. all insurances and reinsurances (the "**Insurances**") currently required under paragraph [•] ([•]) of Schedule 6 (*Insurance*) to the Common Terms Agreement (the "**Insurance** **Schedule**") are in full force and effect and include all the requirements specified in the Insurance Schedule;
				2. in placing the Insurances, we have reviewed the information presented to us by the insureds and reinsured and all information furnished to us which was intended to be disclosed and which it was appropriate for us to disclose has been duly disclosed to the insurers and reinsurers;
				3. all premiums due to date in respect of the Insurances have been paid in full;
				4. the Insurances are, to the best of our knowledge and belief, placed with insurers [and reinsurers] which, at the time of placement, are reputable and financially sound and meet the other requirements of the Insurance Schedule; and
				5. a notice of security interest in substantially the form attached to this letter has been served on each insurer [and reinsurer] in respect of the Insurances and we will use all reasonable endeavours to ensure that each insurer [and reinsurer] acknowledges each such notice as soon as reasonably practicable.
		4. Pursuant to instructions received from the Borrower and in consideration of your approving our appointment or continuing appointment as brokers in connection with the Insurances, we hereby undertake:
			- 1. [to use all reasonable endeavours] to ensure that any insurance [or reinsurance] policy, as and when it is issued or renewed, contains endorsements substantially in the form set out in the Insurance Schedule;
				2. to notify you:

as soon as reasonably practicable:

if any insured or insurer cancels, suspends or gives notice of cancellation or suspension of any of the Insurances; or

of any changes which are proposed to be made in the terms of the Insurances and which, if effected, would result in any reduction in limits or coverage (including those resulting from extensions) or in any increase in deductibles, exclusions or exceptions;

at least [30] days prior to the expiry of any of the Insurances if we have not received instructions from the Borrower to negotiate renewal, and, in the event of our receiving instructions to renew, to advise you of the details as soon as reasonably practicable after receipt thereof;

to notify you at least [60] days prior to ceasing to act as brokers to the Borrower (unless owing to circumstances beyond our control we are unable to do so in which case we shall notify you as soon as reasonably practicable after becoming aware that we shall cease, or that we have ceased, so to act); and

immediately on becoming aware of any act or omission or of any event of which we have knowledge and which in each case in our reasonable assessment may invalidate or render unenforceable or void or voidable the whole or part of the cover provided under the Insurances;

* + - * 1. save as otherwise provided in the endorsements to the Insurances, to pay to the Compensation and Insurance Proceeds Account of the Borrower, [account number [•] with [•]] without any deduction of any kind any and all proceeds from the Insurances (including refunds of premium) received by us from the insurers [or reinsurers];
				2. to disclose to the insurers [and reinsurers] all information made available to us by the Borrower which should properly be disclosed to insurers [or reinsurers] as soon as reasonably practicable after we become aware of such information;
				3. to hold the insurance slips or contracts, the policies and any renewals thereof or any new or substitute policies (in each case, such new or substitute policies to be placed only with the Intercreditor Agent's consent), to the extent held by us, to the order of the Intercreditor Agent;
				4. to notify you, in the case of any renewal of any policy, if such renewal does not comply with the requirements of the Insurance Schedule; and
				5. to treat as confidential all information in relation to the Insurances marked as confidential and supplied to us by the Borrower or any Secured Party and not to disclose such information without the written consent of such supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time. Our obligations of confidentiality shall not conflict with our duties owed to the Borrower and shall not apply to disclosure required by an order of a court of competent jurisdiction or to information which is in the public domain.
		1. The above undertakings are given subject to:
			- 1. our lien, if any, on the policies referred to above for premiums due thereunder[[245]](#footnote-246) and subject to any insurer's [or reinsurer's] right of cancellation (if any) following default in excess of [60 days] in payment of such premiums, but we undertake to advise you immediately if any such premiums are not paid to us by the due date and to give you a reasonable opportunity of paying any such outstanding amounts; and
				2. our continuing appointment for the time being as insurance [and reinsurance] brokers to the Borrower.

This letter is governed by Singapore law.

[*insert name of broker*]

1. [Hedging[[246]](#footnote-247)
	* 1. **Requirements**
			+ 1. The Borrower may only enter into a Hedge Transaction with a Hedging Bank.
				2. A Hedging Bank may [only] be a Mandated Lead Arranger, a Lender or its Affiliate][[247]](#footnote-248)[or any other person] which in each case has a rating for its long-term unsecured and non credit-enhanced debt obligations of [•] or higher by S&P Global Ratings, a division of S&P Global Inc. or Fitch Ratings Ltd or [•] or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.
				3. The Borrower may only enter into a Hedge Transaction with a Hedging Bank that is party to the Security Trust and Intercreditor Deed. A Hedging Bank who accedes to the Security Trust and Intercreditor Deed will benefit from Transaction Security *pari passu* with the Lenders.
				4. Each Hedge Transaction shall only be documented under a Hedging Agreement, which shall be a [2002] ISDA Master Agreement together with a Schedule and any Confirmations thereto (each as defined in the [2002] ISDA Master Agreement), or any other document(s) agreed between the Borrower and the relevant Hedging Bank. Each Hedging Agreement must comply with the requirements set out in the Security Trust and Intercreditor Deed. The Borrower shall deliver a copy of each duly executed Hedge Transaction to the Intercreditor Agent promptly (and in any event within [three] Business Days) after its signature.
				5. Each Hedging Agreement will be governed by [*insert governing law*] and the Borrower's claims under each Hedging Agreement shall be subject to the Transaction Security. The Borrower and each Hedging Bank shall promptly take such action and execute all documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in the form that the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)) to perfect the Transaction Security over the Borrower's claims under each Hedging Agreement.
				6. Scheduled Hedging Payments shall only fall due and payable under each Hedge Transaction on an Interest Payment Date or Repayment Date.
				7. Each Hedging Agreement shall permit the Borrower (as an additional termination event) to, as a result of any Prepayment, pay any Hedging Termination Costs and reduce the notional amount hedged under that Hedge Transaction in connection with that Hedging Termination Costs so that the Borrower complies with the hedging levels specified in paragraph 2 (*Levels and timing*) below.
				8. The Borrower may not enter into any Hedge Transaction for speculative purposes and shall only enter into Hedge Transactions against the risks specified in paragraph 2 (*Levels and timing*) below.
				9. Each Hedging Agreement shall provide that the Hedging Bank shall not be entitled to terminate or close out any transaction under such Hedging Agreement prior to its maturity date unless any of the following events occurs[[248]](#footnote-249):

the Borrower has defaulted on a payment due under such Hedging Agreement [and such default has continued for more than [five] Business Days after notice of such default has been given to the Intercreditor Agent];

a Specified Insolvency Event (as defined in such Hedging Agreement) occurs with respect to the Borrower;

[any of the Loans has been accelerated][[249]](#footnote-250);

an Illegality or Tax Event (as each term is defined in the [2002] ISDA Master Agreement) has occurred;

the Available Commitments under all of the Facilities have been cancelled without any Utilisation having been made under any of the Facilities[[250]](#footnote-251); or

the Intercreditor Agent consents to the termination or close out,

(each, a "**Hedge Termination Event**") and such Hedging Bank shall be required to promptly notify the Intercreditor Agent of any right to terminate or close-out it may acquire under paragraphs (i), (ii) or (iv) above.

* + - * 1. Each Hedging Bank shall agree that it shall, at the request of the Intercreditor Agent, promptly terminate or close out in full[[251]](#footnote-252) any hedging transactions under all or any of the Hedging Agreements to which it is a party prior to their maturity if any acceleration action has been taken by the Intercreditor Agent under this Agreement or any enforcement action has been taken by any Lender pursuant to the Security Trust and Intercreditor Deed.
				2. Each Hedging Bank shall agree that:

it shall have no right to demand or receive any payment, prepayment or repayment of, or any distribution in respect of, or on account of, any liability of the Borrower under the Hedging Agreement to which it is a party or allow any such liability to be discharged by way of netting, set-off, combination or otherwise, except for (A) the receipt of scheduled payments under that Hedging Agreement (and the exercise of payment netting in respect thereof), (B) the receipt of termination or close out amounts payable in the event of any Hedge Termination Event and received from or through the Intercreditor Agent or a Security Agent in accordance with the terms of the Security Trust and Intercreditor Deed, (C) the receipt of payments following any termination or close out contemplated in paragraph (g) above, and (D) the exercise of voting rights provided for in paragraph (l) below; and

it shall not commence any enforcement action, including the institution of legal proceedings to recover any obligations under any Hedging Agreement, the petition or application for the winding-up, dissolution or administration of, or any similar action against the Borrower other than as requested by the Intercreditor Agent pursuant to the Security Trust and Intercreditor Deed.

* + - * 1. Each Hedging Bank shall agree that it shall not have any right to participate in decisions relating to the Finance Documents, except that:

any decision that (A) relates to the rights or obligations of such Hedging Bank in that capacity (including a right to, or priority of, any payment), (B) expressly requires the consent of such Hedging Bank or (C) would impose a new obligation or liability on such Hedging Bank may only be made with the consent of such Hedging Bank; and

any decision relating to any enforcement action to be taken against the Borrower and the manner any such enforcement action is conducted, in each case **provided that** such Hedging Bank has terminated or closed out the relevant transactions under the Hedging Agreement to which it is a party as permitted in paragraphs (g) and (i) above or as required by paragraph (j) above, and in such case the voting entitlement of such Hedging Bank shall be the net amount payable (and unpaid) by the Borrower upon such termination or close out[[252]](#footnote-253).

