

[SUBJECT TO CONTRACT]

[currency and amount in numbers]

FACILITY AGREEMENT¹

dated [_____]

for

[ENERGY PROJECT PARENT]

[ENERGY PROJECT HOLDCO]

and

[ENERGY PROJECT COMPANY]

arranged by

[NAME OF ARRANGERS]

with

[NAME OF FACILITY AGENT]

acting as Facility Agent

No part of the legal templates, documents or any other communication may be interpreted as professional legal advice, counsel or service or the establishment of any contractual, professional service or fiduciary or relationship of any other sort between the User and the project or any persons or entities associated with the project (including Columbia University, Columbia law School, the Center for Climate Change law or its attorneys or staff, the law firms, attorneys and experts associated with the project, Project Sponsor, their staff and/or related affiliate or persons, Weil, Gotshal & Manges LLP, its partners, associates and staff, and AZB & Partners, its partners, associates and staff.) Furthermore, any potential User agrees he/she is responsible for obtaining separate legal counsel prior to signing any contract utilizing project documents in whole or in part, and that the aforementioned persons and entities are not in any attorney/client or other relationship with the User.

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¹ This draft has been prepared in the general form of an English law agreement, but including provisions to facilitate it being completed under New York law (and potentially with Indian law where applicable), depending on the requirements of the Lenders and the Facility Agent/Arranger. We have attempted to indicate those provisions by putting them in **bold blue italics**. In addition, various references, cross-references and spellings will be changed as appropriate. The Schedules largely reflect the Agreement being governed and administered under English law, and to the extent this changes the drafting of the Schedules will change (perhaps significantly).

Information relating to drafting is included as numbered footnotes.

Information relating to jurisdiction specific points is included as lettered endnotes for explanation and consideration.

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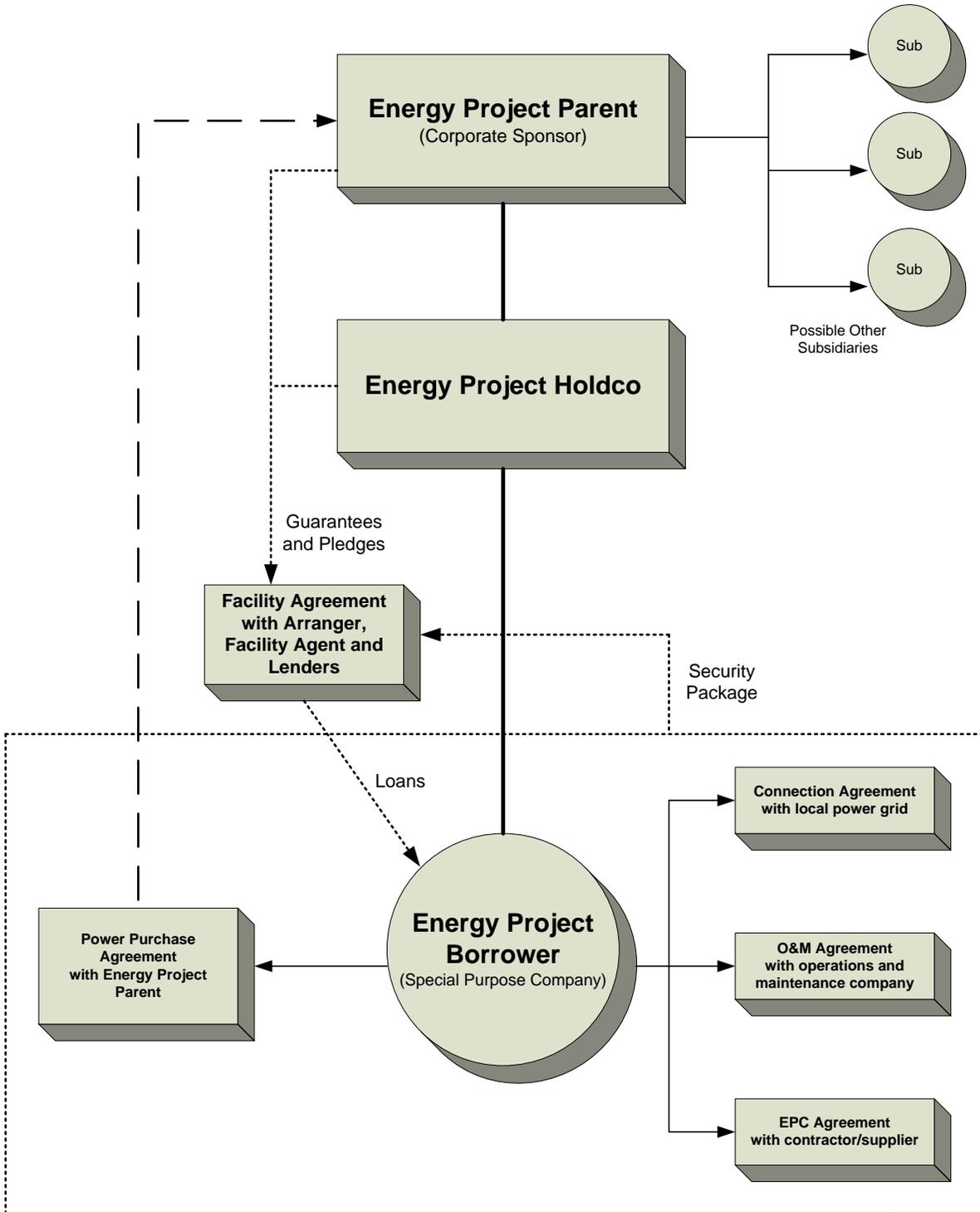
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No part of the legal templates, documents or any other communication may be interpreted as professional legal advice, counsel or service or the establishment of any contractual, professional service or fiduciary or relationship of any other sort between the User and the project or any persons or entities associated with the project (including Columbia University, Columbia law School, the Center for Climate Change law or its attorneys or staff, the law firms, attorneys and experts associated with the project, Project Sponsor, their staff and/or related affiliate or persons, Weil, Gotshal & Manges LLP, its partners, associates and staff, and AZB & Partners, its partners, associates and staff.)Furthermore, any potential User agrees he/she is responsible for obtaining separate legal counsel prior to signing any contract utilizing project documents in whole or in part, and that the aforementioned persons and entities are not in any attorney/client or other relationship with the User.

GENERAL ORGANISATIONAL STRUCTURE

(to be removed from the final version)



* The Project has been funded by the generosity of the Sujana Group.

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THIS AGREEMENT is dated [_____] and made between:^A

- (1) **[ENERGY PROJECT PARENT]**, a company organised under the laws of the Republic of India (the “**Company**”);
- (2) **[ENERGY PROJECT HOLDCO]**, a company organised under the laws of the Republic of India (“**Holdco**”);^B
- (3) **[ENERGY PROJECT COMPANY]**, a company organised under the laws of the Republic of India and an indirect Subsidiary of the Company, as the original borrower (the “**Borrower**”);^C
- (4) **THE SUBSIDIARIES** of the Company listed in Part I of Schedule 1 as original guarantors (together with the Company and Holdco, the “**Original Guarantors**”);^D
- (5) [_____] [and [_____]] as mandated lead arranger[s] ([whether acting individually or together] the “**Arranger**”);
- (6) **THE FINANCIAL INSTITUTIONS** listed in Part II and Part III of Schedule 1 as lenders (the “**Original Lenders**”);^E
- (7) [_____] as facility agent of the other Finance Parties (in this capacity, the “**Facility Agent**”); and
- (8) [_____] as security agent and trustee (in this capacity, the “**Security Agent**”).^F

IT IS AGREED as follows:

ARTICLE 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Acceptable Bank**” means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non-credit enhanced debt obligations of A-1 or higher by Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc. or P-1 or higher by Moody’s Investors Service Limited or a comparable rating from an internationally recognised credit rating agency; or
- (b) any other bank or financial institution approved by the Facility Agent.

* *The Project has been funded by the generosity of the Sujana Group.*

“**Accounting Standards**” means accounting standards which, as at the date of this Agreement, are:

- (a) in the case of the consolidated accounts of the Company and the Borrower, [GAAP]/[IFRS]; and
- (b) in the case of accounts of any other Group Member, generally accepted in the jurisdiction of incorporation of that member of the Group and approved by the relevant regulatory or other accounting bodies in that jurisdiction.

[“**Additional Cost Rate**” has the meaning given to it in Schedule 4 (Mandatory Cost formulae).]²

“**Additional Guarantor**” means a company which becomes an Additional Guarantor in accordance with Clause 24 (Changes to the Obligors).³

“**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]/[another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified; provided, however, that, for purposes Clause 21.19 (Arm’s-length terms), the term “Affiliate” shall also include (i) any person that directly or indirectly owns more than 10% of any class of equity interests of the person specified or (ii) any person that is an officer or director of the person specified].

“**Agents**” means the Facility Agent or the Security Agent, as appropriate.

“**Approved Bank**” means an Acceptable Bank which has been given and has acknowledged all notices (if any) required to be given to it under the Security Documents. If an Acceptable Bank is a Lender it will be deemed to have received and acknowledged those notices by virtue of being a Lender.

“**Assignment Agreement**” means an agreement substantially in the form set out in Schedule 6 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee.

“**Auditors**” means the firm of independent accountants appointed as auditors of the Company and the Borrower in accordance with Clause 21.18 (Auditors).

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“**Availability Period**” means the period from and including the date of this Agreement to and including [_____].

² This is relevant if English law governs.

³ Please see comments with regard to guarantees in Endnote D.

“**Available Commitment**” means a Lender’s Commitment minus:

- (a) the amount of its participation in any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

“**Available Facility**” means the aggregate for the time being of each Lender’s Available Commitment.

“**Borrower**” has the meaning given to such term in the introductory listing of parties to this Agreement.

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

- (a) the interest 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:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in [London]/[New York City]/[India] and [_____]⁴.

“**CERs**” means certified emission reductions issued pursuant to the United Nations Framework Convention on Climate Change adopted in New York on May 9, 1992 (the “UNFCCC”), the protocol to the UNFCCC adopted at the Third Conference of the Parties in Kyoto, Japan on December 11, 1997, as may be amended from time to time.

“**Clearances**” means any consent, license, approval, registration, permit or other authorisation of any nature which is required to be granted by any statutory or regulatory authority or any other person for purposes of: (i) utilising the Facility; (ii) fulfilling the obligations of the Borrower under the Transaction Documents; (iii) the enforceability of any Transaction Documents and the making of any payments contemplated thereunder; (iv) the construction, operation, and maintenance of the New Energy Project; and (v) all such other matters as may be necessary in connection with the New Energy Project or the performance

⁴ Include the city of the Borrower’s general offices.

of any Person's obligations under any Transaction Document, and shall in any event include those Clearances listed in Schedule 14.

"Commitment" means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Part II or Part III of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"Company" has the meaning given to such term in the introductory listing of parties to this Agreement.

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 9 (*Form of Compliance Certificate*) or such other form that is satisfactory to the Facility Agent.

"Confidential Information" means all information relating to the Company, any Obligor, the Group, the Finance Documents or the 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 the Facility from either:

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

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 35 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case,

as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially as set out in Schedule 11 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Company and the Facility Agent.

[“**Connection Agreement**” means a connection agreement between the Borrower and the *[local power company/distribution licensee/transmission licensee]* providing for connection with the *[local power grid]* in form and substance satisfactory to the Facility Agent.]

[“**Connection Agreement Assignment**” means an assignment of rights by way of security in respect of any Connection Agreement, made by the Borrower in favour of the Security Agent on behalf of the Finance Parties.]^G

“**control**” has the meaning given to such term in paragraph (b) of Clause 7.2 (*Change of control*).

[“**CTA**” means the *Corporation Tax Act 2009*.]

[“**Deed of Hypothecation**” shall mean the deed of hypothecation executed by the Borrower in favour of the Security Agent for the benefit of the Finance Parties creating a charge on the [●] of the Borrower.]

[“**Deed of Mortgage**” means the mortgage in form and substance satisfactory to the Security Agent to be granted by the Borrower in favour of the Security Agent for the benefit of the Finance Parties pursuant to which an exclusive first mortgage is created over [●], as security, amongst other things, for the discharge of any amounts outstanding under the Finance Documents].⁵

“**Default**” means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions

⁵ Note that it is not necessary to execute any document in order to create a mortgage by deposit of title deeds or an equitable mortgage. However, banks customarily record the deposit of title deeds (along with a record describing the pertinent properties, and referencing the obligations that are intended as collateral), otherwise known as a “Memorandum of Entry.” A director of the Borrower’s firm (duly authorized to do so) usually deposits these title deeds, and often executes a “Director’s Declaration” recording the intention to create mortgage. The contents of the Director’s Declaration mirror the provisions in the Memorandum of Entry. The Memorandum of Entry and Director’s Declaration may be designated as “Security Document(s)”, eliminating the need for additional definitions.

contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party from:
 - (i) performing its payment obligations under the Finance Documents; or
 - (ii) 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.

“**ECB Guidelines**” means the External Commercial Borrowing Guidelines contained in the Master Circular dated 1 July 2011, issued by the RBI, as amended, modified or replaced from time to time.

[“**EPC Agreement**” means any engineering, procurement and construction agreement entered into between the Borrower and [*contractor*] relating to development and construction of the New Energy Project, in form and substance satisfactory to the Facility Agent.]

[“**EPC Agreement Assignment**” means an assignment of rights by way of security in respect of any EPC Agreement, made by the Borrower in favour of the Security Agent on behalf of the Finance Parties.]

“**Event of Default**” means any event or circumstance specified as such in Clause 22 (*Events of Default*).

“**Facility**” means the term loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

“**Facility Office**” means the office or offices notified by a Lender to the Facility 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 this Agreement.

“**Fee Letter**” means any letter or letters dated on or about the date of this Agreement between the Arranger and the Company (or the Facility Agent and the Company) setting out any of the fees referred to in Clause 11 (*Fees*).

“**Finance Document**” means this Agreement, any Fee Letter, any Accession Letter, any Resignation Letter, any New Energy Project Document, any Security Document and any other document designated as such by the Facility Agent and the Company.

“**Finance Party**” means the Facility Agent, the Security Agent, the Arranger or a Lender.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Standards, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) (inclusive) above.

“**GAAP**” means generally accepted accounting principles in [_____]/[*including IFRS*].

[“**Green Credits**” means any and all rights, interests, credits, entitlements, benefits or allowances to emit (present or future) arising from or in connection with the reduction in greenhouse gases including voluntary environmental efforts or otherwise, and any rights to create, transfer, trade, pass or assign derivatives or other tradable instruments based on those greenhouse gas reductions that arise or may arise in the future, and includes CERs, VERs, and/or renewable energy credits or energy efficiency credits issued under any national or state level scheme in India, and/or recognized or issued under any other national or international treaty or mechanism now or in the future.]

[“**Green Credits Agreement**” means an agreement between the [*green credits buyer*] and the Borrower, providing for the purchase and sale of any carbon credits in connection with the New Energy Project, in form and substance satisfactory to the Facility Agent.]

[“**Green Credits Agreement Assignment**” means an assignment of rights by way of security in respect of any Green Credits Agreement, made by the Borrower in favour of the Security Agent on behalf of the Finance Parties.]

“**Group**” means (a) the Company, (b) Holdco and (c) its Subsidiaries (including the Borrower) for the time being; and “**Group Member**” means any member of the Group.

“**Guarantor**” means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 24 (*Changes to the Obligors*).

“**Holdco**” has the meaning given to such term in the introductory listing of parties to this Agreement.

“**Holding Account**” means an account:

- (a) held in India by the Borrower with the Facility Agent;
- (b) identified in a letter between the Borrower and the Facility Agent as a Holding Account; and
- (c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Facility Agent,

(as the same may be redesignated, substituted or replaced from time to time).

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

“**IBOR**” means, in relation to any Loan, the greatest of:

- (a) [1.50] *per cent. per annum*;
- (b) the applicable Screen Rate; and
- (c) (if no Screen Rate is available for *[to list the relevant currency]*⁶ for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted by the Reference Banks to leading banks in the *[to list jurisdiction, depending on currency]* interbank market,

⁶ Expected to be sterling, dollars, euros or rupee. However, note that an offshore bank will not be able to lend in rupees to a Borrower in India unless they have received specific permission from the RBI. Some multilateral agencies like the Asian Development Bank (“*ADB*”) for instance, have already secured RBI prior approval that is required for the ADB (as an offshore bank) to provide a rupee loan to a borrower in India. Lenders providing a rupee loan often ask the borrower to execute a separate rupee facility agreement (and the interest rate for this rupee loan is usually determined by that lender’s prevailing interest rate).

in the case of paragraphs (b) and (c) above, as of the Specified Time on the Quotation Day for the offering of deposits in [to list the relevant currency] and for a period comparable to the Interest Period for that Loan.

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

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

["ITA" means the Income Tax Act 2007.]

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

“Lender” means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 23 (*Changes to the Lenders*),

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

“Loan” means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

["LMA" means the Loan Market Association.]

