

**FORM OF AGREEMENT FOR CREDIT FACILITIES EXTENDED TO STATES**

**AFD AGREEMENT No. [●]**

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**CREDIT FACILITY AGREEMENT**

**dated as of [●]**

**between**

**AGENCE FRANÇAISE DE DEVELOPPEMENT**

**The Lender**

**and**

**[●]**

**The Borrower**

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## CREDIT FACILITY AGREEMENT

### BETWEEN:

[● *insert name of the borrowing country*],

represented by [●], in his/her capacity as [●], duly authorized for the purposes hereof pursuant to [●], (hereinafter the “Borrower”);

### OF THE ONE PART

### AND

**AGENCE FRANCAISE DE DEVELOPPEMENT**, a French public entity (*Etablissement Public Industriel et Commercial*), governed by French law, whose registered office is at 5, Rue Roland Barthes, 75598 PARIS Cedex 12 – France, registered with the Trade and Companies Register of Paris under number 775 665 599 represented by [●], duly authorized to sign this Agreement, (hereinafter “AFD” or the “Lender”);

### OF THE SECOND PART

(hereinafter jointly referred to as the “Parties” and individually as a “Party”)

### WHEREAS,

- (A) The Borrower intends to [●]<sup>1</sup> (the “Project”).
- (B) The Borrower has requested the Lender to make available a Facility for the purpose of financing the Project.
- (C) Pursuant to its board resolution [●] dated [●], the Lender has agreed to make available the Facility to the Borrower pursuant to the terms and conditions hereunder.

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<sup>1</sup> Briefly describe the project.

**ON THE BASIS OF THE FOREGOING, IT IS HEREBY AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 Definitions

Capitalized terms used in this Agreement (including those appearing in the recitals above and in the Schedules hereto) shall have the meaning given to them in Schedule 1- A (*Definitions*), except as otherwise provided herein.

1.2 Interpretation

Terms used in this Agreement shall be construed pursuant to the provisions of Schedule 1B (*Interpretation*), except as otherwise provided herein.

**2. FACILITY, PURPOSE AND CONDITIONS OF UTILIZATION**

2.1 Facility

The Lender undertakes to make available to the Borrower, upon the Borrower's request and subject to the terms and conditions provided herein, in particular the provisions set out in Clause 2.3 (*Conditions of Utilization*) hereinafter, a Facility in a maximum aggregate principal amount of [*amount in words*] Euros (EUR [●]).

2.2 Purpose

The Borrower shall apply all amounts borrowed under this Facility exclusively towards the financing of the Project, excluding all taxes and duties, in accordance with the Project's description set forth in Schedule 2 (*Project Description*) and the Financing Plan set forth in Schedule 3 (*Financing Plan*).

[The borrowed funds shall be [on-granted/on-lent] by the Borrower to the [Final Recipient] / *or* / [Final Beneficiary]<sup>2</sup> in the form of a [grant] / *or* / [loan]<sup>3</sup> on terms and conditions subject to the Lender's prior approval.]<sup>4</sup>

2.3 Conditions of Utilization

The Lender shall only make the requested Drawdown available if, on the date of the Drawdown Request and on the contemplated Drawdown Date:

- (a) no Event of Default has occurred or is continuing or would result from the Drawdown;
- (b) none of the Co-Financiers has suspended its financing of the Project<sup>5</sup>;
- (c) all the conditions precedent listed in Schedule 4 (*Conditions Precedent*) have been fulfilled and are satisfactory to the Lender; and, in the event that fulfilment of all or part of the conditions precedent set out in Schedule 4 (*Conditions Precedent*) consists in the delivery of documents:

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<sup>2</sup> Here as well as everywhere in the Agreement when Final Recipient and Final Beneficiary are bracketed together, select Recipient for a grant or Beneficiary for a loan.

<sup>3</sup> Delete if no [On-granting/On-lending].

<sup>4</sup> Delete if no [On-granting/On-lending].

<sup>5</sup> Delete if no Co-Financier.