* + 1. **Levels and timing**

The Borrower shall effect Hedge Transactions in accordance with this Schedule in respect of each risk specified below, and to the levels and at the times specified below:

*Interest Rate Risk*

| **Required levels** | **Time period during which Hedge Transactions shall be maintained** |
| --- | --- |
| Within the range of [  ]% to [  ]% of (during the Availability Period) the principal amount of Loans subject to a floating rate of interest  | At all times from [Financial Close][[253]](#footnote-254) to the Final Maturity Date  |

[[*Currency / Commodity Prices / Other*] *Risk*

| **Required levels** | **Time period during which Hedge Transactions shall be maintained** |
| --- | --- |
| Within the range of [  ]% to [  ]% of the [Revenue received or projected in each current Budget to be received]/[*others*] during the current financial year  | At all times from the Commercial Operation Date]  |

1. [Pre-Approved New Lender List[[254]](#footnote-255)]
2. Form of Transfer Certificate

To: [*insert name of Intercreditor Agent*] as Intercreditor Agent

[*insert name of relevant Facility Agent*] as [*insert capacity*] Agent (the "**Relevant** **Facility Agent**")

From: [*Existing Lender*] (the "**Existing Lender**") and [*New Lender*] (the "**New Lender**")

Dated:

**[*insert name of Borrower*] – Common Terms Agreement**

**dated [               ] (the "Agreement")**

* + 1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
		2. We refer to Clause 19.5 (*Procedure for transfer*):
			- 1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with Clause 19.5 (*Procedure for transfer*), all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facility or Facilities as specified in the Schedule.
				2. The proposed Transfer Date is [      ].
				3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 25.2 (*Addresses*) are set out in the Schedule.
		3. The New Lender expressly acknowledges:
			- 1. the limitations on the Existing Lender's obligations set out in paragraphs (a) and (c) of Clause 19.4 (*Limitation of responsibility of Existing Lenders*); and
				2. that it is the responsibility of the New Lender to ascertain whether any document is required or any formality or other condition requires to be satisfied to effect or perfect the transfer contemplated by this Transfer Certificate or otherwise to enable the New Lender to enjoy the full benefit of each Finance Document.
		4. The New Lender confirms that it is a "New Lender" within the meaning of Clause 19.1 (*Assignments and transfers by the Lenders*) of the Agreement.
		5. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
		6. This Transfer Certificate is governed by Singapore law.
		7. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**THE SCHEDULE
COMMITMENT/RIGHTS AND OBLIGATIONS TO BE TRANSFERRED**

[*insert relevant details, including the specific Facility or Facilities to which the transfer relates*]

[*Facility Office address, fax number and attention details for notices and account details for payments*,]

**The Existing Lender**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as Existing Lender | ) |   |
|  |  | Signature |

**The New Lender**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as New Lender | ) |   |
|  |  | Signature |

This Transfer Certificate is accepted by the Intercreditor Agent and the Relevant Facility Agent and the Transfer Date is confirmed as      [      ].

**The Intercreditor Agent**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as Intercreditor Agent | ) |   |
|  |  | Signature |

**The Relevant Facility Agent**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as[ insert capacity] Agent | ) |   |
|  |  | Signature |

NOTE:

\* Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.

1. Form of Assignment Agreement

To: [*insert name of Intercreditor Agent*] as Intercreditor Agent

[*insert name of relevant Facility Agent*] as [*insert capacity*] Agent (the "**Relevant** **Facility Agent**")

[*insert name of Borrower*] as Borrower

From: [*Existing Lender*] (the "**Existing Lender**") and [*New Lender*] (the "**New Lender**")

Dated:

**[*insert name of Borrower*] – Common Terms Agreement**

**Dated [                ] (the "Agreement")**

* + 1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
		2. We refer to Clause 19.6 (*Procedure for assignment*):
			- 1. The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Facility or Facilities specified in the Schedule.
				2. The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Finance Documents specified in the Schedule.
				3. The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.[[255]](#footnote-256)
		3. The proposed Transfer Date is [      ].
		4. On the Transfer Date, the New Lender becomes Party to the Finance Documents as a Lender.
		5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 25.2 (*Addresses*) are set out in the Schedule.
		6. The New Lender expressly acknowledges:
			- 1. the limitations on the Existing Lender's obligations set out in paragraphs (a) and (c) of Clause 19.4 (*Limitation of responsibility of Existing Lenders*); and
				2. that it is the responsibility of the New Lender to ascertain whether any document is required or any formality or other condition requires to be satisfied to effect or perfect the assignment contemplated by this Assignment Agreement or otherwise to enable the New Lender to enjoy the full benefit of each Finance Document.
		7. This Assignment Agreement acts as notice to the Intercreditor Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 19.7 (*Copy of Transfer Certificate, Assignment Agreement to Borrower*), to the Borrower of the assignment referred to in this Assignment Agreement.
		8. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
		9. This Assignment Agreement is governed by Singapore law.
		10. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

**THE SCHEDULE
RIGHTS TO BE ASSIGNED AND OBLIGATIONS TO BE RELEASED AND UNDERTAKEN**

[*insert relevant details, including the specific Facility or Facilities to which the assignment relates*]

[*Facility office address, fax number and attention details for notices and account details for payments*]

**The Existing Lender**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as Existing Lender | ) |   |
|  |  | Signature |

**The New Lender**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as New Lender | ) |   |
|  |  | Signature |

This Assignment Agreement is accepted by the Intercreditor Agent and the Relevant Facility Agent and the Transfer Date is confirmed as [         ].

Signature of this Assignment Agreement by the Intercreditor Agent constitutes confirmation by the Intercreditor Agent of receipt of notice of the assignment referred to herein, which notice the Intercreditor Agent receives on behalf of each Finance Party.

**The Intercreditor Agent**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as Intercreditor Agent | ) |   |
|  |  | Signature |

**The Relevant Facility Agent**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as [insert capacity] Agent | ) |   |
|  |  | Signature |

NOTE:

\* Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.

1. Form of Accession Certificate

To: [ [      ] as Intercreditor Agent] /[[      ] and [      ] as Facility Agents] [[256]](#footnote-257)

From: *Insert full name of acceding party*] (the "**Acceding Party**")

Dated:

**[*insert name of Borrower*] – Common Terms Agreement**

**dated [          ] (the "Common Terms Agreement")**

* + 1. We refer to the Common Terms Agreement. This is an Accession Certificate, and terms used in this Accession Certificate have the same meaning as in the Common Terms Agreement.
		2. This Accession Certificate is delivered to you pursuant to Clause 20 (*Accession of New Agent or Account Bank*) of the Common Terms Agreement.
		3. In consideration of us as the Acceding Party being accepted as successor [*insert capacity* *of acceding Agent/Account Bank*] to the Finance Documents to which the retiring [*insert capacity of retiring Agent/Account Bank*] was party, the Acceding Party hereby confirms that, as from [*insert date*] or if later the date of your counter-signature of this Accession Certificate, we:
			- 1. intend to be party to the Finance Documents to which the retiring [*insert capacity of retiring Agent/Account Bank*] was party as successor [*insert capacity* *of acceding Agent/Account Bank*];
				2. undertake to perform all the obligations expressed in the Finance Documents to be assumed by us as successor [*insert capacity* *of acceding Agent/Account Bank*]; and
				3. agree that we shall be bound by all the provisions of the Finance Documents to which the retiring [*insert capacity of retiring Agent/Account Bank*] was party as if it had been an original party to those documents as [*insert capacity* *of acceding Agent/Account Bank*].
		4. The address, fax number and attention details for notices to us as the Acceding Party for the purposes of [Clause 25 (*Notices*) of the Common Terms Agreement]/[*insert relevant notice clause if the acceding party is not to be party to the Common Terms Agreement*], and our account details for payments to us as the Acceding Party, are set out below.
		5. This Accession Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Accession Certificate.
		6. This Accession Certificate is governed by Singapore law.

**The Acceding Party**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |   |
|  |  | Signature |

[*Insert address, fax number and attention details of Acceding Party for notices and account details for payments*]

**The** [**Intercreditor Agent] /** [[**] Facility Agent]**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of company*] | ) |  |
| in its capacity as [insert capacity] | ) |   |
|  |  | Signature |

1. Notices[[257]](#footnote-258)

| **Party** | **Address** | **Fax, attention** | **Email** |
| --- | --- | --- | --- |
| Borrower |  |  |  |
| [*insert name*] as Mandated Lead Arranger |  |  |  |
| [*insert name*] as Mandated Lead Arranger |  |  |  |
| Intercreditor Agent |  |  |  |
| Term Loan A Facility Agent |  |  |  |
| [[ ] Facility Agent] |  |  |  |
| [*insert name*] as Original Term Loan A Facility Lender |  |  |  |
| [[*insert name*] as Original [ ] Facility Lender]] |  |  |  |
| Offshore Security Agent |  |  |  |
| Onshore Security Agent |  |  |  |
|  |  |  |  |

**SIGNATURES[[258]](#footnote-259)**

**THE BORROWER**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of Borrower*] | ) |   |
|  |  | Signature |

**THE MANDATED LEAD ARRANGER**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of Mandated Lead Arranger*] | ) |   |
|  |  | Signature |

**THE MANDATED LEAD ARRANGER**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of Mandated Lead Arranger*] | ) |   |
|  |  | Signature |

**THE ORIGINAL TERM LOAN A FACILITY LENDER[[259]](#footnote-260)**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of Term Loan A Facility Lender*] | ) |   |
|  |  | Signature |