“Majority Lenders” means:⁷

- (a) if there are no Loans then outstanding, a Lender or Lenders whose Commitments aggregate more than $[66\frac{2}{3}]/[50]\%$ of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than $[66\frac{2}{3}]/[50]\%$ of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than $[66\frac{2}{3}]/[50]\%$ of all the Loans then outstanding.

["Mandatory Cost" means the percentage rate per annum calculated by the Facility Agent in accordance with Schedule 4 (Mandatory Cost formula).]

“Mandatory Prepayment Account” means an [interest-bearing] account:

⁷ To be 66% if English or Indian law, and 50% if New York law, as per market practice.

- (a) held in India by the Borrower with the Facility Agent;
- (b) identified in a letter between the Borrower and the Facility Agent as a Mandatory Prepayment Account;
- (c) subject to Security in favour of the Security Agent which Security is in form and substance satisfactory to the Facility Agent; and
- (d) from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

(as the same may be redesignated, substituted or replaced from time to time).

“**Margin**” means [_____] *per cent. per annum*.⁸

“**Material Adverse Effect**” means an event or circumstance which has, or is reasonably likely to have, a material adverse effect in any of:

- (a) the condition (financial or otherwise), business, performance, prospects, operations or properties of the Company or the Company and its Subsidiaries taken as a whole;
- (b) the legality, validity or enforceability of any Finance Documents;
- (c) the perfection or priority of the Security granted pursuant to the Security Documents;
- (d) the ability of the Borrower to repay the Loans and other obligations under this Agreement or of any of the Obligors to perform their respective obligations under the Finance Documents; or
- (e) the rights and remedies of the Facility Agent or the Lenders under the Finance Documents.

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

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month

⁸ Note, the ECB Guidelines prescribe an all-in-cost ceiling.

- (a) For an ECB with a maturity period exceeding three years but less than or up to five years, the all-in-cost ceilings cannot exceed three hundred and fifty basis points over six month LIBOR.
- (b) For an ECB with a maturity period exceeding five years, the all-in-cost ceilings cannot exceed five hundred basis points over six month LIBOR.

The “all-in-cost ceilings” imposed by the ECB Guidelines will include the following: all interest, fees and expenses except for commitment fees, prepayment fees and fees payable in Indian rupees. The payment of withholding tax in Indian Rupees is excluded for calculating the “all-in-cost”. This will need to be considered when calculating the break costs.

in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

“**New Energy Project**” means:

- (a) the acquisition of the *[New Energy Project Lease and any other acquisition of]* real property necessary for the construction or development of the New Energy Project;
- (b) the design, development, financing, construction, fit-out, testing, commissioning, operation and maintenance of the New Energy Project;
- (c) works in respect of roads, services and other amenities associated with the New Energy Project;
- (d) any relocation (temporary or permanent) of previous occupiers of the New Energy Project Site;
- (e) any other design, development, financing, construction, fit-out, testing, commissioning, operation and maintenance matters envisaged by the *[New Energy Project Planning Permission or any other planning application in respect of the]* New Energy Project permitted by the Borrower under this Agreement; and
- (f) the ongoing operation of the New Energy Project, including performance under each of the New Energy Project Documents.

[“**New Energy Project Account**” means an account with an Approved Bank in the name of the Borrower (as approved by the Facility Agent):

- (a) held in India by the Borrower with the Facility Agent;
- (b) identified as such in writing to the Facility Agent;
- (c) subject to a *[first ranking fixed]/[first priority]* security interest in favour of the Security Agent for the benefit of the Finance Parties; and

- (d) from which withdrawals may only be made to the extent permitted by Clause 21.17(h) (*New Energy Project Accounts*).]⁹

["**New Energy Project Construction**" means [_____/], each as identified in the New Energy Project Construction Budget or as otherwise approved by the Facility Agent.]

["**New Energy Project Construction Budget**" means the itemised budget of monthly costs and expenses for the period from [_____] to [_____] relating to the New Energy Project Construction, in the form approved by the Facility Agent.]

["**New Energy Project Construction Contractor**" means the construction contractor appointed by the New Energy Project Manager or the Borrower in respect of the New Energy Project and approved by the Facility Agent.]

["**New Energy Project Development Report**" means the report to be provided monthly in accordance with Clause 19.6 (*New Energy Project Development Report*) by the Borrower in the form agreed with Facility Agent and including:

- (a) a breakdown of expenditure incurred in respect of New Energy Project Construction as at the date of such report and a comparison of such costs against the New Energy Project Construction Budget (or confirming that no material expenditure in respect of such matters has been incurred during the relevant month); and
- (b) a breakdown of projected expenditure to be incurred in respect of New Energy Project Construction from the date of such report until the completion of New Energy Project Construction (or confirming that there has been no material change from the projected expenditure described in the most recently delivered report).]

"**New Energy Project Documents**" means:

- (a) the New Energy Project Property Documents; and
- (b) the New Energy Project Operations Documents.

["**New Energy Project Lease**" means the [___] year lease in respect of the New Energy Project Site to be entered into between [_____] and the Borrower in such form as the Facility Agent may approve.]

"**New Energy Project Manager**" means the project manager to be appointed by the Borrower and approved by the Facility Agent.

"**New Energy Project Operations Document**" means:

- (a) the Power Purchase Agreement;

⁹ References to various "New Energy Project" terms will be dependent on the stage at which the financing occurs, *i.e.*, whether before or after the project is actually completed.

- (b) the EPC Agreement;
- (c) the O&M Agreement;
- (d) the Connection Agreement;
- (e) the Green Credits Agreement;
- (f) the Clearances;
- (g) [_____]; and
- (h) any other document relating to the New Energy Project entered into by the Borrower pursuant to Clause 21.17(d) (*New Energy Project Documents*).

["**New Energy Project Planning Permission**"] means a planning permission issued by [_____] for the construction of [_____] on the New Energy Project Site and all other approvals (whether of reserved matters or otherwise), all minor amendments and all ancillary plans, documents and other details approved thereunder.]

["**New Energy Project Professional**"] means each architect, engineer and other professional adviser (not being a firm of lawyers or accountants) as the New Energy Project Manager or the Borrower may appoint in respect of New Energy Project Construction, and/or in relation to the New Energy Project generally, and approved by the Facility Agent.]

"**New Energy Project Property Document**" means:

- (a) the New Energy Project Lease;
- (b) any Right of Way Agreements; and;
- (c) any other lease, licence, agreement or covenant in respect of the Group's title to or use or occupation of the New Energy Project Site.

"**New Energy Project Site**" means the [*freehold and leasehold*] property constituting the site for the New Energy Project at [_____] comprising the [*leasehold land demised by the New Energy Project Lease and the freehold*] properties known as [_____] , or such other land as may be designated as forming part of the site for the New Energy Project in the New Energy Project Planning Permission.

["**O&M Agreement**"] means an operations and maintenance agreement between the Borrower and the [*operations and maintenance company*] providing for the ongoing operation and maintenance of the New Energy Project, in form and substance satisfactory to the Facility Agent.]

["**O&M Agreement Assignment**"] means an assignment of rights by way of security in respect of any O&M Agreement, made by the Borrower in favour of the Security Agent on behalf of the Finance Parties.]

“**Obligor**” means the Borrower or a Guarantor.

“**Original Financial Statements**” means:

- (a) in relation to the Company, the audited consolidated financial statements of the Group for the financial year ended [_____]; and
- (b) in relation to each Original Obligor other than the Company, its audited financial statements for its financial year ended [_____].

“**Original Guarantor**” means each of the Company and Holdco.

“**Original Obligor**” means the Borrower or an Original Guarantor.

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

["Patriot Act" has the meaning given to it in paragraph (b) of Clause 18.21 (Anti-Terrorism Law; Foreign Corrupt Practices Act).]

“**Permitted Distribution**” means:

- (a) the payment of a dividend by the Borrower to the Company to enable the Company to make payments of [●], *provided* that the payment is made when no Default is continuing or would occur immediately after the making of the payment; and
- (b) [●].

“**Permitted Financial Indebtedness**” means Financial Indebtedness:

- (a) under finance or capital leases of vehicles, plant, equipment or computers, *provided* that the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed [●] (or its equivalent in other currencies) at any time;
- (b) [●] [*and*]
- (c) [*not permitted by the preceding paragraphs and the outstanding principal amount of which does not exceed [●] (or its equivalent) in aggregate for the Group at any time*].

“**Permitted Share Issue**” means an issue of:

- (a) ordinary shares by the Borrower to the Company, paid for in full in cash upon issue and which by their terms are not redeemable and where (i) such shares are of the same class and on the same terms as those initially issued by the Company and (ii) such issue does not lead to a Change of Control of the Company; or
- (b) [●].

[“**Planning Acts**” means [_____].]

[“**Power Purchase Agreement**” means a power purchase agreement between the Company and the Borrower providing for the purchase and sale of all of the power produced from time to time by the New Energy Project, in form and substance satisfactory to the Facility Agent.]

[“**Power Purchase Agreement Assignment**” means an assignment of rights by way of security in respect of any Power Purchase Agreement, made by the Borrower in favour of the Security Agent on behalf of the Finance Parties.]

“**Qualifying Lender**” has the meaning given to it in Clause 12 (*Tax gross-up and indemnities*).

“**Quotation Day**” means, in relation to any period for which an interest rate is to be determined, *[the first day of that period]*¹⁰/*[two Business Days before the first day of that period]*¹¹ unless market practice differs in the Relevant Interbank Market in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

“**RBI**” means the Reserve Bank of India.

“**Reference Banks**” means the principal *[list jurisdiction]* offices of [___], [___] and [___] or such other banks as may be appointed by the Facility Agent from time to time.

“**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.

“**Relevant Interbank Market**” means the *[list jurisdiction]* interbank market.

“**Repayment Date**” means [_____].

[“**Repayment Instalment**” means [_____].]

“**Repeating Representations**” means each of the representations set out in Clauses 18.1 (*Status*) to 18.6 (*Governing law and enforcement*) (inclusive), 18.9 (*No default*) to 18.14 (*Material disclosure*) (inclusive) *[and]* 18.18 (*New Energy Project*) *[and]* 18.21 (*Anti-Terrorism Law; Foreign Corrupt Practices Act*).

¹⁰ Include if the Loan is in sterling.

¹¹ Include if the Loan is in dollars or a currency other than sterling.

“**Representative**” means any delegate, Facility Agent, manager, administrator, nominee, attorney, trustee or custodian.

“**Resignation Letter**” means a letter substantially in the form set out in Schedule 8 (*Form of Resignation Letter*).

“**Right of Way Agreements**” means any agreements or deeds entered into by the Borrower in relation to the right of ways/right of access to the New Energy Project Site and any other property or work sites to which access is required for completion of the New Energy Project.

“**Screen Rate**” means the [*British Bankers’ Association Interest Settlement Rate*] for [*insert relevant currency*] for the relevant period for the relevant period, displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Facility Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Lenders.

“**Security**” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“**Security Documents**” means:

- (a) the EPC Agreement Assignment;
- (b) the Power Purchase Agreement Assignment;
- (c) the O&M Agreement Assignment;
- (d) the Connection Agreement Assignment;
- (e) the Green Credits Agreement Assignment;
- (f) the Deed of Hypothecation;
- (g) the Deed of Mortgage;
- (h) the Share Pledge Agreement;
- (i) all documents, deeds, power of attorney(s), and other instruments required by the Security Agent or the Facility Agent, or entered into or executed by the Borrower or any other Person for creating and perfecting Security; and
- (j) any other document relating to the above and/or designated as a “Security Document” by the Facility Agent or the Security Agent.

“**Selection Notice**” means a notice substantially in the form set out in Part II of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

“**Share Pledge Agreement**” means the share pledge agreement dated on or about [●], executed among Holdco, [●,] the Borrower and the Security Agent, creating a pledge on

fully paid-up equity shares held by Holdco [and ●] in the Borrower constituting [●]% of the issued and paid up share capital of the Borrower in favour of the Security Agent for the benefit of the Finance Parties.

“**Specified Time**” means a time determined in accordance with Schedule 13 (Timetables).

“**Subsidiary**” means:¹²

- | |
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| <p><i>[(a) a subsidiary within the meaning of section 736 of the Companies Act 1985;</i></p> <p><i>(b) a subsidiary undertaking within the meaning of section 258 of the Companies Act 1985;</i></p> <p><i>(c) an entity of which a person has direct or indirect control or owns directly or indirectly more than 50% of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise; or</i></p> <p><i>(d) an entity treated as a subsidiary in the accounts of any person pursuant to the Accounting Standards.]</i></p> |
|--|

[with respect to any person (the “parent”) at any date,

- | |
|---|
| <p><i>(a) any person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with the Accounting Standards as of such date;</i></p> <p><i>(b) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all equity interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent;</i></p> <p><i>(c) any partnership (i) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (ii) the only general partners of which are the parent and/or one or more subsidiaries of the parent; and</i></p> |
|---|

¹² To be revised depending on relevant governing law. The first set refers to English law; the second set to New York law; the third set to Indian law.

(d) *any other person that is otherwise Controlled by the parent and/or one or more subsidiaries of the parent.]*

[with respect to any company, the meaning ascribed to it in section 4 of the Indian Companies Act 1956 and shall include the following [to specifically include the other entities whom you want to capture as subsidiaries including entities in relation to which Holdco or the Borrower has control and which may not strictly fall within the definition of Subsidiary under the Companies Act, 1956].]

Unless the context requires otherwise, “**Subsidiary**” refers to a Subsidiary of the Company.

“**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).

[“**Technical Adviser**” means [_____].]

“**Termination Date**” means [_____].

“**Total Commitments**” means the aggregate of the Commitments being [_____] at the date of this Agreement.

“**Transaction Documents**” means the Finance Documents, the New Energy Project Documents and [_____].

“**Transfer Certificate**” means a certificate substantially in the form set out in Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Facility Agent and the Company.

“**Transfer Date**” means, in relation to an assignment or a transfer, the later of:

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

“**Treasury Transactions**” means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

“**Unpaid Sum**” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“**Utilisation**” means a utilisation of the Facility.

“**Utilisation Date**” means the date of a Utilisation, being the date on which the relevant Loan is to be made.

“**Utilisation Request**” means a notice substantially in the form set out in Part I of Schedule 3 (*Requests*).

[“VAT” means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.]

“**VERs**” means offsets or emission reductions verified under any international standard other than CERs or and/or renewable energy credits or energy efficiency credits issued under any national or state level scheme in India, and/or recognized or issued under any other national or international treaty or mechanism now or in the future.

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) the “**Facility Agent**”, the “**Arranger**”, any “**Finance Party**”, any “**Lender**”, any “**Obligor**” or any “**Party**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) “**assets**” includes present and future properties, revenues and rights of every description;
 - (iii) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (iv) the words “*include,*” “*includes*” and “*including*” shall be deemed to be followed by the phrase “*without limitation*”;
 - (v) “**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;
 - (vi) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (vii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (viii) a provision of law is a reference to that provision as amended or re-enacted;

- (ix) “dollars” or “\$” means the lawful currency for the time being of the United States of America; “euro” or “€” means the single currency of the member states of the European Communities that adopt or have adopted the euro as their lawful currency under the legislation of the European Community for Economic Monetary Union; “sterling” and “£” means the lawful currency for the time being of the United Kingdom, and “rupee” or “[_]” means the lawful currency for the time being of the Republic of India; and
- (x) a time of day is a reference to *[insert jurisdiction]* time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) 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.
- (d) 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 waived.

1.3 *[Third Party Rights]*

- (a) *Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.*
- (b) *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.¹³*

¹³ To include if English law.

ARTICLE 2 THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a [*insert relevant currency*] multiple draw term loan facility in an aggregate amount equal to the Total Commitments.¹⁴

2.2 Finance Parties' rights and obligations

- (a) 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.
- (b) 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 shall be a separate and independent debt.
- (c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

3. PURPOSE^H

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility in or towards financing the Project, including without limitation:¹⁵

- (a) costs and expenses incurred in respect of New Energy Project Construction;
- (b) costs and expenses incurred by the New Energy Project Professionals in connection with the matters referred to in of Clause 21.17(c) (*Planning*); and

¹⁴ See prior discussions with regard to currencies and lending in India.

¹⁵ ECB Guidelines impose certain end-use restrictions on the use of ECBs with regard to:

- (a) on-lending or investment in capital markets or acquiring a company;
- (b) the real estate sector; and
- (c) working capital, general corporate purpose and repayment of existing rupee loans.
- (d) repayment of rupee loans in the infrastructure sector is permitted, subject to certain conditions.

Hence, it is recommended that the "Purpose" be broadly defined as "financing the Project."

- (c) funding costs and expenses incurred in connection with the negotiation and execution of this Agreement.¹⁶

3.2 Monitoring

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

4. CONDITIONS OF UTILISATION¹

4.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request unless the Facility Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Facility Agent. The Facility Agent shall notify the Company and the Lenders promptly upon being so satisfied.

4.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) the Repeating Representations to be made by each Obligor are true in all material respects.

4.3 Maximum number of Loans

- (a) The Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation [_____] or more Loans would be outstanding.
- (b) The Borrower may not request that a Loan be divided if, as a result of the proposed division, [_____] or more Loans would be outstanding.

¹⁶ This clause as currently worded is unlikely to fall afoul of the “end use” restrictions strictly construed. However, this interpretation could change depending upon the deal structure, and therefore Borrower’s counsel should examine whether “end use” limits placed by Indian law are complied with. See also endnote H.

ARTICLE 3 UTILISATION

5. UTILISATION

5.1 Delivery of a Utilisation Request

The Borrower may not utilise the Facility by delivery to the Facility Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
- (i) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (ii) the Utilisation Request includes a reasonably detailed description of the purpose for the proceeds of the Utilisation (which shall comply with the requirements of Clause 3.1 (*Purpose*) and otherwise be consistent with the most recently delivered New Energy Project Development Report), and including details of the payees of such Utilisation;
 - (iii) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
 - (iv) the proposed Interest Period complies with Clause 9 (*Interest Periods*).
- (b) Only one Loan may be requested in each Utilisation Request.

5.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be *[insert currency]*.
- (b) The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of *[_____]* or, if less, the Available Facility.

5.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Facility Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 Cancellation of Commitment

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

ARTICLE 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

- (a) The Borrower must repay on each date specified in Schedule 12 (*Repayment of Loans*) an amount equal to the percentage set out opposite that date in respect of the outstanding amount at the end of the relevant Availability Period of each Loan borrowed by it.¹⁷
- (b) Any amounts repaid under paragraph (a) above may not be re-borrowed.
- (c) Any amount of any Loan still outstanding on the scheduled date for the payment of the last Repayment Instalment relating to the Loans shall be repaid on that date.
- (d) Any repayment under this Agreement shall be made in compliance with and subject to necessary consents obtained by the Borrower under the ECB Guidelines.

6.2 Reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.

¹⁷ Note the ECB Guidelines include conditions on "minimum maturity period," as indicated below. Prior approvals will need to be secured from the RBI if any pre-payments are intended prior to the. Indian regulators do not encourage such prepayment. The following "minimum maturity period" conditions apply if any corporation decides to raise funds via ECBs:

- (a) A corporation (other than those in the hotel, hospital and software sectors) can raise a maximum of US\$ 750 million or its equivalent, in one financial year. Moreover, such moneys raised via ECBs are subject to the following additional restrictions:
 - (1) If the amount is up to US\$ 20 million (or its equivalent in one financial year), a minimum average maturity of three years will be required;
 - (2) If the amount raised is above US\$ 20 million (up to US\$ 750 million) or its equivalent, a minimum average maturity of five years will be required.
- (b) Terms providing call or put option(s) can be included in agreements when raising up to US\$ 20 million or less via ECBs, *provided, however*, that such call or put option(s) may only be exercised after a minimum average maturity period of three years.

7. PREPAYMENT¹⁸ AND CANCELLATION

7.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:

- (a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall repay that Lender's participation in the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after the Facility Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law), subject to obtaining any required consent under the ECB Guidelines.

7.2 Change of control¹⁹

- (a) If [*_____*] ceases to control the Company]/[*any person or group of persons acting in concert gains control of the Company*]:
 - (i) the Company shall promptly notify the Facility Agent upon becoming aware of that event;
 - (ii) [*a Lender shall not be obliged to fund a Utilisation;*]
 - (iii) if [*the Majority Lenders so require*]/[*a Lender so requires and notifies the Facility Agent within [] days of the Company notifying the Facility Agent of the event*] the Facility Agent shall, by not less than [*___*] days notice to the Company, cancel the [*Total Commitments*]/[*Commitment of that Lender*] and declare [*the participation of that Lender in*] all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the [*Total Commitments*]/[*Commitment of that Lender*] will be cancelled and all such

¹⁸ Under ECB Guidelines, prior approval by the RBI is not necessary for "AD Banks" to prepay ECBs up to US\$ 500 million, *provided, however*, that the conditions with regard to the minimum average maturity period applicable to the loan have been complied with. These AD Banks will however need to secure a prior approval from the RBI if the prepayment amount involved exceeds US\$ 500 million. At present, the scheduled commercial banks are authorized dealers. "Authorised Dealer" has been defined under section 10(1) of the FEMA as follows: "the Reserve Bank may, on an application made to it in this behalf, authorize any person to be known as authorized person to deal in foreign exchange or in foreign securities, as an authorized dealer, money changer or offshore banking unit in any other manner as it deems fit." See footnote 17 for discussion on "minimum maturity period."

¹⁹ To be discussed.

outstanding amounts will become immediately due and payable, subject to obtaining any required consent under the ECB Guidelines.

- (b) For the purpose of paragraph (a) above “**control**” means:
- (i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (A) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the Company; or
 - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Company; or
 - (C) give directions with respect to the operating and financial policies of the Company with which the directors or other equivalent officers of the Company are obliged to comply; or
 - (D) direct the management and policy decisions of the Company; and/or
 - (ii) the holding beneficially of more than 35% of the issued share capital of the Company (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).
- (c) For the purpose of paragraph (a) above “**acting in concert**” means a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Company by any of them, either directly or indirectly, to obtain or consolidate control of the Company.

7.3 Voluntary cancellation

The Borrower may, if it gives the Facility Agent not less than [__] Business Days’ (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of [____]) of the Available Facility. Any cancellation under this Clause 7.3 shall reduce the Commitments of the Lenders rateably.

7.4 Voluntary prepayment of Loans

- (a) The Borrower may, if it gives the Facility Agent not less than [__] Business Days’ (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of [____]).
- (b) A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero) and if the prepayment does

not result in the average maturity of the Facility falling below [●] years from the first Utilisation Date.²⁰

- (c) Any prepayment under this Clause 7.4 shall satisfy the obligations under Clause 6.1 (*Repayment of Loans*) in inverse chronological order.

7.5 Mandatory Prepayment²¹

(a) Disposal and Insurance Proceeds

- (i) For the purposes of this Clause 7.5:

“**Disposal**” means a sale, lease, licence, transfer, loan or other disposal by a person of any asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions).

“**Disposal Proceeds**” means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Group except for Excluded Disposal Proceeds and after deducting:

- (A) any reasonable expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and
- (B) any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

“**Excluded Disposal Proceeds**” means any proceeds of a Disposal which the Borrower notifies the Facility Agent are, or are to be, applied, in the replacement of the assets which are the subject of such Disposed with other assets of like kind, quality and purpose, in each case as soon as possible (but in any event within [__] days, or such longer period as the Facility Agent may agree) after receipt.

“**Excluded Insurance Proceeds**” means any proceeds of an insurance claim which the Borrower notifies the Facility Agent are, or are to be, applied:

- (A) to meet a third party claim; or

²⁰ See Footnote 17 with regard to ECB Guidelines.

²¹ To be discussed, including whether receipt directly or indirectly of any Green Credits should be covered in addition to any contractual Green Credits Agreement requirements. See also Footnote 17 with regard to ECB Guidelines

- (B) in the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made,

in each case as soon as possible (but in any event within [__] days, or such longer period as the Facility Agent may agree) after receipt.

“**Insurance Proceeds**” means the proceeds of any insurance claim under any insurance maintained by any member of the Group except for Excluded Insurance Proceeds and after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

- (ii) The Company shall ensure that the Borrower prepays Utilisations in the following amounts at the times and in the order of application contemplated by Clause 7.5(b) (*Application of mandatory prepayments*):
 - (A) the amount of Disposal Proceeds; and
 - (B) the amount of Insurance Proceeds.

(b) Application of mandatory prepayments

- (i) A prepayment required under Clause 7.5(a) (*Disposal and Insurance Proceeds*) shall be applied in the following order:
 - (A) first, in prepayment of Loans as contemplated in paragraphs (ii) to (v) inclusive below; and
 - (B) secondly, in cancellation of any Available Commitments under the Facility (and the Available Commitments of the Lenders will be cancelled rateably).
- (ii) Unless the Company makes an election under paragraph (v) below, the Borrower shall prepay Loans promptly upon receipt of the relevant Disposal Proceeds and/or Insurance Proceeds.
- (iii) A prepayment under Clause 7.5(a) (*Disposal and Insurance Proceeds*) shall be applied in prepayment of the Loans by reducing the amount of the Repayment Instalment for each Repayment Date falling after that prepayment in inverse chronological order by the amount prepaid.
- (iv) Subject to paragraph (v) below, the Borrower may elect that any prepayment under Clause 7.5(a) (*Disposal and Insurance Proceeds*) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Borrower makes that election then a proportion of the Loan equal

to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

- (v) If the Borrower has made an election under paragraph (iv) above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

(c) Mandatory Prepayment Accounts and Holding Accounts

- (i) The Company shall ensure that:
- (A) Disposal Proceeds and Insurance Proceeds in respect of which the Borrower has made an election under paragraph (iv) of Clause 7.5(b) (*Application of mandatory prepayments*) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group; and
 - (B) any Excluded Disposal Proceeds or Excluded Insurance Proceeds to be applied in replacement, reinstatement or repair of assets are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group.
- (ii) The Company and the Borrower irrevocably authorise the Facility Agent to apply:
- (A) amounts credited to the Mandatory Prepayment Account; and
 - (B) amounts credited to the Holding Account which have not been applied in replacement, reinstatement or repair of assets within [___] months of receipt of the relevant proceeds (or such longer time period as the Facility Agent may agree),

to pay amounts due and payable under Clause 7.5(b) (*Application of mandatory prepayments*) and otherwise under the Finance Documents. The Company and the Borrower further irrevocably authorise the Facility Agent to so apply amounts credited to the Holding Account whether or not [_____] months have elapsed since receipt of those proceeds if a Default has occurred and is continuing. The Company and the Borrower also irrevocably authorise the Facility Agent to transfer any amounts credited to the Holding Account referred to in this Clause 7.5(c) to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Holding Account).

- (iii) A Lender or Agent with which a Mandatory Prepayment Account or Holding Account is held acknowledges and agrees that (x) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (y) each such account is subject to the Security.
- (d) Excluded proceeds

Where Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Company shall ensure that those amounts are used for that purpose and, if requested to do so by the Facility Agent, shall promptly deliver a certificate to the Facility Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

7.6 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 7 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.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) 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.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Company or the affected Lender, as appropriate.
- (g) If all or part of a Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause 4.2 (*Further conditions precedent*)), an amount of the Commitments (equal to the amount of the Loan which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment. Any cancellation under this paragraph (g) shall reduce the Commitments of the Lenders rateably.

- (h) Any repayment or prepayment under this Agreement shall be made in compliance with the ECB Guidelines, if required and all regulatory approvals required for the same shall be obtained by the Obligors.

ARTICLE 5 COSTS OF UTILISATION

8. INTEREST²²

8.1 Calculation of interest

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

- (a) Margin; *[and]*
- (b) IBOR [*; and*]
- (c) *[Mandatory Cost, if any]*.

8.2 Payment of interest

The Borrower shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than three Months, on the dates falling at three monthly intervals after the first day of the Interest Period).

8.3 Default interest

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, *[or fails to have created security as required under Clause 21.22 (Post-Closing Requirements)]* 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 *[to be inserted]* per cent.²³ 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 Facility Agent. Any interest accruing under this Clause 8.3 shall be immediately payable by the Obligor on demand by the Facility Agent.²⁴
- (b) 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:
 - (i) 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

²² If this becomes a New York law agreement, need to discuss whether there is a need to add a base rate interest rate alternative. See also the comments on “All in Cost” limits placed by the ECB Guidelines (see Footnote 8). Further, Indian banks are only permitted to charge interest as per the RBI’s period directives. For further details on this issue, please see RBI’s Master Circular on Interest Rates on Advances, dated July 02, 2012 and available at www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=7337.

²³ To insert the relevant default rate addition based on governing law (e.g., English market standard is 1.0%; New York and India market standard is 2.0%). A default rate should also apply for the failure to create security (per India market practice) of 1.0%.

²⁴ To discuss whether default interest should be payable only on amounts due that are not paid, or only on the amount of the entire debt from the date of the default.

- (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be *[one]/[two] per cent.* higher than the rate which would have applied if the overdue amount had not become due.
- (c) 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.

8.4 Notification of rates of interest

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

9. INTEREST PERIODS

9.1 Selection of Interest Periods

- (a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.
- (b) Each Selection Notice for a Loan is irrevocable and must be delivered to the Facility Agent by the Borrower not later than the Specified Time.
- (c) If the Borrower fails to deliver a Selection Notice to the Facility Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause 9.2 (*Changes to Interest Periods*), be one Month.
- (d) Subject to this Clause 9, the Borrower may select an Interest Period of one, two or three Months or any other period agreed between the Borrower and the Facility Agent (acting on the instructions of all the Lenders). In addition the Borrower may select an Interest Period of a period of less than one Month, if necessary to ensure that there are sufficient Loans (with an aggregate amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the Repayment Instalment due on that date.
- (e) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (f) Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

9.2 Changes to Interest Periods

- (a) Prior to determining the interest rate for a Loan, the Facility Agent may shorten an Interest Period for any Loan to ensure there are sufficient Loans (with an aggregate amount equal to or greater than the Repayment Instalment) which have an Interest Period ending on a Repayment Date for the Borrower to make the Repayment Instalment due on that date.

- (b) If the Facility Agent makes any change to an Interest Period referred to in this Clause 9.2, it shall promptly notify the Company and the Lenders.

9.3 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).

9.4 Consolidation and division of Loans

- (a) Subject to paragraph (b) below, if two or more Interest Periods end on the same date, those Loans will, unless the Borrower specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Loan on the last day of the Interest Period.
- (b) Subject to Clause 4.3 (*Maximum number of Loans*) and Clause 5.3 (*Currency and amount*), if the Borrower requests in a Selection Notice that a Loan be divided into two or more Loans, that Loan will, on the last day of its Interest Period, be so divided into the amounts specified in that Selection Notice, being an aggregate amount equal to the amount of the Loan immediately before its division.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if IBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable IBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

10.2 Market disruption

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
- (i) the Margin;
 - (ii) the rate notified to the Facility Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may select; and
 - (iii) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

- (b) In this Agreement “**Market Disruption Event**” means:
- (i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Facility Agent to determine IBOR for *[insert relevant currency]* for the relevant Interest Period; or
 - (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 35.0 per cent. of that Loan) that the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of IBOR.

10.3 Alternative basis of interest or funding

- (a) If a Market Disruption Event occurs and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

10.4 Break Costs

- (a) 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.
- (b) Each Lender shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11. FEES

11.1 Commitment fee

- (a) The Borrower shall pay to the Facility Agent (for the account of each Lender) a fee computed at the rate of *[_____]* per cent. per annum on that Lender’s Available Commitment for the Availability Period.
- (b) The accrued commitment fee is payable on the last day of each successive period of three Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender’s Commitment at the time the cancellation is effective.

11.2 *[Arrangement fee]*

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

11.3 Agency fee

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

ARTICLE 6
ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS UP AND INDEMNITIES²⁵

12.1 Definitions

(a) In this Agreement:

“**Protected Party**” means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

“**Qualifying Lender**” means:

(i) a Lender (other than a Lender within paragraph (ii) below) which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

(A) a Lender:

- (1) which is a bank (as defined for the purpose of section 879 of the ITA) making an advance under a Finance Document; or
- (2) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of section 879 of the ITA) at the time that that advance was made,

and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or

(B) a Lender which is:

- (1) a company resident in the United Kingdom for United Kingdom tax purposes;
- (2) a partnership each member of which is:
 - (a) a company so resident in the United Kingdom; or

²⁵ This clause is drafted on the assumption that payments made by the Obligor(s) may be subject to withholding tax (if any) under English law and not under the law of any other jurisdiction. If this is not the case and the Obligor(s) is/are to gross-up payments, this Clause will need to be modified, in particular paragraphs (d), (g), (h) and (i) of Clause 12.2 (*Tax gross up*) and the related definitions. If the “Treaty Lender” concept is used, always check the wording of relevant Treaties.

If New York or India is the applicable law, this Article will be revised substantially. A few specific inserts have been included (noted in *bold italics* to cover the terms that would instead need to be utilised if the governing law is India.

- (b) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA;
- (3) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or
- (C) a Treaty Lender.

“**Tax Confirmation**” means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (i) a company resident in the United Kingdom for United Kingdom tax purposes;
- (ii) a partnership each member of which is:
 - (A) a company so resident in the United Kingdom; or
 - (B) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (iii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.

“**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.

“**Tax Payment**” means either the increase in a payment made by an Obligor to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

“**Treaty Lender**” means a Lender which:

- (i) is treated as a resident of a Treaty State for the purposes of the Treaty;
- (ii) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender’s participation in the Loan is effectively connected [*; and*]
- (iii) [*_____*].²⁶

“**Treaty State**” means a jurisdiction having a double taxation agreement (a “**Treaty**”) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

“**UK Non-Bank Lender**” means:

- (i) where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed in Part III of Schedule 1 (*The Original Parties*); and
 - (ii) where a Lender becomes a Party after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party.
- (b) Unless a contrary indication appears, in this Clause 12 a reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

- (a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) *[Each Obligor shall make all payments to any Finance Party under the Finance Document free and clear of any Tax Deduction, unless such Obligor is required to make a Tax Deduction by law.]*²⁷

- (c) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax

²⁶ This is a complex area and in each case relevant treaties should be reviewed and, if appropriate, additional wording inserted to apportion risk as agreed by the Parties.