**THE ORIGINAL [•] FACILITY LENDER[[260]](#footnote-261)**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of [ ] Facility Lender*] | ) |   |
|  |  | Signature |

**THE INTERCREDITOR AGENT**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of Intercreditor Agent*] | ) |   |
|  |  | Signature |

**THE TERM LOAN A FACILITY AGENT**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of Term Loan A Facility Agent*] | ) |   |
|  |  | Signature |

**THE [ ] FACILITY AGENT**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of [ ] Facility Agent*] | ) |   |
|  |  | Signature |

**THE OFFSHORE SECURITY AGENT**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of Offshore Security Agent*] | ) |   |
|  |  | Signature |

**THE ONSHORE SECURITY AGENT**

|  |  |  |
| --- | --- | --- |
| Signed by [*insert signatory name(s)*], | ) |  |
| [a] duly authorised representative[s] | ) |  |
| for and on behalf of | ) |  |
| [*insert name of Onshore Security Agent*] | ) |   |
|  |  | Signature |

[***Insert execution blocks for all other parties***]

1. There are different ways of documenting the accession mechanics. One approach is to have one common accession deed for additional obligors and senior creditors to accede to all relevant finance documents (to be attached to the Security Trust and Intercreditor Deed and the Shareholder Contribution and Sponsor Support Agreement) and a transfer certificate/assignment agreement for lenders (to be attached to each Facility Agreement). [↑](#footnote-ref-2)
2. Delete or duplicate as necessary. This template Common Terms Agreement ("**CTA**") assumes that there will be two or more term loan facilities, which will be used to partially fund Project Costs. Additional changes would need to be included for the additional facilities such as working capital or letter of credit facilities. [↑](#footnote-ref-3)
3. Where there are a number of facilities with different funders, there is generally one overall agent coordinating the facilities and then an individual Facility Agent for each separate facility. This template CTA refers to the overall agent as the Intercreditor Agent throughout. If there is only one facility in the transaction, there is no need for the Intercreditor Agent and the role of the Intercreditor Agent can be played by the Facility Agent; and the references to the Intercreditor Agent in this template CTA should be replaced by the Facility Agent. [↑](#footnote-ref-4)
4. As per the above, if there are multiple facilities, insert the identity of each Facility Agent. [↑](#footnote-ref-5)
5. This Agreement envisages that the Offshore Security Trustee/Agent will hold the Transaction Security created under the Security Documents in respect of assets outside of the Project Jurisdiction as trustee and this is reflected here. For simplicity, this Agreement refers to Offshore Security Agent but readers could make a global change to refer to the term Offshore Security Trustee if preferred. If, for any reason, the Offshore Security Agent is to hold the offshore Transaction Security as an agent, a number of issues should be considered and the trustee provisions set out in the Security Trust and Intercreditor Deed will need to reflect such considerations. [↑](#footnote-ref-6)
6. Depending on the security package, it may be necessary to have an Onshore Security Agent and an Offshore Security Agent (as an offshore entity might not have the required authorities to hold any security in the Project Jurisdiction or enforce it in local courts). [↑](#footnote-ref-7)
7. Include other relevant parties and facilities, such as letter of credit, working capital, as applicable. [↑](#footnote-ref-8)
8. This will typically be a Majority Lenders decision – also see footnote 46. [↑](#footnote-ref-9)
9. Strong borrowers/Sponsors may also request the option of funding the DSRA through a Sponsor guarantee in which case a minimum credit rating in respect of the Sponsor may be required for such Sponsor guarantee to be accepted by lenders. If that is acceptable, revise this paragraph to reflect as needed. [↑](#footnote-ref-10)
10. An onshore/offshore account bank split has been assumed on the basis of there being both onshore and offshore accounts. However, this is subject to what is permissible in the relevant Project jurisdiction, as some jurisdictions may limit the ability of the Borrower to maintain offshore accounts in the absence of special permissions, which may or may not be readily obtainable. [↑](#footnote-ref-11)
11. Due to the differences between how different projects' revenue is structured along with the regulations applicable to accounts in each jurisdiction, account bank provisions are typically included in separate accounts agreements – particularly where there is an onshore and offshore account bank split as has been assumed here. [↑](#footnote-ref-12)
12. Depending on the project, other advisers may be appointed in areas such as: (1) market (e.g. where the revenues generated by the Project are dependent on a market); (2) fuel or raw material (e.g. where inputs to the Project are not provided under a long-term contract); (3) traffic (e.g. for projects where revenues are dependent on traffic flows); or (4) natural resources (e.g. on a mining or upstream oil and gas project, a reserve report and feasibility report may be required; on a wind power project, advice on energy yield may be required). [↑](#footnote-ref-13)
13. Insert amount. [↑](#footnote-ref-14)
14. These are facilities or activities that are not funded as part of the Project but are within the control or influence of the Borrower and, in the judgment of the Finance Parties, are: (a) directly and significantly related to the Project; (b) carried out, or planned to be carried out, contemporaneously with the Project; and (c) necessary for the Project to be viable and would not have been constructed, expanded or conducted if the Project did not exist. [↑](#footnote-ref-15)
15. Parties may wish to consider if any amount released or projected to be released from the MRA to the Operating Account in the relevant period, to the extent such release is permitted in accordance with the Finance Documents, should be included here. See paragraph (b)(iii) below. [↑](#footnote-ref-16)
16. There are different ways in which Equity contribution can be structured. Generally, the following issues should be considered:

	1. will all equity be funded "upfront", or will it be contributed *pro rata* with Utilisations of the Loans, or back-ended (and if so, will it be backed by credit support, and can Lenders 'accelerate' equity payments following an Event of Default) or in accordance with an equity contribution instalment schedule;
	2. where equity is to be back-ended (i.e. contributed at the end of the construction period), will an equity bridge structure be used (and if so, when and how will the equity bridge loan be repaid);
	3. will a portion of equity be on a standby basis (and if so, will it be backed by credit support); and
	4. can sponsors contribute equity in the form of any subordinated debt (shareholder loans) as well as true share capital (if so, the arrangements will need to comply with thin capitalisation rules and technical insolvency concerns in the relevant jurisdiction)? [↑](#footnote-ref-17)
17. This definition is used in Clause 5.10 (*Restrictions*) and Clause 6.4 (*Break Costs*). If the transaction involves fixed rate funding, there may be yield protection, swap or other unwind costs that need to be captured here. [↑](#footnote-ref-18)
18. Definition may require further amendment depending on Loan currencies and requirements of the Lenders in respect of decision-making. [↑](#footnote-ref-19)
19. For example, if required to determine whether to apply physical loss or damage insurance proceeds in mandatory prepayment or in reinstatement and repair. [↑](#footnote-ref-20)
20. This will often coincide with the repayment dates. Typically, ratios are tested: (1) at signing or financial close (conditions precedent ("**CP**")); (2) on the Project Completion Date; and (3) on repayment dates. [↑](#footnote-ref-21)
21. Update as necessary to reflect the relevant Calculation Period and the amortisation schedule (e.g. if the Calculation Period is 12 months and the Repayment Dates are semi-annual this will be the second Calculation Date immediately following such Calculation Date). [↑](#footnote-ref-22)
22. Include bracketed words if there is a Historic DSCR in your transaction. If there will be more than one initial "stub period" shorter than the default [six/12] month Calculation Period, adjust the wording in this paragraph (b) accordingly. [↑](#footnote-ref-23)
23. This definition is generally used to describe the commencement of the operation of the project. In certain transactions (e.g. ECA backed) it may affect the Availability Period and the First Repayment Date. [↑](#footnote-ref-24)
24. This Agreement assumes there will be a single construction contractor. Should there be multiple contractors, changes will be required across the draft including in relation to Project completion and potentially additional sponsor support. [↑](#footnote-ref-25)
25. Consider whether cost savings should be shared between debt and equity through the equity true-up. If so, any resulting Restricted Payments funded by the equity true-up utilisation should be deducted from the total Equity when applying the Debt to Equity Ratio to size the equity true-up utilisation. [↑](#footnote-ref-26)
26. The Borrower may benefit from assurances (rather than direct agreements) from relevant authorities in relation to consents/authorisations and these would typically be mentioned here too. [↑](#footnote-ref-27)
27. [↑](#footnote-ref-28)
28. This definition, together with the covenant in paragraph (g) of Clause 17.22 (*Project Documents*), is intended to replace the traditional reserved discretions schedule. [↑](#footnote-ref-29)
29. Amend if DSRA balance is required to be a different sum (e.g. in some projects this may be the average or the highest debt service instalment or the period may be greater). [↑](#footnote-ref-30)
30. Refer to the current version of the Equator Principles as at the Signing Date. These are available online at <https://equator-principles.com/>*.* [↑](#footnote-ref-31)
31. Certain projects may require the project company to undertake or procure (i) an assessment of potential adverse human rights impacts in accordance with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework United Nations, New York and Geneva, 2011 and/or (ii) an assessment of the potential adverse climate change impacts in accordance with the Task Force on Climate-related Financial Disclosures published on 15 June 2017. These can be undertaken separately or included in the E&S Impact Assessment. [↑](#footnote-ref-32)
32. No separate definition of E&S Audit is required if this will be covered within the scope of the E&S Impact Assessment. [↑](#footnote-ref-33)
33. The documentation listed here is what would typically be required by banks seeking to ensure that a project was in compliance with the Equator Principles and the World Bank Environmental and Social Framework. DFIs and ECAs may have additional requirements in relation to environmental and social matters. [↑](#footnote-ref-34)
34. The template Term Sheet includes options to include other facilities, such as the working capital facility, the standby facility, etc. Insert references to each additional facility (and related definitions) as necessary. Additional adjustments to be made for specific facilities (e.g. ECA or DFI- specific requirements). [↑](#footnote-ref-35)
35. To be used if there are multiple facilities. [↑](#footnote-ref-36)
36. Consider whether this should be included for the relevant transaction. [↑](#footnote-ref-37)
37. This Agreement assumes that there will be one Project Completion Date. Some transactions also include a Financial Completion Date where additional requirements are included prior to the release of sponsor support or the permitted payment of Restricted Payments. [↑](#footnote-ref-38)
38. Insert if including this exclusion and the applicable GAAP is IFRS. [↑](#footnote-ref-39)
39. If including this exclusion and the applicable GAAP is not IFRS, insert the appropriate reference point for the applicable GAAP. [↑](#footnote-ref-40)
40. Delete this concept throughout the document if not relevant for your transaction (e.g. on infrastructure projects, the project will simply need to be operated and maintained once built and will not require a steady feed of fuel/feedstock/raw materials; this concept also will not be required on e.g. wind and solar projects, since these natural inputs do not need to be contracted). [↑](#footnote-ref-41)
41. These amounts are likely to include amounts in the Compensation and Insurance Proceeds Account, and insurance proceeds permitted to be used for reinstatement. [↑](#footnote-ref-42)
42. This is only applicable to the extent there are any pre-completion Revenues that are available to be applied towards payment of Project Costs. [↑](#footnote-ref-43)
43. This is intended to capture up-front costs that may be payable for entering into a hedging arrangement. For most interest rate hedging, any costs tend to be amortised over the life of the hedge and included in the periodic payments. If this is the case, this definition will not be required (as such costs would not be expected to be prioritised in the cashflow waterfall). [↑](#footnote-ref-44)
44. Include if there is a Historic DSCR in your transaction. [↑](#footnote-ref-45)
45. If the deal is to be syndicated after the Agreement is signed this definition may need to be amended as follows: "**Information Memorandum**" means the document in the form approved by the Borrower concerning the Project which, at the Borrower's request and on its behalf, is to be prepared in relation to this transaction and distributed by the Mandated Lead Arranger prior to the Syndication Date in connection with syndication. A new definition of "Syndication Date" should also be added. [↑](#footnote-ref-46)
46. As outlined in the Explanatory Note, this template CTA contemplates that the intercreditor arrangements and voting mechanisms (including the definition of "Majority Lenders" and matters which would be subject to all Lenders' decision) will be included in a Security Trust and Intercreditor Deed. [↑](#footnote-ref-47)
47. Third party liability insurance proceeds are paid directly to the third party and so are not captured under this template CTA (as the Borrower will not receive the funds). [↑](#footnote-ref-48)
48. This is used to limit certain representations in Clause 14 (*Representations*) and undertakings in Clause 17 (*General Undertakings*). If it is to be included it is important to include all legal opinions (including post-closing opinions) and consider all the terms of the relevant opinions. [↑](#footnote-ref-49)
49. To include if an LLCR test is required (usually for debt sizing purposes and as a Financial Completion Date condition). [↑](#footnote-ref-50)
50. To be used if there are multiple facilities. If there is only one facility, adopt the concept of "Facility Loan" in the definition of "Loan". [↑](#footnote-ref-51)
51. What the appropriate longstop date will be on a specific project is likely to be the subject of negotiation and consideration will need to be given to various factors, including the contractual framework and Financial Model. [↑](#footnote-ref-52)
52. Counterparties will only be classified as Major Project Participants for so long as they have material obligations under the Project Documents. Shareholders may require that they are also only Major Project Participants for so long as they have obligations under the relevant equity support documents. [↑](#footnote-ref-53)
53. Terminology to be amended depending on the form of the Construction Contract. [↑](#footnote-ref-54)
54. This definition should be discussed among the parties. [↑](#footnote-ref-55)
55. Adjust to reflect Technical Adviser's recommendations. Typically, the MRA will be built up over time. [↑](#footnote-ref-56)
56. Adjust the definition and the description for the relevant project as appropriate (e.g. this will be changed to "Power Purchase Agreement" for power projects, or a more generic term e.g. "Revenue Contract" can be used). Amend as necessary to reflect the structure of the project (e.g. in some projects there may be multiple offtake contracts and in concession projects there may not be an offtake/revenue contract). [↑](#footnote-ref-57)
57. Adjust the definition and the description of this term for consistency with the definition of "Offtake Contract". [↑](#footnote-ref-58)
58. Delivery of the agreed and audited Financial Model will be a CP to financial close, but in practice the Lenders will require it to be agreed before signing the Finance Documents. [↑](#footnote-ref-59)
59. To be used if there are multiple facilities. [↑](#footnote-ref-60)
60. In some projects the project company may undertake the operation and management of the project and there may not be a separate O&M Contract/O&M Contractor, in which case an operating management plan and additional covenants may be necessary. Consider any consequential amendments which may be necessary to reflect such change. [↑](#footnote-ref-61)
61. If necessary, expand the definitions of "O&M Contractor" and "O&M Contract" to include any replacement O&M Contractor and O&M Contract. If such replacement concept is included, consider whether such replacement would require the Intercreditor Agent's prior written consent or if a replacement regime should be included in this Agreement. [↑](#footnote-ref-62)
62. This is used to limit certain representations in Clause 14 (*Representations*) and undertakings in Clause 17 (*General Undertakings*). If it is to be included it is important to include all legal opinions (including post-closing opinions) and consider all the terms of the relevant opinions. [↑](#footnote-ref-63)
63. There may be other contracts under which liquidated damages are payable – for instance, the concession agreement or offtake agreement – and where this is the case, such contracts should be included here. [↑](#footnote-ref-64)
64. Insert reference to the relevant EHS Guidelines for this Project. [↑](#footnote-ref-65)
65. This Projected DSCR test may not be included in projects where any market risk is being taken (e.g. traffic risk on a road project or pricing risk for a resource project). In such scenarios alternative operational reliability tests may be required. [↑](#footnote-ref-66)
66. This LLCR test is useful/relevant where there is some cyclicality or particular volatility in the cost or revenue side of the project and financiers would like to test this to give some comfort in addition to the level of minimum DSCR. [↑](#footnote-ref-67)
67. This would cover, among other things, the Historic DSCR level not being less than the minimum Historic DSCR level that is required as set out in Clause 18.2 (*Immediate Events of Default*). [↑](#footnote-ref-68)
68. Definition to be adjusted depending on the specifics of the Fuel/Feedstock. [↑](#footnote-ref-69)
69. Assuming these are funded out of the debt and equity, MRA may be funded at a later date depending on project major maintenance cycles. [↑](#footnote-ref-70)
70. Delete if not relevant – see note in the definition of "[Fuel]/[Feedstock]". [↑](#footnote-ref-71)
71. Amend as necessary to reflect the structure of the project (e.g. in concession projects there may not be a project output). [↑](#footnote-ref-72)
72. Parties to consider whether revolving facilities should be included or excluded from the Projected DSCR. [↑](#footnote-ref-73)
73. Include if there is a projected DSCR in your transaction. Whether or not the transaction also includes a projected (forward-looking) DSCR test in addition to the Historic DSCR test reproduced here will be specific to the deal and the market but it is becoming common in every project for such test to be included. Parties to consider whether this should be tested (i) either in 6 or 12 month periods and (ii) if the latter, whether over two consecutive 6 month periods or one 12 month period (to allow for smoothing to address seasonality, e.g. of renewable energy projects). [↑](#footnote-ref-74)
74. Adjust for the ratios used in your transaction. The most common uses of ratios are as follows:

(1) financial/project completion test (will the project as built produce cashflows to meet original expectations?);

(2) distribution test (if not met, cash can be locked up or used to prepay debt);

(3) Event of Default.