²⁷ If governed by Indian law.

Deduction) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such notification from a Lender it shall notify the Borrower and that Obligor.

- (d) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (e) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority;
 - (ii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of Qualifying Lender; and:
 - (A) an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a “**Direction**”) under section 931 of the ITA which relates to the payment and that Lender has received from the Obligor making the payment or from the Company a certified copy of that Direction; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if that Direction had not been made; or
 - (iii) the relevant Lender is a Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of Qualifying Lender and:
 - (A) the relevant Lender has not given a Tax Confirmation to the Borrower; and
 - (B) the payment could have been made to the Lender without any Tax Deduction if the Lender had given a Tax Confirmation to the Borrower, on the basis that the Tax Confirmation would have enabled the Borrower to have formed a reasonable belief that the payment was an “excepted payment” for the purpose of section 930 of the ITA; or
 - (iv) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender

without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below.

- (f) If an Obligor is required to make a Tax Deduction, that Obligor 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.
- (g) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Facility Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (h) A Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.
- (i) A UK Non-Bank Lender which becomes a Party on the day on which this Agreement is entered into gives a Tax Confirmation to the Borrower by entering into this Agreement.
- (j) A UK Non-Bank Lender shall promptly notify the Borrower and the Facility Agent if there is any change in the position from that set out in the Tax Confirmation.

12.3 Tax indemnity²⁸

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

(b) *[Without prejudice to Clause 12.2 (Tax Gross-up), if any Protected 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 purposes of Tax to be received or receivable by such Protected 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 by the Facility Agent) shall promptly indemnify the Protected Party which suffers a loss or liability as a*

²⁸ Note, as per the provisions of FEMA (and the regulations issued thereunder), the RBI's approval will need to be secured at the time of remittance, if any indemnity is paid by a person residing in India to a person residing outside India.

*result against such payment or liability, together with any interest, penalties, costs and expenses payable or incurred in connection therewith.*²⁹

- (c) Paragraph (a) above shall not apply:
- (i) with respect to any Tax assessed on a Finance Party:
- (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
- (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
- if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
- (ii) to the extent a loss, liability or cost:
- (A) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or
- (B) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 (*Tax gross-up*) applied.
- (d) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Borrower.
- (e) A Protected Party shall, on receiving a payment from an Obligor under this Clause 12.3, notify the Facility Agent.

12.4 Tax Credit

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

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
- (b) that Finance Party has obtained, utilised and retained that Tax Credit,

²⁹ If governed by Indian law.

the Finance Party shall pay an amount to the Obligor 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 Obligor.

12.5 Lender Status Confirmation

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Facility Agent and without liability to any Obligor, which of the following categories it falls in:

- (a) not a Qualifying Lender;
- (b) a Qualifying Lender (other than a Treaty Lender); or
- (c) a Treaty Lender.

If a New Lender fails to indicate its status in accordance with this Clause 12.5 then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Facility Agent which category applies (and the Facility Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 12.5.

12.6 Stamp taxes

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

12.7 VAT

- (a) *All amounts set out or expressed in a Finance Document to be payable by any Party to a Finance Party which (in whole or in part) constitute the consideration for a supply or supplies for VAT purposes shall be deemed to be exclusive of any VAT which is chargeable on such supply or supplies, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of such VAT (and such Finance Party shall promptly provide an appropriate VAT invoice to such Party).*
- (b) *If VAT is or becomes chargeable on any supply made by any Finance Party (the "Supplier") to any other Finance Party (the "Recipient") under a Finance Document, and any Party other than the Recipient (the "Subject Party") is required by the terms of any Finance Document to pay an amount equal to the consideration for such supply to the Supplier (rather than being required to*

reimburse the Recipient in respect of that consideration), such Party shall also pay to the Supplier (in addition to and at the same time as paying such amount) an amount equal to the amount of such VAT. The Recipient will promptly pay to the Subject Party an amount equal to any credit or repayment obtained by the Recipient from the relevant tax authority which the Recipient determines is in respect of such VAT.

- (c) *Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.*
- (d) *Any reference in this Clause 12.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term “representative member” to have the same meaning as in the Value Added Tax Act 1994).*

13. INCREASED COSTS

13.1 Increased costs

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
 - (ii) compliance with any law or regulation made after the date of this Agreement.
- (b) In this Agreement “**Increased Costs**” means:
 - (i) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
 - (ii) an additional or increased cost; or
 - (iii) a reduction of any amount due and payable under any Finance Document,which is incurred or suffered by a Finance Party 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.

13.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

- (a) Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.3 (*Tax indemnity*) applied);
 - (iii) compensated for by the payment of the Mandatory Cost; or
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 13.3, a reference to a “**Tax Deduction**” has the same meaning given to the term in Clause 12.1 (*Definitions*).

14. OTHER INDEMNITIES

14.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:
 - (i) making or filing a claim or proof against that Obligor;
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between:

- (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and

- (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor 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.

14.2 Other indemnities³⁰

The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 27 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

14.3 Indemnity to the Agents

The Borrower shall promptly indemnify each of the Agents against any cost, loss or liability incurred by such Agent as a result of:

- (a) investigating any event which it believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it believes to be genuine, correct and appropriately authorised.

15. MITIGATION BY THE LENDERS

15.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*), Clause 13 (*Increased costs*) or paragraph 3 of Schedule 4 (*Mandatory Cost formulae*)

³⁰ See Footnote 28.

including transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

- (b) Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

15.2 Limitation of liability

- (a) 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 15.1 (Mitigation).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (Mitigation) if, in the opinion of that Finance Party, to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 Transaction expenses

The Borrower shall promptly on demand pay the Agents and the Arranger the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and syndication of:

- (a) this Agreement and any other documents referred to in this Agreement; and
- (b) any other Finance Documents executed after the date of this Agreement.

16.2 Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 28.9 (Change of currency), the Borrower shall, within three Business Days of demand, reimburse the Agents for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agents in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 Enforcement costs

The Borrower shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

ARTICLE 7
GUARANTEE

17. GUARANTEE AND INDEMNITY

17.1 Guarantee and indemnity³¹

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each Finance Party punctual performance by the Borrower of all that Borrower's obligations under the Finance Documents;
- (b) undertakes with each Finance Party that whenever the Borrower does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of the Borrower not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 17 if the amount claimed had been recoverable on the basis of a guarantee.

17.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.³²

17.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Finance Party in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 17 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

17.4 Waiver of defences

The obligations of each Guarantor under this Clause 17 will not be affected by an act, omission, matter or thing which, but for this Clause 17.4, would reduce, release or prejudice

³¹ See the requirement for obtaining a "no-objection" certificate as discussed in Endnote D.

³² In accordance with ECB Guidelines, all guarantees are required to co-terminus with the maturity of the underlying ECB.

any of its obligations under this Clause 17 (without limitation and whether or not known to it or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

17.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any trustee or Facility Agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 17. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

17.6 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any trustee or Facility Agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or Facility Agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order

as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 17.

17.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligor under or in connection with the Finance Documents have been irrevocably paid in full and unless the Facility Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 17:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 17.1 (*Guarantee and Indemnity*);
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligor under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Facility Agent or as the Facility Agent may direct for application in accordance with Clause 28 (*Payment mechanics*).

17.8 Release of Guarantors' right of contribution

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a

contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and

- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

17.9 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

17.10 Limitations

Notwithstanding anything to the contrary in this Agreement, the obligations of any Guarantor organised under the laws of [_____] under this Clause 17 shall be limited to any amount [_____].³³

³³ To be completed based on the jurisdictions of the Guarantors.

ARTICLE 8
REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

18. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement.

18.1 Status

- (a) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

18.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*) or Clause 24 (*Changes to the Obligors*), legal, valid, binding and enforceable obligations.

18.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its or any of its Subsidiaries' constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets.

18.4 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 Finance Documents to which it is a party and the transactions contemplated by those Finance Documents. Each Finance Document has been duly executed and delivered by each of the Obligors.

18.5 Validity and admissibility in evidence

All Authorisations required or desirable:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
- (b) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect.

18.6 Governing law and enforcement

- (a) The choice of [____] law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.
- (b) Any judgment obtained in [____] in relation to a Finance Document will be recognised and enforced in its jurisdiction of incorporation.

18.7 Deduction of Tax³⁴

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Lender which is:

(a) *a Qualifying Lender:*

- (i) *falling within paragraph (i)(A) of the definition of Qualifying Lender;*
- (ii) *except where a Direction has been given under section 931 of the ITA in relation to the payment concerned, falling within paragraph (i)(B) of the definition of Qualifying Lender; or*
- (iii) *falling within paragraph (ii) of the definition of Qualifying Lender or;*

(b) *a Treaty Lender and the payment is one specified in a direction given by the Commissioners of Revenue & Customs under Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations 1970 (SI 1970/488).*

18.8 No filing or stamp taxes

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

18.9 No default

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which might have a Material Adverse Effect.

18.10 Insolvency

None of the circumstances described in Clause 22.7 (Insolvency) applies to any Group Member and no corporate action, legal proceeding or other procedure or step described in

³⁴ This representation should be considered on a case-by-case basis and modified, or deleted, as appropriate. If tax other than UK tax may be relevant, this should be taken into account.

Clause 22.8 (*Insolvency proceedings*) or action described in Clause 22.9 (*Creditors' process*) has been taken or, so far as it is aware, threatened in relation to a Group Member.

18.11 Financial statements

- (a) Its Original Financial Statements were prepared in accordance with the Accounting Standards consistently applied.
- (b) Its Original Financial Statements fairly represent its financial condition and operations (consolidated in the case of the Company) during the relevant financial year.
- (c) There has been no material adverse change:
 - (i) in the condition (financial or otherwise), business, performance, prospects, operations or properties of the Company and its Subsidiaries, taken as a whole, since [_____]; and
 - (ii) in the condition (financial or otherwise), business, performance, prospects, operations or properties of the Group since [_____].
- (d) The financial statements and accounts most recently delivered under Clause 19.1 (*Financial statements*):
 - (i) (if audited) give a true and fair view of or (if not audited) fairly present the consolidated financial condition of the Group or, as applicable, the relevant Obligor as at the date to which they were prepared and the results of operations for the Financial Year or, as applicable, quarter or month then ended; and
 - (ii) were prepared in accordance with the Accounting Standards consistently applied.

18.12 [New Energy Project Development Reports]³⁵

[At the date of its delivery:

- (a) all factual information contained in the most recently delivered New Energy Project Development Report was, taken as a whole, true and accurate in all material respects as at the date of such report;
- (b) the projections and forecasts contained in the most recently delivered New Energy Project Development Report have been prepared in good faith and based upon assumptions which were believed to be reasonable at the time prepared and on the basis of recent historical information (it being understood that such projections and forecasts are subject to significant uncertainties and contingencies, many of which

³⁵ See Footnote 9.

are beyond the Group's control, and that no assurance can be given that such projections and forecasts will be realised); and

- (c) the most recently delivered New Energy Project Development Report does not omit to disclose or take into account any matter the omission of which makes that New Energy Project Development Report misleading in any material respect, taken as a whole.]

18.13 Authorisations

Except for registration where required of each Security Document, all authorisations required by it:

- (a) in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Transaction Documents have been (or will on the Closing Date be) obtained or effected (as appropriate) and are (or will on the Closing Date be) in full force and effect; and
- (b) to carry on its business in the ordinary course and in all material respects as it is being conducted have been obtained or effected (as appropriate) and are in full force and effect;

except in each case to the extent failure to obtain or effect those authorisations would not have a Material Adverse Effect.

18.14 Material disclosure

The Obligors have fully disclosed in writing to the Facility Agent all material information in its possession regarding the arrangements relating to the development of the New Energy Project.

18.15 No Security Interests/Financial Indebtedness:

- (a) No Security (or agreement to create Security) exists on or over any Group Member's assets which is not permitted by the terms of this Agreement.
- (b) No Group Member has any (actual or contingent) Financial Indebtedness outstanding which is not permitted by the terms of this Agreement.

18.16 Litigation

No litigation, arbitration, administrative, regulatory or similar proceeding is current, has been notified to it or, to its knowledge, is threatened:

- (a) to restrain its entry into, the exercise of its rights under and performance of its obligations under, or the enforcement by it of, any of the Transaction Documents to which it is a party or the carrying out of the transactions contemplated by the Transaction Documents (other than in respect of any claims which are frivolous or vexatious); or
- (b) against a Group Member which has, or could reasonably be expected to have, by itself or together with any other such proceeding, a Material Adverse Effect.

18.17 Security Documents

- (a) It is the sole legal and beneficial owner of the assets over which it purports to grant security pursuant to the Security Documents to which it is party.
- (b) The shares in any Group Member that are subject to security pursuant to a Security Document (a “**Pledged Group Member**”) are fully paid and not subject to any option to purchase or similar right. The constitutive documents of each Pledged Group Member do not restrict or inhibit any transfer of the shares in that Pledged Group Member by the Facility Agent. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any Group Member (including any option or right of pre-emption or conversion).

18.18 New Energy Project

- (a) The Borrower has:
 - (i) good title to, or freedom to use under any applicable laws, the New Energy Project Site, any buildings or fixtures on the New Energy Project Site and any other assets (including contractual, proprietary and intellectual property rights) necessary to *[implement and]* operate the New Energy Project; and
 - (ii) access to the New Energy Project Site and all easements, wayleaves and other rights necessary or desirable in order to *[implement and]* operate the New Energy Project,in each case free from Security (other than any Security expressly permitted under this Agreement).
- (b) [The Borrower has received all planning permissions necessary for, or relating to, the completion of the New Energy Project Construction and to permit the construction of *[_____]* at the New Energy Project Site.]
- (c) There is no other agreement in connection with the Group’s interest in the New Energy Project Site to which any member of the Group is party which has not been delivered to the Facility Agent.
- (d) No Group Member is aware of any dispute in connection with any New Energy Project Document.

18.19 *Pari passu* ranking

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.

18.20 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material

Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

18.21 [Anti-Terrorism Law; Foreign Corrupt Practices Act]³⁶

(a) *No Group Member and, to the knowledge of the Obligors, no Affiliate of any Group Member acting or benefiting in any capacity in connection with the Loans, is in violation of any Legal Requirements relating to terrorism or money laundering (“Anti-Terrorism Laws”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “Executive Order”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the “Patriot Act”).*

(b) *No Group Member and to the knowledge of the Obligors, no Affiliate or broker or other agent of any Group Member acting or benefiting in any capacity in connection with the Loans, is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and the Borrower will not directly or indirectly use the proceeds of the Loans or otherwise make available such proceeds to any person, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.*

(c) *No Group Member and, to the knowledge of the Obligors, no broker or other agent of any Group Member acting or benefiting in any capacity in connection with the Loans:*

(i) *conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) of this Clause 18.21;*

(ii) *deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or*

(iii) *engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.*

(d) *No Group Member, nor any director or officer, nor to the knowledge of the Obligors, any agent, employee or other person acting, directly or indirectly, on behalf of any Group Member, has, in the course of its actions for, or on behalf of, any Group Member, directly or indirectly:*

³⁶ To be included if New York law, or if there are any US based Lenders.

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|---|
| <p>(i) <i>used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity;</i></p> <p>(ii) <i>made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds;</i></p> <p>(iii) <i>violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977; or</i></p> <p>(iv) <i>made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.]</i></p> |
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18.22 Taxation

- (a) None of the Obligors are materially overdue in the filing of any Tax returns. None of the Obligors have any overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against an Obligor with respect to Taxes.
- (c) Each Obligor is resident for Tax purposes only in the jurisdiction of its incorporation.

18.23 RBI approvals

Each Loan is being or will be borrowed in accordance with the approvals, guidelines, regulations and circulars (which are in effect from time to time) of the RBI including the ECB Guidelines, the Government of India and each other applicable Governmental Agency in India.

18.24 Foreign Exchange Control

Each Obligor has obtained all necessary governmental and other consents required under all applicable laws for the execution of each Finance Document to which it is a party and for the payment in [●] of all sums due thereunder.

18.25 Repetition

- (a) The representations and warranties in this Clause 18 shall be made by each Obligor on the date of this Agreement and deemed repeated on the date of the initial Utilisation Request and the date on which the initial Loan is made.
- (b) The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request (after the initial Utilisation Request) and the last day of each Interest Period, in each case by reference to the facts and circumstances existing on such date.

19. INFORMATION UNDERTAKINGS

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Financial statements

The Company shall supply to the Facility Agent in sufficient copies for all the Lenders:

- (a) as soon as the same become available, but in any event within 90 days after the end of each of its financial years:
 - (i) its audited consolidated financial statements for that financial year;
 - (ii) the audited consolidated financial statements of the Borrower for that financial year; and
 - (iii) the audited financial statements of each other Obligor for that financial year;
- (b) as soon as the same become available, but in any event within 45 days after the end of each of its financial quarters:
 - (i) its unaudited consolidated financial statements for that financial quarter;
 - (ii) the unaudited consolidated financial statements of the Borrower for that financial quarter; and
 - (iii) the financial statements of each other Obligor for that financial quarter; and
- (c) as soon as the same become available, but in any event within 30 days after the end of each month:
 - (i) its consolidated financial statements for that month (to include cumulative management accounts for the financial year to date);
 - (ii) the consolidated financial statements of the Borrower for that month (to include cumulative management accounts for the financial year to date); and
 - (iii) the financial statements for each Obligor for that month.

19.2 Compliance Certificate

- (a) The Company shall supply to the Facility Agent, with each set of financial statements delivered pursuant to paragraph (a)(i), (a)(ii), (b)(i) or (b)(ii) of Clause 19.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 20 (*Financial covenants*) as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by two directors of the Company and, if required to be delivered with the financial statements delivered pursuant to

paragraph (a)(i) and (a)(ii) of Clause 19.1 (*Financial statements*), shall be reported on by the Auditors in the form agreed by the Company and the Facility Agent.

19.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Company pursuant to Clause 19.1 (*Financial statements*) shall be certified by a director of the relevant company as fairly representing its financial condition as at the date as at which those financial statements were drawn up.
- (b) The Company shall procure that each set of financial statements delivered pursuant to Clause 19.1 (*Financial statements*) is prepared using the Accounting Standards, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, it notifies the Facility Agent that there has been a change in the Accounting Standards, the accounting practices or reference periods and its Auditors (or, if appropriate, the auditors of the Obligor) deliver to the Facility Agent:
 - (i) a description of any change necessary for those financial statements to reflect the Accounting Standards, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
 - (ii) sufficient information, in form and substance as may be required by the Facility Agent, to enable the Lenders to determine whether Clause 20 (*Financial covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.

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.

19.4 Information: miscellaneous

The Company shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):

- (a) all documents dispatched by the Company to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect; and

- (c) promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party (through the Facility Agent) may request.

19.5 Notification of default

- (a) Each Obligor shall notify the Facility Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- (b) Promptly upon a request by the Facility Agent, the Company shall supply to the Facility 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).

19.6 [New Energy Project Development Report]³⁷

The Borrower shall deliver a New Energy Project Development Report to the Facility Agent on the last Business Day in each month.]

19.7 [New Energy Project Account]³⁸

The Borrower will deliver to the Facility Agent within two Business Days of the end of each calendar month a certificate in the agreed form signed by the Finance Director of the Borrower setting out details of expenditure funded from the New Energy Project Account in such calendar month and confirming that the requirements of Clause 21.17(h) (*New Energy Project Account*) were met in respect of the withdrawal of the relevant amounts from the New Energy Project Account.]

19.8 Performance review

- (a) A conference call shall be held on the first Business Day of each financial quarter between the finance director of the Borrower and the Facility Agent to review the financial performance of the Group, including the most recently delivered financial statements of the Group, and the status of the New Energy Project.
- (b) A meeting shall be held on or around the last day of each financial quarter between the finance director and another director of the Company and any Lender wishing to participate in such meeting to review the financial performance of the Group and the status of the New Energy Project, including the performance of the Group against the most recently delivered operating budget and New Energy Project Development Budget.

³⁷ See Footnote 9.

³⁸ See Footnote 9.

19.9 [Use of websites³⁹

- (a) The Company and the Borrower may satisfy their obligation under this Agreement to deliver any information in relation to those Lenders (the “**Website Lenders**”) who accept this method of communication by posting this information onto an electronic website designated by the Company and the Facility Agent (the “**Designated Website**”) if:
- (i) the Facility Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (ii) each of the Company, the Borrower and the Facility Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (iii) the information is in a format previously agreed between the Company, the Borrower and the Facility Agent.

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Facility Agent shall notify the Company and the Borrower accordingly and the Company and the Borrower shall supply the information to the Facility Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company and the Borrower shall supply the Facility Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Facility Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company, the Borrower and the Facility Agent.
- (c) The Company or the Borrower shall promptly upon becoming aware of its occurrence notify the Facility Agent if:
- (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

³⁹ If necessary

- (v) the Company or the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Company or the Borrower notifies the Facility Agent under paragraph (c)(i) or (c)(v) above, all information to be provided by the Company and the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Facility Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Facility Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company and the Borrower shall comply with any such request within 10 Business Days.]

19.10 “Know your customer” checks

- (a) If:
 - (i) 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;
 - (ii) any change in the status of an Obligor after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Facility Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Facility Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each Lender shall promptly upon the request of the Facility Agent supply, or procure the supply of, such documentation and other evidence as is requested by the Facility Agent (for itself) in order for the Facility Agent to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks

under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (c) The Company shall, by not less than 10 Business Days' prior written notice to the Facility Agent, notify the Facility Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Guarantor pursuant to Clause 24 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Guarantor obliges the Facility Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Company or the Borrower shall promptly upon the request of the Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Facility Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.

20. FINANCIAL COVENANTS⁴⁰

[_____]

21. GENERAL UNDERTAKINGS⁴¹

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1 Authorisations

Each Obligor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

⁴⁰ To be determined what covenants are appropriate.

⁴¹ To be discussed in terms of the extent to which undertakings are to extend beyond the Borrower. The drafting reflects the starting position in the standard LMA form, but will be revised to the extent New York or India is the governing law.

(b) supply certified copies to the Facility Agent of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

21.2 Compliance with laws

Each Obligor shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

21.3 Negative pledge

In this Clause 21.3, “**Quasi-Security**” means an arrangement or transaction described in paragraph (b) below.⁴²

(a) The Company shall ensure that no member of the Group will create or permit to subsist any Security over any of its assets.

(b) The Company shall ensure that no member of the Group will:

(i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) 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

(iv) 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.

(c) Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, listed below:

(i) any Security or Quasi-Security listed in Schedule 10 (*Existing Security*) except to the extent the principal amount secured by that Security or Quasi-Security exceeds the amount stated in that Schedule;

⁴² To be determined which companies in the Group are to be subject to these and other negative covenants.

- (ii) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (iii) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
 - (A) hedging any risk to which any member of the Group is exposed in its ordinary course of trading; or
 - (B) its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;
- (iv) any lien arising by operation of law and in the ordinary course of trading;
- (v) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (B) the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
 - (C) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;
- (vi) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, if:
 - (A) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (B) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (C) the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;
- (vii) any Security or Quasi-Security entered into pursuant to any Finance Document;

- (viii) any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- (ix) [_____]; or
- (x) any Security or Quasi-Security securing indebtedness the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any permitted under paragraphs (i) to (ix) above) does not exceed [_____] (or its equivalent in another currency or currencies).

21.4 Disposals

- (a) The Company shall ensure that no member of the Group will 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.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
 - (i) made in the ordinary course of trading of the disposing entity;
 - (ii) of assets in exchange for other assets comparable or superior as to type, value and quality;
 - (iii) [_____]; or
 - (iv) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal, other than any permitted under paragraphs (i) to [(iii)] above) does not exceed [_____] (or its equivalent in another currency or currencies) in any financial year.

21.5 Merger

The Company shall ensure that no member of the Group will enter into any amalgamation, demerger, merger or corporate reconstruction.

21.6 Acquisitions

The Company shall ensure that no member of the Group will:

- (a) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
- (b) incorporate a company.

21.7 Joint ventures

The Company shall ensure that no member of the Group will:

- (a) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
- (b) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

21.8 Loans or credit

The Company shall ensure that no member of the Group will be a creditor in respect of any Financial Indebtedness.

21.9 No Guarantees or indemnities

The Company shall ensure that no member of the Group will incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

21.10 Dividends and share redemption

The Company shall ensure that no member of the Group will:

- (a) declare, make or pay any dividend, charge, fee 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 its share capital (or any class of its share capital);
- (b) repay or distribute any dividend or share premium reserve;
- (c) pay or allow any member of the Group to pay any management, advisory or other fee to or to the order of any of the shareholders of the Company or any of its affiliates; or
- (d) redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so,

other than a Permitted Distribution.

21.11 Financial Indebtedness

The Company shall ensure that no member of the Group will incur or allow to remain outstanding any Financial Indebtedness other than Permitted Financial Indebtedness.

21.12 Share capital

The Company shall ensure no member of the Group will issue any shares except pursuant to a Permitted Share Issue.

21.13 Change of business

The Company shall ensure that no substantial change is made to the general nature of the business of the Company and its Subsidiaries or the Group from that carried on at the date of this Agreement.

21.14 [New Energy Project Account]⁴³

- (a) The Borrower shall ensure that the net proceeds of any Utilisation of the Facility and any other cash received by it are credited to a New Energy Project Account immediately upon receipt.
- (b) No amount may be withdrawn from the New Energy Project Account unless such amount is identified in the most recent certificate in respect of the New Energy Project Account delivered pursuant to Clause 19.7 (New Energy Project Account), and the requirements of Clause 21.17(h) (New Energy Project Account) are met on the date such withdrawal is to be made.]

21.15 [Centre of main interests]

No Obligor incorporated in a Member State of the European Union will cause or allow its registered office or centre of main interests to be in or maintain an establishment (as that term is used in Article 2(h) of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings) in any jurisdiction other than its jurisdiction of incorporation where to do so could reasonably be expected to materially adversely affect the interests of the Lenders.]⁴⁴

21.16 Interest rate and currency hedging

The Company will ensure that no members of the Group will enter into any Treasury Transaction, except that at all times from the date falling [____] days after the date of this Agreement until the Termination Date:

- (a) the Borrower shall have hedging in place reasonably acceptable to the Facility Agent to hedge the floating interest rate exposure in respect of a notional principal amount equal to [_____]; and
- (b) the Borrower shall have hedging in place reasonably acceptable to the Facility Agent to hedge a notional amount of [_____] to [insert relevant currency] foreign currency exposure.

21.17 New Energy Project Undertakings⁴⁵

- (a) [New Energy Project expenditure]. Neither the Borrower nor any other member of the Group will incur any capital expenditure or other cost, expense or liability in respect of the New Energy Project which is not:
 - (i) anticipated by and in accordance with the New Energy Project Construction Budget or is otherwise approved by the Facility Agent; and

⁴³ See Footnote 9.

⁴⁴ If relevant.

⁴⁵ To be revised accordingly to match the applicable requirements. See also Footnote 9.

- (ii) funded from the proceeds of a Utilisation standing to the credit of the New Energy Project Account.]
- (b) [New Energy Project works. The Borrower and each other member of the Group will use its best endeavours to ensure that the New Energy Project is implemented in accordance with such timetables and cost proposals as the board of directors of the Borrower and the Facility Agent may approve from time to time.]
- (c) [Planning.
 - (i) Neither the Borrower nor any other member of the Group will make any application for planning permission or implement any planning permission obtained or enter or agree to enter into any agreement or undertaking under any *[Planning Act]* or any other similar act or acts without the prior consent of the Facility Agent;
 - (ii) the Borrower and each other member of the Group will use reasonable endeavours to achieve planning permission and related consents for the construction of a *[_____]* on the New Energy Project Site (in a form and on a basis approved by the Facility Agent) as soon as reasonably practical after the date of this Agreement; and
 - (iii) the Borrower and each other member of the Group will comply in all material respects with any conditions attached to the New Energy Project Planning Permission and any other planning permissions relating to or affecting the New Energy Project Site and not carry out any development (as defined in the *[Planning Acts]*) other than the New Energy Project (or any matters referred to in any subsequent planning permission in respect of the New Energy Project Site obtained pursuant to paragraph (i) above and approved by the Facility Agent) or make any material change in use of the New Energy Project Site.]
- (d) New Energy Project Documents.
 - (i) No Group Member shall enter into any New Energy Project Document unless that document is in a form approved by the Facility Agent and the identity of the relevant counterparty has been approved by the Facility Agent.
 - (ii) No Group Member shall:
 - (A) amend, vary or waive (or agree to amend, vary or waive) any material provision of any New Energy Project Document or exercise any right to rescind, cancel or terminate any New Energy Project Document or release any counterparty from any material obligations under any New Energy Project Document;

- (B) waive any material breach by any counterparty to a New Energy Project Document or consent to any act or omission which would otherwise constitute a material breach of a New Energy Project Document; or
 - (C) novate, transfer, assign or otherwise dispose of its rights under a New Energy Project Document.
- (iii) Each relevant Group Member shall:
- (A) comply with and perform all its obligations under the New Energy Project Documents in all material respects;
 - (B) use reasonable endeavours to enforce its material rights under the New Energy Project Documents in order to ensure the performance by the other parties to them of their obligations under such documents; and
 - (C) notify the Facility Agent promptly upon becoming aware of any material breach by itself or any other party, or of any material liability arising under, any New Energy Project Document.
- (iv) [Prior to the commencement of excavation, laying of foundations, construction or other similar development works at the New Energy Project Site, the Borrower shall (or procure that the relevant Group Member shall):
- (A) enter into documentation in the approved form with the New Energy Project Construction Contractor and relevant New Energy Project Professionals which engage such persons in respect of the New Energy Project on a fixed price basis through to actual completion of the New Energy Project; and
 - (B) procure that the New Energy Project Manager provides a confirmation to that effect to the Facility Agent.]
- (v) [The Borrower will:
- (A) procure that each of the New Energy Project Construction Contractor and the New Energy Project Manager enter into a collateral warranty or similar agreement with the Facility Agent in a form acceptable to the Facility Agent in respect of the documents referred to in paragraph (iv) above to which they are party at the time such documentation is entered into; and/or
 - (B) shall procure that the relevant Group Member shall use reasonable endeavours to procure that, upon the request of the Facility Agent, each other party to a New Energy Project Document enters into a collateral warranty or similar agreement with the Facility Agent in a form acceptable to the Facility Agent.]

- (e) Inspection.
- (i) The Facility Agent *[and the Technical Adviser]* may attend any material periodic discussions in respect of the New Energy Project. The Borrower shall give reasonable prior notice to the Facility Agent *[and the Technical Adviser]* of all meetings *[it is]/[they are]* entitled to attend.
 - (ii) The Borrower shall promptly send the Facility Agent *[and the Technical Adviser]* a copy of any minutes of any meeting attended by *[it]/[them]*.
 - (iii) Each Group Member shall give the Facility Agent *[and the Technical Adviser]* access to inspect the New Energy Project Site and any records in respect of the New Energy Project upon reasonable prior notice and during normal business hours and permit *[it]/[them]* to take copies of any documents inspected.
 - (iv) No approval of drawings or specifications, passing of any work, visit to the New Energy Project Site or attendance at any meetings by the Facility Agent *[, the Technical Adviser]* or any other officer, Facility Agent, employee or representative of any Finance Party will excuse any Group Member from its obligations under the Finance Documents.
- (f) New Energy Project Site.
- (i) No Group Member shall enter into, grant, amend, waive, surrender or forfeit any leasehold interest in the New Energy Project Site, dispose of any freehold or leasehold interest in the New Energy Project Site or permit or allow any third party to occupy the New Energy Project Site or any part of it, other than pursuant to a New Energy Project Property Document entered into pursuant to the New Energy Project Planning Permission or with the consent of the Facility Agent.
 - (ii) No Group Member shall agree or permit any extension, alteration, waiver or release of any rights or encumbrances enjoyed by third parties which affect the New Energy Project Site or grant any new rights over or encumbrances affecting the New Energy Project Site in each case without the consent of the Facility Agent.
- (g) Insurance.
- (i) Each Group Member will maintain insurance in respect of all its assets and business of an insurance nature with reputable insurers of good standing. Those insurances must provide cover against all risks which are normally insured against by other companies with teams of comparable standing owning, possessing or leasing similar assets and carrying on similar businesses and include cover against business interruption, loss of profits, product liability, professional indemnity, terrorism, player personal accident,

pollution and public liability and otherwise be satisfactory in all material respects to the Facility Agent.

- (ii) Without prejudice to paragraph (i) above, the Borrower will:
 - (A) maintain general insurance in respect of the New Energy Project Site on terms acceptable to the Facility Agent; and
 - (B) procure that professional indemnity insurance is maintained in full force and effect until the Repayment Date by all of the New Energy Project Professionals, the New Energy Project Construction Contractor (if relevant) and the New Energy Project Manager [*at all times after any such person has commenced excavation, laying of foundations, construction or other similar development works at or on the New Energy Project Site*].
- (iii) Each Group Member will:
 - (A) supply to the Facility Agent on request copies of each policy for insurance required to be maintained in accordance with paragraph (i) above together with the current applicable premium receipts;
 - (B) not agree any decreases to the level of insurance cover in respect of the New Energy Project without the prior written consent of the Facility Agent;
 - (C) promptly notify the Facility Agent in writing of any material change to its insurance cover;
 - (D) promptly notify the Facility Agent in writing of any claim or notification under any of its insurance policies which is for, or could reasonably be expected to result in a claim under such policy for, an amount in excess of [____]; and
 - (E) procure that the interest of the Facility Agent is noted on each policy of insurance required to be maintained in accordance with paragraph (i) above to the extent that such insurance is of a type on which it is possible to so note the interest of the Facility Agent.
- (h) [New Energy Project Accounts].
 - (i) The Borrower shall open and thereafter shall maintain the New Energy Project Account.
 - (ii) The Borrower may only apply amounts standing to the credit of the New Energy Project Account in accordance with Clause 21.17(a) (*New Energy Project expenditure*).