Other examples of where ratios may be used are: (i) incurring additional debt (there may be a prohibition on incurring additional debt unless, taking into account the additional debt servicing burden, specified ratios can be met) and also on repayment (to either determine the repayment amount or trigger a cash sweep); (ii) partial refinancing (if such refinancing is permitted at all, it may be subject to specified ratio tests being satisfied); (iii) reinstatement following insurance claim (Lenders may require ratio tests following an insurance claim to demonstrate that insurance proceeds should be applied in reinstatement as opposed to mandatory prepayment); and (iv) in conjunction with mandatory prepayments. [↑](#footnote-ref-75)
75. Include if the interest rate of the Loan is to be determined by reference to SIBOR. [↑](#footnote-ref-76)
76. See footnote 138. [↑](#footnote-ref-77)
77. In certain projects (e.g. power projects), the revenue stream will come from selling the production of the plant. In other projects (e.g. infrastructure projects), the revenue stream will instead come from users of the infrastructure. There may also be an availability-style payment revenue stream. Adjust this limb to suit your transaction. [↑](#footnote-ref-78)
78. Delay Liquidated Damages, and Loss of Revenue Insurance proceeds, are seen as "revenue-replacing" (i.e. replacing the revenue that would have been received by the Borrower had the works been completed on time/had the casualty event not occurred, and so they are treated as Revenue. Performance Liquidated Damages, however, since they compensate for reduced performance/quality levels, are treated as Compensation (and so are subject to the mandatory prepayment regime for Compensation). [↑](#footnote-ref-79)
79. Include reference to any asset in the Project Jurisdiction captured by any additional security document included in paragraph (g) of this definition. [↑](#footnote-ref-80)
80. Seek advice from local counsel on whether additional security documents need to be entered into to take security over the assets in or outside of the Project Jurisdiction, or if security could be granted under the general security documents referred to in paragraphs (a) or (e) of the definition of "Security Documents". [↑](#footnote-ref-81)
81. An alternative way of documenting these provisions is to enter into a separate Security Trust Deed (as between the Borrower and Finance Parties) and a separate Intercreditor Agreement (as between the Finance Parties only). Consider what the preferred approach is and amend this Agreement accordingly. [↑](#footnote-ref-82)
82. The concept of "Shareholders" should be included if the Sponsors do not directly own the Borrower. If the Sponsors directly own the Borrower, make corresponding changes to references to "Shareholder" to "Sponsor". [↑](#footnote-ref-83)
83. If the Sponsors do not directly own the Borrower, the equity support provided by the Shareholders and the Sponsors may be contained in different agreements (e.g. the equity contribution agreement and the sponsor support agreement). For the purpose of this Agreement, such agreement is referred to as the Shareholder Contribution and Sponsor Support Agreement, but consider updating this term for your transaction as necessary. [↑](#footnote-ref-84)
84. The provisions relating to Equity contribution (e.g. when such contributions are required to be made and any credit support)and any other customary support and undertakings provided by the Sponsors/Shareholders in relation to the Project (e.g. share retention, subordination and other general undertakings) are typically included in the Shareholder Contribution and Sponsor Support Agreement and therefore are not included in this template CTA. [↑](#footnote-ref-85)
85. This is an important definition. It is used, in particular, in the definitions of Affiliate and Holding Company. [↑](#footnote-ref-86)
86. The terms (such as interest rate, fees, availability period and specific conditions precedent) which are specific to a Facility will be documented in the relevant Facility Agreement under which such Facility is made available. [↑](#footnote-ref-87)
87. Other currencies referred to within the Finance Documents should also be defined. [↑](#footnote-ref-88)
88. This will vary. Check the Term Sheet. Note that the purpose of an ECA facility is likely to be more specific (and may make reference to eligible costs and premium). [↑](#footnote-ref-89)
89. The Borrower will be permitted to pay Project Costs as long as these are in line with the relevant budgets (subject to permitted variances). Finance Parties will want to have approval rights if costs are in excess of budget. Some payments may also be subject to approval by the Technical Adviser. [↑](#footnote-ref-90)
90. This paragraph will only be required if there are separate initial conditions precedent in any of the Facility Agreements. Ordinarily, there will be only one set of initial conditions precedent covering all facilities, but separate lists of conditions precedent in individual facilities may be required if there are institutions such as ECAs with requirements specific to their facilities. [↑](#footnote-ref-91)
91. As with initial conditions precedent, there should only be separate conditions to utilisation if there are facilities with specific requirements (such as ECA facilities). [↑](#footnote-ref-92)
92. This assumes that equity will be contributed *pro rata* with Utilisations of the Facilities. Adjust to suit your transaction. [↑](#footnote-ref-93)
93. Amend depending on the requirement of the Lenders. [↑](#footnote-ref-94)
94. ECAs to advise minimum notice period for drawdowns. [↑](#footnote-ref-95)
95. Such a true-up may be appropriate to allow the Sponsors to take some or all of the benefit of any cost saving during construction, particularly in circumstances where base equity has been funded upfront (including through an equity bridge facility). Sponsors will have a disproportionate share of the cost saving if the equity true-up allows a higher debt to equity ratio than in the base case, while if the same debt to equity ratio is used, the cost savings will be shared proportionately between Sponsors and Lenders. [↑](#footnote-ref-96)
96. This is sometimes funded by Acceptable Credit Support. [↑](#footnote-ref-97)
97. Project finance facilities in Southeast Asia are typically long-term facilities which are repaid in instalments (amortising) rather than in one lump sum (bullet). However the repayment clause may be structured differently (e.g. as a bullet repayment at maturity) if, for example, a mini-perm structure is used. If there is any Facility supported by an ECA, there may also be specific requirements relating to the repayment profile that apply. [↑](#footnote-ref-98)
98. Amend this accordingly if any of the Facilities are revolving facilities. [↑](#footnote-ref-99)
99. Amend if necessary. [↑](#footnote-ref-100)
100. The mandatory prepayment events may differ from project to project. [↑](#footnote-ref-101)
101. It may be preferable to specify the ratio levels required. [↑](#footnote-ref-102)
102. This provides that the proportion of insurance proceeds that is required to be applied towards mandatory prepayment is the portion required to restore the level of ratios to an agreed threshold / the base case ratios. Some lenders may require 100% of the insurance proceeds to be applied toward mandatory prepayment. Amend as necessary. [↑](#footnote-ref-103)
103. It may be preferable to specify the ratio levels required. [↑](#footnote-ref-104)
104. Examples of these mandatory prepayment events include asset disposals above a certain threshold, a cash sweep sanctions event which does not constitute an illegality, transactions with a target and mandatory repayment schedule, (if there is an ECA Facility) loss of ECA cover, and specific policy matters for DFIs or ECAs to the extent they are involved in the financing. Some deals may, depending on the sector to which the Project relates, also include a cash sweep. A cash sweep is a form of mandatory prepayment which requires a proportion (which could be 100%) of surplus cash flow from the project to be applied towards repayment of debt (when otherwise it would have been used to provide sponsors with a return on their capital). [↑](#footnote-ref-105)
105. Where voluntary cancellation is permitted, consider whether cancellation must be *pro rata* across the Facilities or otherwise. [↑](#footnote-ref-106)
106. Remove if there is no cancellation fee in your transaction. [↑](#footnote-ref-107)
107. Amend as necessary. [↑](#footnote-ref-108)
108. If this condition is included, the condition in sub-paragraph (ii) is not required. [↑](#footnote-ref-109)
109. Remove if there is no prepayment fee in your transaction. [↑](#footnote-ref-110)
110. In some transactions Lenders may require stapling rights in the case of any cancellation or prepayment (other than in agreed circumstances e.g. a mandatory prepayment due to illegality affecting a Lender or a cancellation in relation to a Defaulting Lender). Include wording to address this if applicable. [↑](#footnote-ref-111)
111. Each Facility Agreement will set out the scheduled interest payable on the Loans made under that Facility Agreement, plus provisions relating to changes to the calculation of interest for any Interest Period (e.g. due to market disruption). These provisions may vary among the different Facilities. If these provisions are intended to be identical across all Facilities, they may be included in this Agreement, to save duplication across the Facility Agreements. [↑](#footnote-ref-112)
112. Amend this clause accordingly if any of the Facilities are revolving facilities. [↑](#footnote-ref-113)
113. Indirect tax is dealt with in Clause 9.6 (*Indirect tax*). [↑](#footnote-ref-114)
114. Insert any other fees payable (e.g. waiver fees). [↑](#footnote-ref-115)
115. Please refer to the "Securitisation" section of the Explanatory Note for tax considerations relating to any intended future securitisations. [↑](#footnote-ref-116)
116. Paragraphs (e), (f), (g) and (h) of Clause 9.7 (*FATCA Information*)may be used for loans entered into with US borrowers (or loans where a US borrower may become an additional borrower). [↑](#footnote-ref-117)
117. Also consider whether costs arising from CRD V (being (i) Regulation (EU) No 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012 and (ii) Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU) and, at the end of the transition period under the EU/UK Withdrawal Agreement, costs under the UK's equivalent regime should be included or excluded from the scope of this clause. [↑](#footnote-ref-118)
118. Include this definition if paragraph (a)(iii) of Clause 10.1 (*Increased Costs*) is included. [↑](#footnote-ref-119)
119. Consideration should be given to the allocation of responsibility for the costs and expenses relating to any amendment or waiver contemplated by any provisions relating to replacement of screen rate/benchmark rate used for calculating interest rates, if applicable. [↑](#footnote-ref-120)
120. Additional materiality or other qualifications can be included as agreed among the parties on a transaction by transaction basis. [↑](#footnote-ref-121)
121. Other representations may be relevant to the Borrower (and the Sponsors/Shareholders as the case may be) on a transaction by transaction basis. [↑](#footnote-ref-122)
122. Lenders and in particular ECAs will sometimes expect the Borrower to make representations on behalf of itself and, subject to a knowledge qualifier, the Sponsors/Shareholders and other project parties (although these may also be contained in the Finance Documents to which the Sponsors/Shareholders are parties or the Direct Agreements entered into by the relevant project parties). Amend as necessary. [↑](#footnote-ref-123)
123. This does not need to repeat after day 1 **provided that** the undertaking to maintain its existence is retained in the undertakings. [↑](#footnote-ref-124)
124. This does not need to repeat after day 1 **provided that** the undertaking to maintain its power to own the assets and carry out the Project is retained in the undertakings. [↑](#footnote-ref-125)
125. Check the limitations in the legal opinions. [↑](#footnote-ref-126)
126. If required, an additional representation may be included:

"**Consents obtained**

It has obtained all consents necessary to ensure that no other party to any agreement or arrangement entered into by it becomes entitled to terminate that agreement or arrangement as a consequence of the Borrower entering into the Transaction Documents." [↑](#footnote-ref-127)
127. This may be extended to specifically refer to any key contracts in respect of which a material default would be significant whether or not it had a "Material Adverse Effect". [↑](#footnote-ref-128)
128. Consider whether this representation should extend to documents other than the Finance Documents. [↑](#footnote-ref-129)
129. This does not need to repeat after day 1 **provided that** the indemnity in respect of such filing and stamp taxes is retained in the tax clause. [↑](#footnote-ref-130)
130. This does not need to repeat after day 1 **provided that** the corresponding undertaking is retained. [↑](#footnote-ref-131)
131. This does not need to repeat after day 1 **provided that** the corresponding undertaking is retained. [↑](#footnote-ref-132)
132. This does not need to repeat after day 1 **provided that** the corresponding undertaking is retained. [↑](#footnote-ref-133)
133. The representations in this Clause assumes that the project company owns all the intellectual property for the Project. In some projects (particularly in the natural resources sector), this may not be the case. Parties to consider and amend as necessary. [↑](#footnote-ref-134)
134. This template CTA provides some suggested sanctions and anti-bribery and corruption provisions for the user's adaptation. However, the extent to which such provisions are required will be heavily dependent on the identity of the Finance Parties (including ECAs and DFIs), the jurisdictions and the industry sectors involved in the Project. A more tailored approach is likely required based on the various parties' obligations under applicable law and regulation. [↑](#footnote-ref-135)
135. One possible variation to the sanctions approach adopted in this Agreement (which provides for sanctions representations and covenants which are given and binding on the Borrower and the breach of which would give rise to an Event of Default) is to include the ability for certain lenders to opt out of certain sanctions event being applicable to the relevant lender (e.g. where there is a conflict among international sanctions authorities) and dealing with the mandatory prepayment of a single lender affected by certain sanctions events on a "pay if you can" basis so as to balance the interests of affected lenders and non-affected lenders. [↑](#footnote-ref-136)
136. Please refer to the "Securitisation" section of the Explanatory Note for sanctions considerations relating to any intended future securitisations. [↑](#footnote-ref-137)
137. Subject to input from the E&S Adviser. [↑](#footnote-ref-138)
138. Check whether there is any services agreement in place with the Sponsors, and ensure that any fee payable under it by the Borrower is either (1) treated wholly as a Restricted Payment or (2) regulated through the covenants (to the extent that the fee is modelled and accepted by the Lenders) and any additional/increased amount is treated as a Restricted Payment. [↑](#footnote-ref-139)
139. If primary syndication takes place after the agreement is signed, this representation needs to be amended so that paragraphs (a) and (c) are only given after the Information Memorandum has been approved by the Borrower/Obligors. [↑](#footnote-ref-140)
140. This representation does not need to repeat after day 1 as it only relates to the original Information Memorandum (if any) and not any updated ones. [↑](#footnote-ref-141)
141. Delete if there is no Information Memorandum. [↑](#footnote-ref-142)
142. Delete if there is no Information Memorandum. [↑](#footnote-ref-143)
143. This representation does not need to repeat after day 1 as it only relates to the Original Financial Statements and not any later financial statements. [↑](#footnote-ref-144)
144. This representation has been drafted on the assumption that it will not be repeating, as there is a MAC (material adverse change) event of default. [↑](#footnote-ref-145)
145. This should be consistent with the corresponding Event of Default in Clause 18.17 (*Insurance*). [↑](#footnote-ref-146)
146. Lenders will sometimes require this to be a Repeating Representation so that it applies during the Operating Period as well as serves as a Distribution Test. [↑](#footnote-ref-147)
147. Certain projects may require the project company to prepare and maintain a pandemic business continuity plan. [↑](#footnote-ref-148)
148. This template CTA includes a suggested list of representations to be repeated but this is negotiated on a project by project basis. [↑](#footnote-ref-149)
149. Certification by directors of financial statements may not be the usual practice in certain jurisdictions. Check this in relation to your transaction. [↑](#footnote-ref-150)
150. Paragraph (c) should be used where the Borrower's financial statements follow generally accepted accounting principles from time to time. Paragraph (d) should be used where the Borrower will ensure that all financial statements apply the same GAAP, accounting practices and financial reference periods as used for the Original Financial Statements (or, if there has been a change, provide the Intercreditor Agent with updating information) - often referred to as the "frozen GAAP" provision. [↑](#footnote-ref-151)
151. As a general note, the provisions in Clause 15.3 (*Construction Budgets*) and Clause 15.4 (*O&M Budgets*) would be open to negotiation on a transaction by transaction basis. [↑](#footnote-ref-152)
152. Parties to discuss whether approval is required or the procedure in paragraphs (f) and (g) are acceptable. This may depend on the project structure and economics and the negotiating strength of the parties. Some sponsors may ask for a deemed approval mechanism for budgets (or parts of budgets) that are within a reasonable percentage of the budget assumed for a given budget period in the Base Case (or otherwise for any part of a proposed budget that is not objected to). [↑](#footnote-ref-153)
153. See footnote 151. [↑](#footnote-ref-154)
154. Parties to consider whether it is necessary for a comparison from the start of the Construction Period to the end of the reporting period is required and, if so, update this paragraph to reflect such requirement. [↑](#footnote-ref-155)
155. Parties to consider whether it is necessary for a comparison from the start of the Operating Period to the end of the reporting period is required and, if so, update this paragraph to reflect such requirement. [↑](#footnote-ref-156)
156. The level of oversight that the lenders will have in relation to completion tests under the Construction Contract can vary greatly from project to project. This optional paragraph represents a reasonable minimum level of oversight that lenders would want – i.e. the Technical Adviser is permitted to attend any tests (this may be covered by the general 'Access' undertaking, but it is likely to be sensible to include a specific undertaking relating to the tests) and to comment on them, and the Borrower must 'pay due regard' to its comments and obtain its countersignature to the certificate of completion. It may be necessary to include provisions for referral to dispute resolution, particularly if it is agreed that the lenders have the right to approve/reject a certificate. [↑](#footnote-ref-157)
157. Parties to amend as appropriate any site access requirements (and any notice and information requirements of or for certain events such as testing or compliance). These often are required at regular intervals during the construction period and operation period or ad hoc in connection with certification of construction progress, performance and quality testing, E&S compliance, if a Default is continuing or suspected and/or for the purposes of taking, administering or enforcing Security. [↑](#footnote-ref-158)
158. Lenders/ECAs/DFIs may require their KYC checks to extend to the Major Project Participants. Provisions for delivery of documents/information for such parties have been included as a CP to Financial Close but consider whether an ongoing requirement to update KYC information even in the absence of change to such information or the relevant party that is the object of such checks should be included. [↑](#footnote-ref-159)
159. If an Obligor is listed, the reference to changes in the composition of the shareholders of that Obligor may be deleted. [↑](#footnote-ref-160)
160. Please refer to the "Securitisation" section of the Explanatory Note for KYC considerations relating to any intended future securitisations. [↑](#footnote-ref-161)
161. Commercial issue requiring discussion among the parties as to whether deemed approval is acceptable. [↑](#footnote-ref-162)
162. This protocol could also be included in a schedule to this Agreement. [↑](#footnote-ref-163)
163. Commercial issue requiring discussion among the parties as to whether deemed approval is acceptable. [↑](#footnote-ref-164)
164. Commercial issue requiring discussion among the parties as to whether deemed approval is acceptable. [↑](#footnote-ref-165)
165. Additional permitted baskets, carve-outs and/or qualifications can be included as agreed among the parties on a transaction by transaction basis. [↑](#footnote-ref-166)
166. Alongside the general obligation to comply with Good Industry Practice (contained in the Compliance Standards), you may wish to consider the following additional undertakings:

"**Supplies and spare parts**

The Borrower shall at all times maintain adequate supplies of spare parts and other plant, materials and apparatus in accordance with Good Industry Practice."