- (iii) No Group Member shall apply any amounts standing to the credit of the New Energy Project Account other than to fund payments in respect of New Energy Project Construction.]
- (i) Borrower as a special purpose company. Notwithstanding any other provision of this Agreement, the Borrower will not carry on any business or incur or permit to subsist any indebtedness or other liability, make any loan or guarantee, own any asset, make or receive any payment or enter into any other transaction, in each case except to the extent arising solely from the *[implementation and]* operation of the New Energy Project and activities reasonably related thereto or otherwise expressly permitted by the terms of this Agreement.
- (j) Holdco as a special purpose company. Notwithstanding any other provision of this Agreement, Holdco will not carry on any business or incur or permit to subsist any indebtedness or other liability, make any loan or guarantee, own any asset, make or receive any payment or enter into any other transaction, in each case except to the extent arising solely from:
- (i) entering into and exercising its rights and performing its obligations under the Transaction Documents to which it is party;
 - (ii) the ownership of shares in its direct Subsidiaries and intra-Group debit and credit balances; and
 - (iii) liabilities in respect of its share capital and professional fees, employee costs, administration costs and taxes in each case incurred in the ordinary course of its business.

21.18 Auditors

No Group Member will appoint any auditors other than *[_____]*, *[_____]* or *[_____]* (or any amalgamation of the same or their successors) and the Borrower and the Company shall instruct those auditors to disclose to the Facility Agent (and provide copies of) such information as the Facility Agent requests relating to the financial condition and operations of any Group Member.

21.19 Arm's-length terms

No Obligor shall (and the Company shall ensure no member of the Group will) enter into any transaction with any person except on arm's length terms and for full market value.

21.20 Use of proceeds

- (a) The Borrower shall ensure that all the proceeds of each Loan borrowed under this Agreement are used strictly in accordance with the purpose set out in Clause 3 (Purpose) and in accordance with the ECB Guidelines, and shall not be utilised for any of the following purposes:
- (i) the subscription to or purchase of any shares or debentures;

- (ii) the provision of loans to any Subsidiaries or associates of any promoter or any member of the Group;
 - (iii) the making of any inter-corporate deposits; or
 - (iv) any speculative purposes.
- (b) Within 15 Business Days after each Utilisation, the Borrower shall deliver to the Facility Agent a certificate signed by the Borrower's chartered accountant stating that the proceeds of such Utilisation were used in accordance with the purpose set out in Clause 3 (*Purpose*), and not for any other purpose.

21.21 Filings

The Borrower shall comply with all applicable laws, regulations, directions, notifications, circulars and guidelines issued by the RBI and/or the Government of India.

21.22 Post-Closing Requirements

- (a)
- (b)

22. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 22 is an Event of Default (save for Clause 22.19 (*Acceleration*)).

22.1 Non-payment

An Obligor 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:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within two Business Days of its due date.

22.2 Financial and other covenants

Any requirement of Clause 20 (*Financial covenants*) or Clause 21 (*General undertakings*) is not satisfied.

22.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-payment*) and Clause 22.2 (*Financial and other covenants*)).

- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 10 Business Days of the earlier of (A) the Facility Agent giving notice to the Company and (B) the Company or any other Obligor becoming aware of the failure to comply.

22.4 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

22.5 New Energy Project Documents

The Borrower or any other member of the Group shall be in default under any New Energy Project Document and such default shall not have been remedied within 10 Business Days after the earlier of earlier of (A) the Facility Agent giving notice to the Company and (B) the Company or any other Obligor becoming aware of the failure to comply.

22.6 Cross default

(a) Obligors

- (i) Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- (ii) Any Financial Indebtedness of any member of the Group 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).
- (iii) Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- (iv) Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- (v) No Event of Default will occur under this Clause 22.6(a) if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (i) to (iv) above is less than [_____] (or its equivalent in any other currency or currencies).

(b) The Company

- (i) Any Financial Indebtedness of the Company is not paid when due nor within any originally applicable grace period.

- (ii) Any Financial Indebtedness of the Company 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).
- (iii) Any commitment for any Financial Indebtedness of the Company is cancelled or suspended by a creditor of the Company as a result of an event of default (however described).
- (iv) Any creditor of the Company becomes entitled to declare any Financial Indebtedness of the Company due and payable prior to its specified maturity as a result of an event of default (however described).
- (v) No Event of Default will occur under this Clause 22.6(b) if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (i) to (iv) above is less than [_____] (or its equivalent in any other currency or currencies).

22.7 Insolvency

- (a) The Company or any member of the Group is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of the Company or any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Company or any member of the Group.

22.8 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company or any member of the Group;
- (b) a composition, compromise, assignment or arrangement with any creditor of the Company or any member of the Group;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Company or any member of the Group or any of its assets; or
- (d) enforcement of any Security over any assets of the Company or any member of the Group,

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

This Clause 22.8 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement.

22.9 Creditors' process

Any attachment, sequestration, distress or execution affects any asset or assets of the Company or any member of the Group.

22.10 Unlawfulness

It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.

22.11 Repudiation

An Obligor repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

22.12 Material adverse change

An event or series of events occurs that has or could reasonably be expected to have, in the reasonable judgment of the Facility Agent, a Material Adverse Effect.

22.13 Expropriation

- (a) All or part of the New Energy Project Site is nationalised, confiscated or requisitioned.
- (b) All or part of the Borrower's *[or the New Energy Project Construction Contractor's]* rights under the New Energy Project Documents or any authorisations in respect of the New Energy Project are forfeited, suspended or otherwise abrogated by any Government Entity.
- (c) There is any other intervention in the New Energy Project by or on behalf of any Governmental Entity and this has or would reasonably be expected to have a Material Adverse Effect.

22.14 Litigation

Any litigation, arbitration or administrative or regulatory proceeding is commenced by or against the Company or any member of the Group which is reasonably likely to be adversely determined and, if adversely determined, could reasonably be expected to have (whether by itself or together with any related claims) a Material Adverse Effect.

22.15 Audit qualification

The Auditors qualify their report on any audited consolidated financial statements of the Company or the Borrower and that qualification is materially adverse to the Lenders in the context of the Finance Documents.

22.16 Judgment default

- (a) The Company fails to comply with one or more binding, final and non-appealable judgments or orders to pay an amount where the aggregate amount subject to any such failure exceeds [_____].
- (b) Any Group Member fails to comply with one or more binding, final and non-appealable judgments or orders to pay an amount where the aggregate amount for all Group Members subject to any such failure exceeds [_____].

22.17 Ownership of the Obligors

An Obligor (other than the Company) is not or ceases to be a wholly-owned Subsidiary of the Company.

22.18 Project events

- (a) The Borrower does not have, at the time such is necessary or desirable to implement the New Energy Project in accordance with the Transaction Documents, or ceases to have:
 - (i) good title to, or freedom to use under any applicable laws, the New Energy Project Site, any buildings or fixtures on the New Energy Project Site that are material in the context of the New Energy Project and any other assets (including contractual, proprietary and intellectual property rights) necessary or desirable to implement the New Energy Project in accordance with the Transaction Documents; and
 - (ii) good title to all the assets (other than the assets which it is entitled to dispose of under the terms of this Agreement) reflected in its latest audited financial statements that are material in the context of the business of the Group,

in each case free from Security, restrictions and onerous covenants (other than any Security, restrictions and onerous covenants expressly permitted under this Agreement or any Security Document).
- (b) Any Group Member permits or allows any occupation of the New Energy Project Site which prevents or hinders the New Energy Project in any material respect.
- (c) The Borrower wilfully and voluntarily abandons, suspends or ceases the [*construction,*] operation and/or maintenance activities at the New Energy Project for a continuous period of more than [_____] days, unless the Borrower is taking commercially reasonable actions to overcome or mitigate the effects of the cause of the suspension or cessation so that [*construction,*] maintenance and/or operations, as the case may be, can be resumed.

22.19 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:

- (a) cancel the Total Commitments whereupon they shall immediately be cancelled;
- (b) 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;
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders; and/or
- (d) exercise one or more of the actions or rights available to Lenders or their agents and trustees under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

ARTICLE 9
CHANGES TO PARTIES

23. CHANGES TO THE LENDERS⁴⁶

23.1 Assignments and transfers by the Lenders

Subject to this Clause 23, a Lender (the “**Existing Lender**”) may [*at its liberty and without the consent of the Borrower or any other Party*]:¹

- (a) assign any or all of its rights and benefits hereunder [*and the other Transaction Documents (including the Security in relation thereto)*]; or
- (b) 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**”) and subject to necessary approvals under the ECB Guidelines for such transfer, novation and assignment to any New Lender.

23.2 Conditions of assignment or transfer

- (a) At least 5 Business Days prior consultation with the Company and the prior consent of the Facility Agent is required for an assignment or transfer by an Existing Lender, unless the assignment or transfer is to another Lender or an Affiliate of a Lender.
- (b) The consent of the Facility Agent to an assignment or transfer must not be unreasonably withheld or delayed.
- (c) An assignment will only be effective on:
 - (i) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
 - (ii) performance by the Facility Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.
- (d) A transfer will only be effective if the procedure set out in Clause 23.5 (*Procedure for transfer*) is complied with.

⁴⁶ These are standard LMA provisions. To be discussed whether (or the extent to which) they are necessary depending on the lending structure, and to be revised in part to the extent New York or India is the governing law.

- (e) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under 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 (e) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.

- (f) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the 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.

23.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of [____].

23.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
 - (ii) the financial condition of any Obligor;
 - (iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or
 - (iv) 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.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- (c) Nothing in any Finance Document obliges an Existing Lender to:
 - (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or
 - (ii) 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.

23.5 Procedure for transfer

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The 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.
- (b) The 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 and regulations in relation to the transfer to such New Lender.
- (c) On the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the “**Discharged Rights and Obligations**”);

- (ii) each of the Obligors 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 that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
- (iii) the Facility Agent, the Arranger, the New Lender and other Lenders 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 Facility Agent, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a “Lender”.

23.6 Procedure for assignment⁴⁷

- (a) Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The 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.
- (b) The 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 and regulations in relation to the assignment to such New Lender.
- (c) On the Transfer Date:
 - (i) 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;
 - (ii) 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

⁴⁷ If an 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 this Clause 23.5 (*Procedure for assignment*).

- (iii) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this Clause 23.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 23.5 (*Procedure for transfer*), to obtain a release by that Obligor from the obligations owed to that 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 23.2 (*Conditions of assignment or transfer*).

23.7 Copy of Transfer Certificate or Assignment Agreement to Company

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Company a copy of that Transfer Certificate or Assignment Agreement.

23.8 Security over Lenders’ rights

In addition to the other rights provided to Lenders under this Clause 23, 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, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, 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:

- (i) 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
- (ii) require any payments to be made by an 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.

24. CHANGES TO THE OBLIGORS

24.1 Assignments and transfer by Obligors

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

24.2 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 19.10 (“*Know your customer*” checks), the Company may request that any of its Subsidiaries become an Additional Guarantor. That Subsidiary shall become an Additional Guarantor if:
- (i) the Company delivers to the Facility Agent a duly completed and executed Accession Letter; and
 - (ii) the Facility Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Facility Agent.
- (b) The Facility Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*).

24.3 Repetition of Representations

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the Repeating Representations are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

24.4 Resignation of a Guarantor

- (a) The Company may request that a Guarantor (other than the Company) ceases to be a Guarantor by delivering to the Facility Agent a Resignation Letter.
- (b) The Facility Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:
- (i) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Company has confirmed this is the case);
 - (ii) all the Lenders have consented to the Company’s request; and
 - (iii) [_____].

ARTICLE 10
THE FINANCE PARTIES

25. ROLE OF THE AGENTS AND THE ARRANGER

25.1 Appointment of the Facility Agent

- (a) Each other Finance Party (other than such Agent) appoints each Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each other Finance Party authorises each Agent to:
 - (i) exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions; and
 - (ii) execute each Finance Document expressed to be executed by the relevant Agent on its behalf.
- (c) Each Agent has only those duties which are expressly specified in the Senior Finance Documents. Those duties are solely of a mechanical and administrative nature.

25.2 Duties of the Agents

- (a) Subject to paragraph (b) below, each Agent shall promptly forward to a Party the original or a copy of any document which is delivered to such Agent for that Party by any other Party.
- (b) Without prejudice to Clause 23.7 (*Copy of Transfer Certificate or Assignment Agreement to Company*), paragraph (a) above shall not apply to any Transfer Certificate or to any Assignment Agreement.
- (c) Except where a Finance Document specifically provides otherwise, neither Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If either Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- (e) If either Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than such Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Agents' duties under the Finance Documents are solely mechanical and administrative in nature.

25.3 Role of the Arranger

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

25.4 No fiduciary duties

- (a) Nothing in this Agreement constitutes the Agents or the Arranger as a trustee or fiduciary of any other person.
- (b) None of the Agents nor the 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.

25.5 Business with the Group

Each Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

25.6 Rights and discretions of the Agents

- (a) Each Agent may rely on:
 - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) Each Agent may assume (unless it has received notice to the contrary in its capacity as such Agent for the Lenders) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
 - (iii) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.
- (c) Each Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) Each Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) Each Agent may disclose to any other Party any information it reasonably believes it has received as an Agent under this Agreement.

- (f) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agents nor the 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.

25.7 Majority Lenders' instructions

- (a) Unless a contrary indication appears in a Finance Document, each Agent shall (i) exercise any right, power, authority or discretion vested in it as an Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as an Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
- (c) Each Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability *[(together with any associated VAT)]* which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders (or, if appropriate, the Lenders), each Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) Neither Agent is authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

25.8 Responsibility for documentation

None of the Agents nor the Arranger:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by either Agent, the Arranger, an Obligor or any other person given in or in connection with any Finance Document; or
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

25.9 Exclusion of liability

Without limiting paragraph (b) below for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct:

- (a) no Party (other than an Agent) may take any proceedings against any officer, employee or agent of an Agent in respect of any claim it might have against such Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of such Agent may rely on this Clause 25.9;
- (b) neither Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by such Agent if such Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by such Agent for that purpose; and
- (c) nothing in this Agreement shall oblige either Agent or the Arranger to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agents and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agents or the Arranger.

25.10 Lenders’ indemnity to the Agents

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify each Agent, within three Business Days of demand, against any cost, loss or liability incurred by such Agent (otherwise than by reason of such Agent’s gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless such Agent has been reimbursed by an Obligor pursuant to a Finance Document).

25.11 Resignation of an Agent

- (a) Either Agent may resign and appoint one of its Affiliates acting through an office in [_____] as successor by giving notice to the other Finance Parties and the Company.
- (b) Alternatively an Agent may resign by giving 30 days’ notice to the other Finance Parties and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Agent (after consultation with the Company) may appoint a successor Agent (acting through an office in [_____]).
- (d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

- (e) The relevant Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 25. Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (g) After consultation with the Company, the Majority Lenders may, by notice to either Agent, require it to resign in accordance with paragraph (b) above. In this event, the relevant Agent shall resign in accordance with paragraph (b) above.

25.12 Confidentiality

- (a) In acting as an Agent for the Finance Parties, each Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of either Agent, it may be treated as confidential to that division or department and such Agent shall not be deemed to have notice of it.

25.13 Relationship with the Lenders

- (a) Each Agent may treat the person shown in its records as Lender at the opening of business (in the place of such Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Finance Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) *[Each Lender shall supply the Facility Agent with any information required by the Facility Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (Mandatory Cost formula).]*

- (c) Any Lender may by notice to the Agents appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 30.5 (*Electronic communication*)) electronic mail address

and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 30.2 (*Addresses*) and paragraph (a)(iii) of Clause 30.5 (*Electronic communication*) and each Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

25.14 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 Agent and the 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:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by either Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

25.15 Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Facility Agent shall (in consultation with the Company) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

25.16 Facility Agent's Management Time

Any amount payable to the Facility Agent under Clause 14.3 (*Indemnity to the Facility Agent*), Clause 16 (*Costs and expenses*) and Clause 25.10 (*Lenders' indemnity to the Facility Agent*) shall include the cost of utilising the Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the

relevant Agent may notify to the Company and the Lenders, and is in addition to any fee paid or payable to the Agents under Clause 11 (*Fees*).

25.17 Deduction from amounts payable by the Agents

If any Party owes an amount to an Agent under the Finance Documents, such Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which that Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

26. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) 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
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

27. SHARING AMONG THE FINANCE PARTIES

27.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from an Obligor other than in accordance with Clause 28 (*Payment mechanics*) (a “**Recovered Amount**”) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Facility Agent;
- (b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 28 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Facility Agent determines

may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 28.5 (*Partial payments*).

27.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 28.5 (*Partial payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

27.3 Recovering Finance Party’s rights

On a distribution by the Facility Agent under Clause 27.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

27.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

27.5 Exceptions

- (a) This Clause 27 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause 27.5, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

ARTICLE 11
ADMINISTRATION

28. PAYMENT MECHANICS

28.1 Payments to the Facility Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency with such bank as the Facility Agent specifies.

28.2 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 28.3 (*Distributions to an Obligor*) and Clause 28.4 (*Clawback*) be made available by the Facility Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency.

28.3 Distributions to an Obligor

The Facility Agent may (with the consent of the Obligor or in accordance with Clause 29 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

28.4 Clawback

- (a) Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

28.5 Partial payments

- (a) If the Facility Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
- (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Facility Agent under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
 - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

28.6 No set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

28.7 Business Days

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

28.8 Currency of account

- (a) Subject to paragraphs (b) and (c) below, *[insert currency of Loan]* is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than *[insert currency of Loan]* shall be paid in that other currency.

28.9 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
- (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the Company); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent.
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Facility Agent specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

29. SET-OFF⁴⁸

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

⁴⁸ Pursuant to FEMA (and the regulations issued thereunder), a prior approval from the RBI will need to be secured to permit any set-off between a person resident in India and a person resident outside India.

Further, Sec. 2(v) of FEMA defines “person resident in India” as:

- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include
 - (A) a person who has gone out of India or who stays outside India, in either case (a) for or on taking up employment outside India, or (b) for carrying on outside India a business or vocation outside India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (B) a person who has come to or stays in India, in either case, otherwise than (a) for or on taking up employment in India, or (b) for carrying on in India a business or vocation in India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (ii) any person or body corporate registered or incorporated in India;
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India, and
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India”.

Sec. 2(w) of FEMA defines “person resident outside India” as “a person who is not resident in India”.

30. NOTICES

30.1 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.

30.2 Addresses

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:

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of each Lender or any other Original Obligor, that notified in writing to the Facility Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Facility Agent, that identified with its name below,

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

30.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) 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 30.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Facility Agent will be effective only when actually received by the Facility Agent and then only if it is expressly marked for the attention of the department or officer identified with the Facility Agent's signature below (or any substitute department or officer as the Facility Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Facility Agent.
- (d) Any communication or document made or delivered to the Company in accordance with this Clause 30.3 will be deemed to have been made or delivered to each of the Obligors.

30.4 Notification of address and fax number

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 30.2 (*Addresses*) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

30.5 Electronic communication

- (a) Any communication to be made between the Facility Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Facility Agent and the relevant Lender:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Facility Agent and a Lender will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Facility Agent only if it is addressed in such a manner as the Facility Agent shall specify for this purpose.

30.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Facility 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.

31. CALCULATIONS AND CERTIFICATES

31.1 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.

31.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

31.3 Day count convention

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]⁴⁹ days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

32. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents 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.

33. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

34. AMENDMENTS AND WAIVERS

34.1 Required consents

- (a) Subject to Clause 34.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.
- (b) The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 34.1.

⁴⁹ Sterling follows a day count convention of 365 days; US dollar follows a day count convention of 360 days; India follows a day count convention of 365 days in the money markets.

34.2 Exceptions

- (a) An amendment or waiver that has the effect of changing or which relates to:
- (i) the definition of “Majority Lenders” in Clause 1.1 (*Definitions*);
 - (ii) an extension to the date of payment of any amount under the Finance Documents;
 - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
 - (iv) an increase in or an extension of any Commitment;
 - (v) a change to the Guarantors other than in accordance with Clause 24 (*Changes to the Obligors*);
 - (vi) any provision which expressly requires the consent of all the Lenders;
 - (vii) Clause 2.2 (*Finance Parties’ rights and obligations*), Clause 23 (*Changes to the Lenders*) or this Clause 34;
 - (viii) the nature or scope of the guarantee and indemnity granted under Clause 17 (*Guarantee and Indemnity*); or
 - (ix) *[others]*,
- shall not be made without the prior consent of all the Lenders.
- (b) An amendment or waiver which relates to the rights or obligations of the Facility Agent or the Arranger (each in their capacity as such) may not be effected without the consent of the Facility Agent or, as the case may be, the Arranger.

35. CONFIDENTIALITY

35.1 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 35.2 (*Disclosure of Confidential Information*), 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.

35.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives 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;

- (b) to any person:
- (i) 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 and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) 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;
 - (iii) 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 (including, without limitation, any person appointed under paragraph (c) of Clause 25.13 (Relationship with the Lenders));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 23.8 (Security over Lenders' rights);
 - (vii) 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;
 - (viii) who is a Party; or
 - (ix) with the consent of the Company;

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

- (A) 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;
 - (B) 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;
 - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) 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;
- (c) 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 without limitation, 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 Undertaking;
- (d) 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 Obligors 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.

35.3 Entire agreement

This Clause 35 (Confidentiality) 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.

35.4 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.

35.5 Notification of disclosure

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 35.2 (*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
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 35 (*Confidentiality*).

35.6 Continuing obligations

The obligations in this Clause 35 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of *[twenty-four]* months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

36. COUNTERPARTS

Each Finance Document 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 the Finance Document.

ARTICLE 12
GOVERNING LAW AND ENFORCEMENT

37. GOVERNING LAW⁵⁰

[This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.]/[This Agreement and the other Finance Documents and any claims, controversy, dispute or cause of action (whether sounding in contract law or tort law or otherwise) based upon, arising out of or relating to this Agreement or any other Finance Document (except, as to any other Finance Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York without giving effect to any choice of law principles that would apply the laws of another jurisdiction.]

38. ENFORCEMENT

38.1 Jurisdiction

- (a) *[The courts of England 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 any non-contractual obligation arising out of or in connection with this Agreement) (a “Dispute”).]*
- (b) *[The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.]*
- (c) *[This Clause 38.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.]⁵¹*

- (a) *[Each Obligor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Finance Document, or for recognition or enforcement of any judgment, and each of the parties hereto]*

⁵⁰ As per Indian law, this Agreement can be governed by English law; the security documents, however, will need to be governed by Indian law. Indian parties often prefer to include English courts for the facility agreement, because England is a reciprocating territory

⁵¹ If English law governs.

hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by applicable legal requirements, in such federal court.]

- (b) *[Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. Nothing in this Agreement or any other Finance Document or otherwise shall affect any right that the Facility Agent, the Security Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Finance Document against any Obligor or its properties in the courts of any jurisdiction in the United States (and, in the case of the enforcement of a judgment obtained in the courts of any jurisdiction in the United States in respect of any Foreign Document relating to any collateral consisting of equity interests in a foreign Subsidiary or assets located outside of the United States or any State thereof, the jurisdiction in which such foreign Subsidiary is organized or such assets are located).]*
- (c) *[Each Obligor hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable legal requirements, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Finance Document in any court referred to in paragraph (b) of this Clause 38.1. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable legal requirements, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.]⁵²*

- (a) *[The Borrower agrees that the High Court of Judicature at [●] shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Finance Documents and that accordingly any suit, action or proceedings (together referred to as “Proceedings”) arising out of or in connection with the Finance Documents may be brought in such courts or the tribunals, and the Borrower irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of those courts or tribunals.*
- (b) *The Borrower irrevocably waives any objection now or in future, to the laying of the venue of any Proceedings in the High Court of Judicature at [●] and any claim that any such Proceedings have been brought in an inconvenient forum*

⁵² If New York law governs.

and further irrevocably agrees that a judgment in any Proceedings brought in the High Court of Judicature at [●] shall be conclusive and binding upon it and may be enforced in the courts of any other jurisdiction, (subject to the laws of such jurisdiction) by a suit upon such judgment a certified copy of which shall be conclusive evidence of such judgment, or in any other manner provided by law.

- (c) *Nothing contained in this Clause 38.1 (Jurisdiction) shall limit any right of the Security Agent, or the Lender to take Proceedings in any other court or tribunal of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction whether concurrently or not and the Borrower irrevocably submits to and accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of such court or tribunal, and the Borrower irrevocably waives any objection it may have now or in the future to the laying of the venue of any Proceedings and any claim that any such Proceedings have been brought in an inconvenient forum.*
- (d) *The Borrower hereby consents generally in respect of any Proceedings arising out of or in connection with any Finance Document to the giving of any relief or the issue of any process in connection with such Proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.*
- (e) *To the extent that the Borrower may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity.]⁵³*

38.2 Service of process⁵⁴

[Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

- (a) *irrevocably appoints [_____] as its Facility Agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and*
- (b) *agrees that failure by a process Facility Agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.]*

⁵³ If Indian law governs.

⁵⁴ If appropriate depending on governing law and jurisdiction.

[Each party to this Agreement irrevocably consents to service of process in any action or proceeding arising out of or relating to any Finance Document, in the manner provided for notices (other than telecopy or email) in Clause 30.2 (Addresses). Nothing in this Agreement or any other Finance Document will affect the right of any party to this Agreement to serve process in any other manner permitted by applicable legal requirements.]

38.3 [WAIVER OF JURY TRIAL]

[EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY FINANCE DOCUMENT, THE TRANSACTIONS OR THE OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS CLAUSE 38.3.]⁵⁵

38.4 [Interest Rate Limitation]⁵⁶

[Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively, the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable legal requirements, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Clause 38.4 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon to the date of repayment, shall have been received by such Lender.]

38.5 [USA Patriot Act]⁵⁷

⁵⁵ If governed by New York law.

⁵⁶ Appropriateness to be confirmed.

⁵⁷ Necessary if governed by New York law, or if there are any US Lenders.

[Each Lender hereby notifies each Obligor that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Obligors, which information includes the name, address and taxpayer identification number of each Obligor and other information that will allow such Lender to identify such Obligor in accordance with the Patriot Act.]

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

THE ORIGINAL PARTIES

Part I

The Original Obligors

Name of Original Borrower

Registration number (or equivalent, if any)

Name of Original Guarantors

Registration number (or equivalent, if any)

Part II

The Original Lenders [- other than UK Non-Bank Lenders]⁵⁸

Name of Original Lender

Commitment

⁵⁸ If no Original Lender is a UK Non-Bank Lender, delete the words in square brackets from the heading of this Part.

Part III

[The Original Lenders - UK Non-Bank Lenders]⁵⁹

Name of Original Lender

Commitment

⁵⁹ If no Original Lender is a UK Non-Bank Lender, delete this part of the Schedule and all references to it in the body of the Agreement.

SCHEDULE 2
CONDITIONS PRECEDENT

Part I
Conditions Precedent to Initial Utilisation

1. Original Obligors

- (a) A copy of the constitutional documents of each Original Obligor.
- (b) A copy of a resolution of the board of directors of each Original Obligor:
 - (i) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (ii) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
 - (iii) 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) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A copy of a resolution signed by all the holders of the issued shares in each Original Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Original Guarantor is a party.
- (e) A certificate of the Company (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on any Original Obligor to be exceeded.
- (f) A certificate of an authorised signatory of the relevant Original Obligor certifying that each copy document relating to it specified in this Part I of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

2. Legal opinions

A legal opinion of [_____], legal advisers to the Company in [_____], substantially in the form distributed to the Original Lenders prior to signing this Agreement, and if an Original Obligor is incorporated in a jurisdiction other than [_____], a legal opinion of the

legal advisers to that Obligor in the relevant jurisdiction, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

3. **Other documents and evidence**

- (a) Evidence that any process Facility Agent referred to in Clause 38.2 (*Service of process*), if not an Original Obligor, has accepted its appointment.
- (b) A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable (if it has notified the Company accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (c) The Original Financial Statements of each Original Obligor.
- (d) Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
- (e) evidence of the following approvals and registrations:
 - (i) that the Form 83 in the format and in terms prescribed under the Master Circular on External Commercial Borrowing and Trade Credits guidelines (along with any amendments and notifications issued from time to time) dated July 1, 2011 issued by the RBI (the “ECB Guidelines”) has been submitted by the Borrower to the authorised dealer bank of the Borrower to submit to the Director, Balance of Payments, Statistics Division, Department of Statistical Analysis and Computer Services, RBI for allotment of a loan registration number within seven days after the execution of this Agreement;
 - (ii) a certified copy of the letter issued by the RBI allotting the loan registration number.

Part II
Conditions Precedent Required to be
Delivered by an Additional Guarantor

1. An Accession Letter, duly executed by the Additional Guarantor and the Company.
2. A copy of the constitutional documents of the Additional Guarantor.
3. A copy of a resolution of the board of directors of the Additional Guarantor:
 - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter;
 - (b) authorising a specified person or persons to execute the Accession Letter on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
5. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
6. A certificate of the Additional Guarantor (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded.
7. A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.
8. A copy of any other Authorisation or other document, opinion or assurance which the Facility Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.
9. If available, the latest audited financial statements of the Additional Guarantor.
10. A legal opinion of [_____], legal advisers to the Arranger and the Facility Agent in [_____].
11. A copy of the NOC from the Authorised Dealer.

12. A legal opinion of the legal advisers to that Additional Guarantor in the jurisdiction in which the Additional Guarantor is incorporated. xxx
13. If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that the process Facility Agent specified in Clause 38.2 (*Service of process*), if not an Obligor, has accepted its appointment in relation to the proposed Additional Guarantor.

SCHEDULE 3

REQUESTS

Part I

Utilisation Request

From: [*Borrower*]

To: [*Facility Agent*]

Dated:

Dear Sirs

[**Company**] – [] **Facility Agreement**

dated [] (the “Agreement”)

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Loan on the following terms:
Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)
Amount: [] or, if less, the Available Facility
Interest Period: []
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Loan should be credited to [*account*].
5. The proceeds of this Utilisation are to be used for [_____], which is consistent with the most recently delivered New Energy Project Development Report.
6. This Utilisation Request is irrevocable.

Yours faithfully

.....
authorised signatory for
[*name of relevant Borrower*]

Part II
Selection Notice

From: [*Borrower*]

To: [*Facility Agent*]

Dated:

Dear Sirs

[Company] - [] Facility Agreement
dated [] (the “Agreement”)

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.
2. We refer to the following Loan[s] with an Interest Period ending on [_____] ^{*}.
3. [We request that the above Loan[s] be divided into [] Loans with the following amounts and Interest Periods:] ^{**}

or

[We request that the next Interest Period for the above Loan[s] is []]. ^{***}
4. This Selection Notice is irrevocable.

Yours faithfully

.....
authorised signatory for
[the Company on behalf of]
[*name of relevant Borrower*]

* Insert details of all Loans which have an Interest Period ending on the same date.

** Use this option if division of Loans is requested.

*** Use this option if sub-division is not required.

SCHEDULE 4

MANDATORY COST FORMULA

Current LMA Mandatory Cost Schedule to be inserted

SCHEDULE 5
FORM OF TRANSFER CERTIFICATE

To: [] as Facility Agent

From: [*The Existing Lender*] (the “**Existing Lender**”) and [*The New Lender*] (the “**New Lender**”)

Dated:

[Company] – [] Facility 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 23.5 (*Procedure for transfer*):
 - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender’s Commitment, rights and obligations referred to in the Schedule in accordance with Clause 23.5 (*Procedure for transfer*).
 - (b) The proposed Transfer Date is [].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 30.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of Clause 23.4 (*Limitation of responsibility of Existing Lenders*).
4. The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender falling within paragraph (i)(A) [or paragraph (ii)] of the definition of Qualifying Lender;]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].⁶⁰
5. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

⁶⁰ Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.

- (a) a company resident in the United Kingdom for United Kingdom tax purposes;
- (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
- (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]⁶¹

[4/5]. 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.

[5/6]. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by [*insert governing law*].

[6/7]. 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*]

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

[Existing Lender]

[New Lender]

By:

By:

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

[Facility Agent]

By:

⁶¹ Include if New Lender comes within paragraph (i)(B) of the definition of Qualifying Lender in Clause 12.1 (*Definitions*).

SCHEDULE 6
FORM OF ASSIGNMENT AGREEMENT

To: [] as Facility Agent and [] as Company, for and on behalf of each Obligor

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

Dated:

[Company] - [] Facility 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 23.6 (*Procedure for assignment*):
 - (a) 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 Commitments and participations in Loans under the Agreement as specified in the Schedule.
 - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in Loans under the Agreement specified in the Schedule.
 - (c) 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.⁶²
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 30.2 (*Addresses*) are set out in the Schedule.

⁶² 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.

6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 23.4 (*Limitation of responsibility of Existing Lenders*).
7. The New Lender confirms, for the benefit of the Facility Agent and without liability to any Obligor, that it is:
 - (a) [a Qualifying Lender falling within paragraph (i)(A) [or paragraph (ii)] of the definition of Qualifying Lender;]
 - (b) [a Treaty Lender;]
 - (c) [not a Qualifying Lender].⁶³
8. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
 - (b) a partnership each member of which is:
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (within the meaning of section 19 of the CTA) the whole of any share of interest payable in respect of that advance that falls to it by reason of Part 17 of the CTA; or
 - (c) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company.]⁶⁴
- [8/9]. This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 23.7 (*Copy of Transfer Certificate or Assignment Agreement to Company*), to the Company (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.
- [9/10]. 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.

⁶³ Delete as applicable - each New Lender is required to confirm which of these three categories it falls within.

⁶⁴ Include only if New Lender is a UK Non-Bank Lender - i.e. falls within paragraph (i)(B) of the definition of Qualifying Lender in Clause 12.1 (*Definitions*).

[10/11] This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by *[insert governing law]*.