"**Personnel**

The Borrower shall employ a sufficient number of suitably qualified and experienced management personnel and other staff to ensure it carries out the Project in accordance with Good Industry Practice." [↑](#footnote-ref-167)
167. Consideration should be given as to whether any of the undertakings in paragraphs (d) to (f) should be qualified by materiality to avoid any hair-triggers arising from extensive covenants often contained in property documents. [↑](#footnote-ref-168)
168. Consideration should be given as to whether the undertaking in paragraph (a) should be qualified by reference to materiality in projects where Intellectual Property is not a key asset. Also see footnote 133. [↑](#footnote-ref-169)
169. These provisions will be negotiated on a case by case basis. [↑](#footnote-ref-170)
170. If there is no offtake agreement and the Borrower will be selling product on a spot or *ad hoc* basis then this undertaking must be amended to permit such disposals on an arm's length basis. [↑](#footnote-ref-171)
171. These provisions will be negotiated on a case by case basis. [↑](#footnote-ref-172)
172. Lenders may, depending on the nature of the project, also require a Projected DSCR test particularly where there is any potential volatility in future revenues. [↑](#footnote-ref-173)
173. If there is a refinancing strategy for the transaction (which could allow for a refinancing of part of the financing with other parts remaining in place), any condition to incurring permitted refinancing debt would need to be negotiated on a case by case basis. [↑](#footnote-ref-174)
174. Parties to consider whether to include any additional permitted debt e.g. for refinancings, funding additional capex or expansions, etc. [↑](#footnote-ref-175)
175. Update this Clause to reflect the Lenders' policy requirements. [↑](#footnote-ref-176)
176. Update this Clause to reflect the Lenders' policy requirements. [↑](#footnote-ref-177)
177. In a secured transaction where there are any risks of an environmental nature which could affect the liability of the Security Agents or the Lenders if the Transaction Security is enforced, consider whether to qualify this Clause by reference to "Material Adverse Effect". [↑](#footnote-ref-178)
178. Subject to input from the E&S Adviser. [↑](#footnote-ref-179)
179. Check whether there is any services agreement in place with the Sponsors, and ensure that any fee payable under it by the Borrower is either (a) treated wholly as a Restricted Payment or (b) regulated through the covenants (to the extent that the fee is modelled and accepted by the Lenders) and any additional/increased amount is treated as a Restricted Payment. [↑](#footnote-ref-180)
180. It may be unrealistic to impose an absolute prohibition on entering into other agreements, in which case the parties may agree on a threshold below which the Borrower can enter into such agreements without lender consent, together with an information undertaking to inform the Intercreditor Agent of any new agreements. [↑](#footnote-ref-181)
181. This general undertaking is intended to replace the traditional reserved discretions schedule. If there are any particular discretions in the Project Documents in your transaction that do not fit within this general covenant (i.e. over which the lenders want specific control whether or not they may result in an MAE or a material effect on the Project) or the traditional approach is preferred, adjust this clause accordingly. [↑](#footnote-ref-182)
182. Parties should consider whether the Borrower should be given a remedy period to amend the actions in the Delay Action Report with input from the Technical Adviser and the Intercreditor Agent and re-submit to the Technical Adviser and the Intercreditor Agent for approval prior to constituting an immediate Event of Default. [↑](#footnote-ref-183)
183. Insert this undertaking if primary syndication is to take place after the agreement is signed. [↑](#footnote-ref-184)
184. Additional permitted baskets, carve-outs and/or qualifications can be included as agreed among the parties on a transaction by transaction basis. [↑](#footnote-ref-185)
185. If any other Obligor is under a payment obligation under any Finance Document. [↑](#footnote-ref-186)
186. It will be a subject for negotiation whether the Equity Cure amounts are treated as (a) additional revenue or (b) a reduction in debt – these will have different mathematical impacts on the ratio(s). The application of Equity Cure towards a reduction of debt is far less common. If the Equity Cure is applied to reduce debt, an additional mandatory prepayment event may be included in this Agreement providing for the application of the Equity Cure to prepay the Loans (typically on a *pro rata* basis). Stronger sponsors may negotiate for the Equity Cure sum to be subject to security in favour of the banks but not actually applied towards prepayment, with an option for the release of the Equity Cure once the relevant ratio is remedied in the subsequent quarter(s). [↑](#footnote-ref-187)
187. Insert any other events or circumstances giving rise to an immediate Event of Default without a remedy period. [↑](#footnote-ref-188)
188. Any default related to key Project Documents should have a grace period shorter than, or in alignment with, the grace period in the relevant underlying key Project Document to preserve the rights of the Lenders. [↑](#footnote-ref-189)
189. Pursuant to section 440 (*Certain contractual rights limited*) of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**"), a party to this Agreement may not, at any time after the commencement, and before the conclusion, of any proceedings (as defined in that section) by any obligor which is liable to be wound up under the IRDA (which would include Singapore companies and (if there is sufficient nexus with Singapore such that insolvency proceedings can be established in Singapore, for example by entry into a Singapore law governed common terms agreement) foreign companies):

terminate or amend, or claim an accelerated payment or forfeiture of the term under, this Agreement to which such obligor is a party; or

terminate or modify any right or obligation under this Agreement to which such obligor is a party,

by reason only that the proceedings are commenced or that the obligor is insolvent. Any such provision in this Agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to that section is of no force or effect. Lenders should be aware that one of the practical implications of this is that accelerating the Facilities based solely on the Insolvency or the Insolvency Proceedings Events of Default of such obligor in Clauses 18.6 (*Insolvency*) or 18.7 (*Insolvency proceedings*) of this Agreement could be restricted under the IRDA. However, acceleration on other grounds may not be affected. [↑](#footnote-ref-190)
190. If this clause is not inserted, a breach will constitute an Event of Default under Clause 18.3 (*Other obligations*) so might be covered by a grace period if one is included in Clause 18.3 (*Other obligations*). [↑](#footnote-ref-191)
191. Parties to check that this clause does not conflict with the share retention and other obligations in the Shareholder Contribution and Sponsor Support Agreement. Also consider whether restrictions on changes of ownership of other Obligors (besides the Borrower) are required. [↑](#footnote-ref-192)
192. In some transactions, sponsors/the project company may prefer this to be reflected as a change of control mandatory prepayment event instead of  an Event of Default – parties should consider what is the appropriate position for the relevant transaction. [↑](#footnote-ref-193)
193. See footnote 181. [↑](#footnote-ref-194)
194. Subject to input from the E&S Adviser. [↑](#footnote-ref-195)
195. Parties will need to consider the consequences of breaches of E&S provisions (e.g. immediate event of default, event of default subject to the general remedy period in Clause ‎18.3 (*Other obligations*) or triggering a bespoke cure regime that would be subject to the parties agreeing a remedy plan). [↑](#footnote-ref-196)
196. See earlier definition of "continuing" and the two options provided. [↑](#footnote-ref-197)
197. Project financings typically demand a higher level of engagement from Lenders during the life of the project than would be the case on less structured financings, and thus the departure from the typically expected position that Lenders may freely transfer the participations. Lenders may be called upon frequently to make decisions, and there may be significant decisions to be made by Lenders, which means that the parties on a project financing often focus very minutely on issues relating to:

	1. the identity of the Lenders and the relationships between the individual Lenders, and between the lending group and the borrower. Common points of discussion include the definition of permitted transferee entities (e.g. concerns may be raised about the possibility that vulture funds or distressed debt specialists, for example, might become Lenders). On some transactions, the parties may agree on a list of permitted transferees (e.g. a white list) and/or a rating requirement.
	2. the decision making process (syndicate management) – including a "yank the bank" (see Clause 29.4 (*Replacement of Lender*)) provision. [↑](#footnote-ref-198)
198. If there is an ECA facility, changes will need to be made to this Clause to permit transfers to an ECA. [↑](#footnote-ref-199)
199. Parties could consider modifications to the transfer restrictions on a project by project basis, such as including acceptable bank requirements and different deeming period for Clause 19.2(b). [↑](#footnote-ref-200)
200. Please refer to "Securitisation" section of the Explanatory Note for transferability considerations relating to any intended future securitisations. [↑](#footnote-ref-201)
201. Adapt paragraphs (a) and (b) if Borrower consent is required. Adapt paragraph (c) if the Borrower has to be consulted before a transfer is made. The two options are mutually exclusive and therefore should not both be included. [↑](#footnote-ref-202)
202. If you have Obligors that are party to another Finance Document (e.g. the Security Trust and Intercreditor Deed), then you may require separate release provisions in that Finance Document. [↑](#footnote-ref-203)
203. If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations referred to in paragraph (c)(iii) of Clause 19.6 (*Procedure for assignment*). [↑](#footnote-ref-204)
204. This Clause is not strictly required on the assumption that these clauses would be included in other Finance Documents such as the Security Trust and Intercreditor Deed. Readers to consider if it may be useful to include this Clause for reference only. [↑](#footnote-ref-205)
205. Parties to consider whether to remove reference to faxes and shorten this Clause. [↑](#footnote-ref-206)
206. Parties to consider providing notice details as a separate document rather than including this as a Schedule. [↑](#footnote-ref-207)
207. Clause 25.5 (*Communication when Finance Agent is Impaired Agent*) provides an alternative to communicating through a Finance Agent at a time when that Finance Agent is an Impaired Agent and before the appointment of a replacement Agent. In those circumstances the Clause allows the Parties to communicate directly with each other notwithstanding any provision in any Finance Document requiring such communications to be made through that Finance Agent. [↑](#footnote-ref-208)
208. Check the applicable day count convention for the relevant currency. 365 days is the appropriate convention if S$ is the relevant currency. [↑](#footnote-ref-209)
209. Include to the extent that paragraph (c) is included in the definition of "Defaulting Lender". [↑](#footnote-ref-210)
210. To be considered if this should be included. This may be less acceptable to certain lenders (e.g. ECAs and DFIs which are lending to the Project directly). [↑](#footnote-ref-211)
211. This clause is often referred to as a "Yank the Bank" provision. [↑](#footnote-ref-212)
212. To be considered if this should be included. This may be less acceptable to certain lenders (e.g. ECAs and DFIs which are lending to the Project directly). [↑](#footnote-ref-213)
213. Insert agreed time period. [↑](#footnote-ref-214)
214. To be considered if this should be included. This may be less acceptable to certain lenders (e.g. ECAs and DFIs which are lending to the Project directly). [↑](#footnote-ref-215)
215. Some financial institutions may also require disclosures to be extended to service providers. Parties to consider if this is necessary/acceptable. [↑](#footnote-ref-216)
216. Consider if disclosure should be extended to cover insurers, reinsurers and insurance brokers as Finance Parties are typically included as insureds on the insurance/reinsurances. [↑](#footnote-ref-217)
217. Some financial institutions may also require disclosure to be extended to any person whom it deems fit for the purpose of any merger, amalgamation, acquisition, corporation reconstruction, or corporate reorganisation undertaken (or which may be potentially undertaken) by it. Parties to consider if this is necessary/acceptable. [↑](#footnote-ref-218)
218. Some financial institutions may also require this to be extended to cover any person to whom the Finance Party is under a duty to disclose. Parties to consider if this is necessary/acceptable. [↑](#footnote-ref-219)
219. Include if optional Clause 19.8 (*[Security over Lenders' rights*) is included. [↑](#footnote-ref-220)
220. Include this reference if the optional paragraph (b)(vii) of Clause 30.2 (*Disclosure of Confidential Information*) is included. [↑](#footnote-ref-221)
221. Please refer to the "Securitisation" section of the Explanatory Note for confidentiality considerations relating to any intended future securitisations. [↑](#footnote-ref-222)
222. Term/Revolver etc. [↑](#footnote-ref-223)
223. This requirement has been limited to the Intercreditor Agent on the assumption that if the Intercreditor Agent requests an identification number, it will, in any event, require all Parties to use that number in communications etc. If this is not the case, this Clause can be deleted. [↑](#footnote-ref-224)
224. Banks should consider whether they have any specific internal requirements for the drafting of the provisions of the Personal Data Protection Act 2012. Alternatively, the following clause can be used as a starting point for negotiations:

"(a) If any Obligor provides the Finance Parties with personal data of any individual as required by, pursuant to, or in connection with the Finance Documents, that Obligor represents and warrants to the Finance Parties that it has, to the extent required by law, (i) notified the relevant individual of the purposes for which data will be collected, processed, used or disclosed; and (ii) obtained such individual's consent for, and hereby consents on behalf of such individual to, the collection, processing, use and disclosure of his/her personal data by the Finance Parties, in each case, in accordance with or for the purposes of the Finance Documents, and confirms that it is authorised by such individual to provide such consent on his/her behalf.