[11/12] 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]

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

[Existing Lender]

[New Lender]

By:

By:

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

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

[Facility Agent]

By:

SCHEDULE 7
FORM OF ACCESSION LETTER

To: [] as Facility Agent

From: [*Subsidiary*] and [*Company*]

Dated:

Dear Sirs

[Company] – [] Facility Agreement
dated [] (the “Agreement”)

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [*Subsidiary*] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement as an Additional Guarantor pursuant to Clause 24.2 (Additional Guarantors) of the Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [*name of relevant jurisdiction*].
3. [*Subsidiary*'s] administrative details are as follows:
Address:

Fax No:

Attention:
4. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by [*insert governing law*].

[This Guarantor Accession Letter is entered into by deed.]

[Company]

[Subsidiary]

SCHEDULE 8
FORM OF RESIGNATION LETTER

To: [] as Facility Agent

From: [*resigning Obligor*] and [*Company*]

Dated:

Dear Sirs

[Company] – [] Facility Agreement
dated [] (the “Agreement”)

1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.
2. Pursuant to Clause 24.4 (*Resignation of a Guarantor*), we request that [*resigning Guarantor*] be released from its obligations as a Guarantor under the Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) []*
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by [*insert governing law*].

[Company]

[Subsidiary]

By:

By:

* Insert any other conditions required by the Facility Agreement.

SCHEDULE 9
FORM OF COMPLIANCE CERTIFICATE

To: [] as Facility Agent

From: [Company]

Dated:

Dear Sirs

[Company] – [] Facility Agreement
dated [] (the “Agreement”)

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that: [Insert details of covenants to be certified]
3. [We confirm that no Default is continuing.] *

Signed:
	Director	Director
	Of	Of
	[Company]	[Company]

[insert applicable certification language]**

.....
for and on behalf of
[name of auditors of the Company]***

* If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

** To be agreed with the Company’s auditors and the Lenders prior to signing the Agreement.

*** Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the auditors. To be agreed with the Company’s auditors prior to signing the Agreement.

SCHEDULE 10
EXISTING SECURITY

Name of Obligor	Security	Total Principal Amount of Indebtedness Secured
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SCHEDULE 11

LMA FORM OF CONFIDENTIALITY UNDERTAKING⁶⁵

⁶⁵ The current form of LMA Confidentiality Letter (Seller) or Confidentiality Letter (Purchaser) for the secondary trading of loans should be included in this Schedule. In the case where primary syndication takes place after the Facility Agreement is signed, the current LMA Confidentiality and Front Running Letter should also be included to avoid confusion over which form of confidentiality letter is appropriate.

SCHEDULE 12
REPAYMENT OF LOANS

SCHEDULE 13
TIMETABLES⁶⁶

	Utilisations in Sterling	Utilisations in Dollars	Utilisations in [Euro]/[Rupee]
Delivery of a duly completed Utilisation Request (<u>Clause 5.1</u> (<i>Delivery of a Utilisation Request</i>) or a Selection Notice (<u>Clause 9.1</u> (<i>Selection of Interest Periods</i>))	U – [x] 9.30 a.m.	U – [x] 9.30 a.m.	U – [x] 9.30 a.m.
Facility Agent notifies the Lenders of the Loan in accordance with <u>Clause 5.4</u> (<i>Lenders’ participation</i>)	U – [x] 3.00 p.m.	U – [x] 3.00 p.m.	U – [x] 3.00 p.m.
IBOR is fixed	Quotation Day as of 11:00 a.m. London time	Quotation Day as of 11:00 a.m. London time	Quotation Day as of 11:00 a.m. London time
“U” =	Utilisation Date		
“U – x” =	x Business Days prior to Utilisation Date		

⁶⁶ Choose the timetable applicable for the currency of the Loan.

SCHEDULE 14

CLEARANCES

Endnotes

^A Note, it is assumed that each of the companies, namely, the Company, Holdco and the Borrower will be companies incorporated in India. This Agreement will accordingly be executed in India. Under Indian law, stamp duty is payable on documents executed based on the stamp duty applicable in the State where the document is executed. For example, if the Agreement is executed in Maharashtra, the stamp duty payable is 0.2% of the amount of the loan. In most of the other states the stamp duty is nominal. In the event the Agreement is executed outside India, the Agreement will need to be stamped within a period of 3 months of being brought into India as per the applicable stamp duty rules. Please note that even receipt of copies of the Agreement in India will trigger the requirement for payment of stamp duty.

^B Note, Indian law does not permit a person resident in India to set up a Holdco outside India for the purpose of making investments back into India. Hence, it is recommended for an Energy Project Parent (incorporated in India) to set up a Holdco incorporated in India for the purpose of making investments into the Borrower (also incorporated in India). Such a structure avoids the risk of being construed as “round tripping,” which is prohibited under Indian laws. Any offshore investors could, however, establish a Holdco outside India, and this Holdco could invest into the Borrower along with the Energy Project Parent. However, note, the offshore (or foreign investors) will be required to undertake the following steps in order to invest into India:

(a) All foreign investors’ entry, operations and exits are governed by the provisions of the Foreign Exchange Management Act, 1999 (“*FEMA*”) and the regulations issued thereunder. FEMA has been enacted to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and promoting the orderly development and maintenance of the foreign exchange market in India. As per FEMA provisions, depending upon the investors’ proposed activities, a foreign entity can establish its presence in India, either by:

- (1) opening a liaison office, or
- (2) utilising a branch office (the detailed requirements are listed in the Foreign Exchange Management (establishment in India of a branch or office or other place of business) Regulations, 2000), or
- (3) directly investing in an Indian company either as a joint venture or a wholly owned subsidiary.

(b) Two Caveats:

- (1) Please note that the aforementioned option (a)(1) may not be particularly useful in the present case as a liaison office can only undertake certain limited activities. If option (a)(3) is chosen, the investment will need to be made in accordance with Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000).
- (2) Section 6 (6) of FEMA, read with Regulation 3, specifically prohibits any foreign entity from carrying out its activities in India, except through the options mentioned above. As a result, Holdco will in all likelihood have to be a corporate entity established in India.

(c) Moreover, it is also recommended that Holdco have some operations in light of the Indian regulations:

- (1) Foreign investment into an investment company requires the prior approval of the Foreign Investment Promotion Board of India (“*FIPB*”);
- (2) Holdco may need to be registered as a “non-banking finance company” (“*NBFC*”) with the RBI if more than 50% of the assets of Holdco are financial assets and more than 50% of the revenues of Holdco are also from financial assets, which may be the case here. If Holdco is determined to be an NBFC, other conditions will also need to be fulfilled. Therefore, holding companies are typically structured as “holding cum operating companies”.
- (3) Further, all investments by a holding company into downstream project SPVs will need to comply with downstream guidelines. Subject to these conditions, a holding company (structured as a holding cum operation company) with multiple project SPVs may be acceptable. See also, the Consolidated Foreign Direct Policy of India (as shall be updated from time to time), Department of Industrial Policy & Promotion (“*DIPP*”), available at <http://dipp.nic.in>; FEMA (and rules and regulations made thereunder) for a comprehensive list of the rules and guidelines regulating foreign investors’ investment into India.
- (4) One should also note that FEMA, the Government of India and RBI’s policies (as amended from time to time) regulate foreign investments in Indian NBFCs and the activities that NBFCs are permitted to undertake.

^C Because this Agreement anticipates a loan provided by the an offshore entity to an onshore company, this facility will be construed as an external commercial borrowing (“*ECB*”) and will have to be comply with the provisions of the External

Commercial Borrowing Guidelines contained in the Master Circular dated 1 July 2011 issued by the RBI, as amended, modified or replaced from time to time (the “*ECB Guidelines*”). Only a borrower determined to be an “Eligible Borrower” (as per the ECB Guidelines) may avail itself of this type of loan. The ECB Guidelines defines an “Eligible Borrower” as including:

- (a) corporations, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956), and
- (b) Infrastructure Finance Companies (“IFCs”),

but excluding financial intermediaries, such as banks, financial institutions (“FIs”), Housing Finance Companies (“HFCs”) and Non-Banking Financial Companies (“NBFCs”). In this Agreement, the proposed Borrower is a company incorporated under the Companies Act, 1956, and hence is expected to an “Eligible Borrower” as defined by the ECB Guidelines.

^D For the purpose of this proposed Agreement, it is assumed that any “Subsidiaries” listed above will be other Project SPVs. In India, generally, lenders do not allow security across projects to be shared, and insist that each individual project’s assets be “ring fenced”. Further, FEMA (and the regulations issued thereunder) will govern any guarantee that may be issued by a person resident in India in favour of a person resident outside India. With regard to the ECB Guidelines that govern the proposed transaction, Indian corporations can issue corporate guarantees to secure an ECB after obtaining a no-objection from the authorized dealers. However, banks, financial institutions, and NBFCs cannot issue such guarantees. In this draft Agreement it is expected that there will be no bar preventing Holdco from issuing a guarantee, provided it is not construed as an NBFC.

^E Please note that as per the ECB Guidelines, only a “Recognised Lender” may provide an ECB. A recognised lender has been defined as:

- (a) an internationally recognised source such as
 - (i) international banks,
 - (ii) international capital markets,
 - (iii) multilateral financial institutions (such as IFCs, ADBs, CDCs, etc.), financial institutions and government owned development financial institutions,
 - (iv) export credit agencies,
 - (v) suppliers of equipment,
 - (vi) foreign collaborators (holding minimum paid-up equity in the borrower company as follows:
 - (1) For an ECB of up to USD 5 million, minimum paid-up equity of 25 per cent held directly by the lender,
 - (2) For an ECB of more than USD 5 million, minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1) and
 - (vii) foreign equity holders (other than erstwhile overseas corporate bodies).

In short, (a) the lender(s) providing the ECB will need to be a “Recognised Lenders” as per the ECB Guidelines and (b) the facility (and the terms governing the facility in this Agreement) will need to comply with the terms of the ECB Guidelines.

^F Note, the Security Agent may be an onshore or an offshore security agent. Because the Borrower (as well as the assets will be in India, a local trusteeship company is recommended as a security agent or trustee for the purpose of ensuring compliance with the various security perfection mechanisms.

^G Note, lenders in India prefer that the project contracts (and all clearances) be “assigned by way of security” to save on stamp duty. Under Indian law, stamp duty at an ad valorem rate becomes payable on an actual assignment. Hence, parties prefer to include such assignment by way security in the mortgage deed and execute a direct agreement between the counter parties to the project documents.

^H End uses for external commercial borrowings (“ECB”) under the Master circular on External Commercial Borrowings and Trade Credits (RBI/2012-13/12 Master Circular No.12/2012-13) dated July 02, 2012

I. End uses permitted under the Automatic Route/Approval Route

- a. ECB can be availed for investment such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/expansion of existing production units in real sector - industrial sector

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- including small and medium enterprises (SME), infrastructure sector and specified service sectors, namely, hotel, hospital, software in India. Infrastructure sector is defined as (i) power, (ii) telecommunication, (iii) railways, (iv) roads including bridges, (v) sea port and airport, (vi) industrial parks, (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining and (ix) cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.
- b. Overseas Direct Investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/ WOS abroad.
- c. Utilization of ECB proceeds is permitted for first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.
- d. Interest During Construction (IDC) for Indian companies which are in the infrastructure sector, where "infrastructure" is defined as per the extant ECB guidelines, subject to IDC being capitalized and forming part of the project cost.
- e. For lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building by NGOs engaged in micro finance activities.
- f. Payment for Spectrum Allocation. The payment by eligible borrowers in the Telecom sector, for spectrum allocation may, initially, be met out of Rupee resources by the successful bidders, which can then be refinanced with a long-term ECB, under the approval route, subject to the following conditions:
- (i) The ECB should be raised within 12 months from the date of payment of the final installment to the Government;
 - (ii) The designated AD - Category I bank should monitor the end-use of funds;
 - (iii) Banks in India will not be permitted to provide any form of guarantees; and
 - (iv) All other conditions of ECB, such as eligible borrower, recognized lender, all-in-cost, average maturity, etc, should be complied with.
- g. Infrastructure Finance Companies (IFCs) i.e. Non Banking Financial Companies (NBFCs) categorized as IFCs by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy, subject to their complying with the following conditions: i) complying with the norms prescribed in the [DNBS Circular DNBS.PD.CCNo.168 / 03.02.089 / 2009-10 dated February 12, 2010](#); and ii) hedging of the currency risk in full. Designated Authorised Dealer is required to ensure compliance with the extant norms while certifying the ECB application.
- h. Maintenance and operations of toll systems for roads and highways for capital expenditure provided they form part of the original project.
- i. The first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.
- j. Repayment of Rupee loans availed of from domestic banking system: Indian companies which are in the infrastructure sector (except companies in the power sector), as defined under the extant ECB guidelines, are permitted to utilise 25 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system, subject to the following conditions:-
- (i) at least 75 per cent of the fresh ECB proposed to be raised should be utilised for capital expenditure towards a 'new infrastructure' project(s);
 - (ii) in respect of remaining 25 per cent, the refinance shall only be utilized for repayment of the Rupee loan availed of for 'capital expenditure' of earlier completed infrastructure project(s); and
 - (iii) the refinance shall be utilized only for the Rupee loans which are outstanding in the books of the financing bank concerned.

Companies in the power sector are permitted to utilize up to 40 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system subject to the condition that at least 60 per cent of the fresh ECB proposed to be raised should be utilized for fresh capital expenditure for infrastructure project(s).

- k. Bridge Finance: Indian companies which are in the infrastructure sector, as defined under the extant ECB policy are permitted to import capital goods by availing of short term credit (including buyers' / suppliers' credit) in the nature of 'bridge finance', under the approval route, subject to the following conditions:-
- (i) the bridge finance shall be replaced with a long term ECB;
 - (ii) the long term ECB shall comply with all the extant ECB norms; and
 - (iii) prior approval shall be sought from the Reserve Bank for replacing the bridge finance with a long term ECB.
- l. ECB for working capital for civil aviation sector: Airline companies registered under the Companies Act, 1956 and possessing scheduled operator permit license from DGCA for passenger transportation are eligible to avail of ECB for working capital. Such ECBs will be allowed based on the cash flow, foreign exchange earnings and the capability to service the debt and the ECBs can be raised with a minimum average maturity period of three years. The overall ECB ceiling for the entire civil aviation sector would be USD one billion and the maximum permissible ECB that can be availed by an individual airline company will be USD 300 million. This limit can be utilized for working capital as well as refinancing of the outstanding working capital Rupee loan(s) availed of from the domestic banking system. ECB availed for working capital/refinancing of working capital as above will not be allowed to be rolled over. The foreign exchange for repayment of ECB should not be accessed from Indian markets and the liability should be extinguished only out of the foreign exchange earnings of the borrowing company.
- m. Indian companies in the manufacturing and infrastructure sector can avail of ECBs for repayment of Rupee loans availed of for capital expenditure from the domestic banking system which are still outstanding and/or fresh Rupee capital expenditure provided they are consistent foreign exchange earners during the past three financial years and not in the default list/caution list of the Reserve Bank of India. The overall limit for such ECBs is USD 10 billion and the maximum permissible ECB that can be availed of by an individual company will be limited to 50 per cent of the average annual export earnings realized during the past three financial years. The foreign exchange for repayment of ECB should not be accessed from Indian markets and and the liability arising out of ECB should be extinguished only out of the foreign exchange earnings of the borrowing company.

II. End-uses not permitted under the Automatic Route/ Approval Route

Other than the purposes specified hereinabove, ECBs are not be utilized for any other purpose including the following purposes, namely:

- (a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate [investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc., are also considered as investment in capital markets];
- (b) for real estate sector; and
- (c) for working capital, general corporate purpose and repayment of existing Rupee loans.

¹ As per the ECB Guidelines, borrowers are permitted to either retain the ECB proceeds abroad, or remit the funds to India, subject to the condition that the funds be deployed for one of the "end-uses" permitted by the Guidelines. ECB proceeds deposited overseas can be invested in the following liquid assets:

- (a) deposits or certificate of deposit or other products offered by banks rated not less than AA- by Standard and Poor's or Fitch IBCA, or Aa3 by Moody's;
- (b) treasury bills and other monetary instruments with one year maturity and with the same minimum ratings prescribed in clause (a) above, or

(c) deposits with overseas branches or subsidiaries of Indian banks.

The funds should be invested in such a way that the investments can be liquidated as and when the Indian borrower requires the funds. These conditions will need to be fulfilled when ECB funds are parked outside India.

^J In India, lenders routinely include terms that specifically indicate they do not need the consent of the borrower in order to assign the loan. Requiring that the Borrower consent to the assignment may create additional impediment(s) if lenders, for example, intend to assign this loan to any asset reconstruction companies under the Indian Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the “SARFAESI Act”). This legislation authorizes specific Indian banks and financial institutions to auction residential and commercial properties (if the borrower defaults on a loan), without insisting that court orders be secured first. In short, this greatly expedites the lenders ability to secure repayment by selling secured assets. For more details on the SARFAESI Act, see Project Documents, Note Prepared by Mohan Parasaran, Additional Solicitor General of India.