(b) Each Obligor agrees and undertakes to notify the Agent promptly upon its becoming aware of the withdrawal by the relevant individual of his/her consent to the collection, processing, use and/or disclosure by any Finance Party of any personal data provided by that Obligor to any Finance Party.

(c) Any consent given pursuant to this Agreement in relation to personal data shall, subject to all applicable laws and regulations, survive death, incapacity, bankruptcy or insolvency of any such individual and the termination or expiration of this Agreement." [↑](#footnote-ref-225)
225. To consider whether a bail-in clause under the requirements of Article 55 of EU Directive 2014/59 EU (often referred to as the Bank Resolution and Recovery Directive or "**BRRD**") is to be included in this Agreement. Article 55 of the BRRD is relevant to all transactions involving EEA banks (including local branches of EEA banks) entering into or recurring liabilities under non-EEA law documents (such as an EEA security agent entering into a security document governed by non-EEA law).

The Loan Market Association has published a Users' Guide on this topic. Readers may refer to such Users' Guide for more information. [↑](#footnote-ref-226)
226. Subject to jurisdiction specific advice (e.g. where arbitration might be preferable such as for jurisdictions which do not have reciprocal enforcement of foreign judgments), parties should seek specialist advice on arbitration provisions to the extent appropriate, depending on the relevant jurisdiction(s) of the Project. [↑](#footnote-ref-227)
227. Parties to consider whether to include a prior mediation step before further dispute proceedings and, if so, amend this Clause to reflect the agreement (e.g. whether such recourse to mediation is mandatory and thus a pre-condition to the further dispute proceedings under this Clause). If parties agree to adopt mediation, one approach would be to incorporate the model clause on the SIAC-SIMC Arb-Med-Arb Protocol – more information on the AMA Protocol, including the model clause, can be found here: https://simc.com.sg /dispute-resolution/arb-med-arb/. [↑](#footnote-ref-228)
228. Delete as applicable. Parties to consider whether to include a prior mediation step before further dispute proceedings. [↑](#footnote-ref-229)
229. Most complex or high-value disputes will tend to be heard by a three-person (or, very occasionally, five-person) arbitral tribunal. Pre-conditions to the nomination of an arbitrator may also be appropriate (e.g. a lawyer of a given number of years' experience in a certain field or a sector/industry specialist).

Parties to consider their preferred selection process for appointment of the tribunal bearing the existing appointment process under prevailing SIAC rules in mind. Further, in the rare event that a five-person arbitral tribunal is preferred, parties will need to provide for the selection process and/or expressly modify existing appointment process under SIAC Rules in the event that it is not addressed under the prevailing set of rules. [↑](#footnote-ref-230)
230. Delete as applicable. [↑](#footnote-ref-231)
231. This Clause is not necessary if it is clear that the Borrower has no sovereign status. [↑](#footnote-ref-232)
232. This Clause provides a resolution procedure for certain matters referred to in this Agreement (including any challenge to the draft construction/O&M budget, changes to the Base Case, Assumptions or the draft Financial Report) by way of expert determination. Parties could amend this to reflect discussions on the relevant transaction and to address additional considerations such as (1) any pre-agreed procedure for the nomination of the Expert and (2) the manner in which the Expert could conduct the determination process. [↑](#footnote-ref-233)
233. Parties to consider whether it is necessary to include other alternative bodies for making such nomination. [↑](#footnote-ref-234)
234. Consider if this time period could be extended with the relevant parties' agreement. [↑](#footnote-ref-235)
235. To the extent any of these contracts (e.g. the O&M Contract) will be entered into after Financial Close, remove from this Schedule and include a condition subsequent undertaking to require such contract to be provided by a specified time. [↑](#footnote-ref-236)
236. This may not be appropriate in all circumstances and may need to be removed once the conditions precedent have been agreed to avoid the last minute disagreement on how this condition precedent should be satisfied. [↑](#footnote-ref-237)
237. If applicable under the relevant term facility, include the following definition:

"**Selection Notice**" has the meaning given to that term in the [ ] Facility Agreement. [↑](#footnote-ref-238)
238. Duplicate to cover each jurisdiction the laws by which a Finance Document is governed. [↑](#footnote-ref-239)
239. Lenders will not always seek legal opinions on the Project Documents. [↑](#footnote-ref-240)
240. Lenders will not always seek legal opinions on the capacity and authority of Major Project Participants. [↑](#footnote-ref-241)
241. This would be certified by the Borrower and may also be included in the Financial Model or a funds flow statement if required by the Lenders. [↑](#footnote-ref-242)
242. Certain projects may require the project company to prepare and maintain a pandemic business continuity plan. If this is applicable, it should be included as a condition precedent. [↑](#footnote-ref-243)
243. CP wording to be updated if required by Lenders' Legal Adviser(s) to reflect the Real Property title requirements of the Project Jurisdiction. [↑](#footnote-ref-244)
244. The insurance requirements for a project will be negotiated on a case by case basis and will vary depending on a number of factors, including the nature of the project and the jurisdiction of the project. This schedule should address, for example, (a) the required terms of the insurances in respect of the project (including the types of insurances and when the insurances should be in place); and (b) provisions in relation to endorsements, loss payee, and security in respect of insurances and reinsurances. [↑](#footnote-ref-245)
245. Such a lien would arise as a result of unpaid premiums or expenses due to it from the insured. [↑](#footnote-ref-246)
246. To include if hedging will be required. The specifics of the hedging programme would depend on the transaction, including what is permissible in the jurisdiction of the Project. Key points to consider in relation to any hedging strategy include, among others:

	1. what will be hedged (e.g. interest rate, exchange rate, input price (e.g. fuel), output price (e.g. metal ore));
	2. at what point will the hedging be entered into (e.g. at financial close, in stages following financial close);
	3. what will the profile (term) of the hedging be;
	4. what proportion of the debt (or other underlying) must be hedged;
	5. who will the hedging counterparties be (e.g. only Mandated Lead Arrangers or Lenders, or will Mandated Lead Arrangers/Lenders have a 'right to match'; must they have a specified rating; must they exit the hedges if they exit the debt);
	6. what security and voting rights will the hedging counterparties have; and
	7. form of hedging documentation. [↑](#footnote-ref-247)
247. Please refer to the "Securitisation" section of the Explanatory Note for hedging considerations relating to any intended future securitisations. [↑](#footnote-ref-248)
248. The restrictions on the Hedging Bank's ability to terminate or close out any transactions under the Hedging Agreements help to avoid the Hedging Banks having significant leverage over negotiations in the event the Borrower enters into financial difficulty. [↑](#footnote-ref-249)
249. Consideration should be given to whether to allow Hedging Banks to terminate if any Loan (rather than all the Loans, or the Loans that the Hedging Bank (or its affiliate) has made) has been accelerated. [↑](#footnote-ref-250)
250. The Hedging Banks may require a time limit of, say one year, rather than have to wait for formal cancellation of the Available Facilities. [↑](#footnote-ref-251)
251. See footnote 248. [↑](#footnote-ref-252)
252. There are different approaches that can be taken in terms of the enforcement rights of the Hedging Banks. This provision takes the more balanced approach, which allows the Hedging Bank to take part in a vote on the taking of enforcement action and vote in respect of how enforcement is conducted. Consideration should be given as to whether a different approach should be taken in the relevant transaction. [↑](#footnote-ref-253)
253. Update as necessary. If hedging is entered into after Financial Close, other changes may be required to be made to other Finance Documents e.g. on debt sizing. Some hedging banks may push this back to a date within an agreed period after Financial Close for comfort that the conditions precedent to the utilisation of the facilities have been satisfied and lenders are committed to advance the facilities. [↑](#footnote-ref-254)
254. Insert the agreed list of entities. [↑](#footnote-ref-255)
255. If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph 2(c). This issue should be addressed at primary documentation stage. [↑](#footnote-ref-256)
256. Address to the Intercreditor Agent except where a successor Intercreditor Agent is acceding, in which case address to each Facility Agent. [↑](#footnote-ref-257)
257. Insert additional parties as necessary. [↑](#footnote-ref-258)
258. Local counsel to review and comment on signature blocks. [↑](#footnote-ref-259)
259. Duplicate as necessary. [↑](#footnote-ref-260)
260. Duplicate as necessary. [↑](#footnote-ref-261)