- the final version of documents, which drafts have been (x) previously provided to the Lender and (y) agreed upon by the Lender, shall not reveal differences from such drafts likely to affect the project or the rights or interest of the Lender; and
- all documents, other than mentioned in subparagraph above, shall be in form and substance satisfactory to the Lender.

### 3. DRAWDOWN OF FUNDS

#### 3.1 Drawdown Amount

The Facility will be made available to the Borrower during the Drawdown Period, within the limits of the Available Credit, in one or several Drawdowns.

Each Drawdown will be at least equal to [*amount in words*] Euros (EUR[●]) or to the Available Credit if such amount is smaller than [*amount in words*] Euros (EUR[●]).

#### 3.2 Drawdown Request

Subject to conditions set forth in Clause 2.3 (*Conditions of Utilization*), the Borrower will be entitled to draw on the Facility by delivering to the Lender a duly filled in Drawdown Request.

Each Drawdown Request shall be sent by the Borrower (represented by [● *name of Ministry or Department authorized to submit Drawdown Requests*]) to the Director of the AFD agency at the following address: [● *address of the AFD agency in the relevant country*].

[or] [The Borrower authorizes the [Final Recipient] [Final Beneficiary] [Implementing Agency] to submit Drawdown Requests to the Director of the AFD agency at [● *insert address of the AFD agency in the relevant country*]. A copy of each Drawdown Request shall be sent to the Borrower by the [Final Recipient] [Final Beneficiary] [Implementing Agency]. [Notices must be first countersigned by [●] or [the Borrower].]<sup>6</sup>

Each Drawdown Request shall be irrevocable and shall be deemed valid only if:

- (a) it is substantially in the form attached at Schedule 5A (*Form of Drawdown Request*);
- (b) it is submitted to and received by the Lender no later than fifteen (15) Business Days prior to the end of the Availability Period; and
- (c) all documents, including necessary supporting documents, are included with the Drawdown Request and are in compliance with the provisions of Clause 3.4 (*Payment Mechanics*).

#### 3.3 Payment Completion

If all conditions set out herein are satisfied, the Lender shall make available to the Borrower [or [the Final Recipient] [Final Beneficiary] [the Implementing Agency]] the requested Drawdown.

The Lender shall promptly send to the Borrower a Drawdown confirmation letter substantially in the form attached as Schedule 5B (*Form of Drawdown Confirmation Letter*).

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<sup>6</sup> Insert this option (and delete the preceding paragraph) in the case of a [On-granting/On-lending] or Implementing Agency, when the funds are paid directly to the Final Recipient or Beneficiary or the Implementing Agency.

### 3.4 Payment Mechanics

The funds shall be made available as follows:

#### 3.4.1 Refinancing of Expenses Incurred by the Borrower [*or* the [Final Recipient] [Final Beneficiary] [Implementing Agency]]<sup>7</sup>

The funds shall be paid directly to the Borrower [*or* the [Final Recipient] [Final Beneficiary] [Implementing Agency]] pursuant to the conditions set forth in this Agreement upon evidence, satisfactory to the Lender, of payment of the expenses incurred and duly paid by the Borrower [*or* the [Final Recipient] [Final Beneficiary] [Implementing Agency]]:

Any Drawdown Request shall be delivered to the Lender together with all relevant documents, satisfactory to the Lender, evidencing that such costs and expenses have been incurred and duly paid by the Borrower.

Documentary evidence, such as bills of costs or paid invoices, may be submitted in the form of photocopy or duplicate certified true by the Borrower [*or* the [Final Recipient] [Final Beneficiary] [Implementing Agency]] and shall mention references and dates of the payment orders. The Borrower undertakes not to part with the originals and to keep them available to the Lender on a permanent basis, as well as to provide the Lender with certified duplicates upon request [*or*: to procure that the [Final Recipient] [Final Beneficiary] [Implementing Agency] will not part with the originals, will keep them available to the Lender on the permanent basis and will provide the Lender with certified duplicates upon request].

In addition, the Lender may request the Borrower [*or* the [Final Recipient] [Final Beneficiary] [Implementing Agency]] to provide any other document evidencing that the investment corresponding to the relevant costs and expenses has been duly made.

#### 3.4.2 Direct Payments by the Lender to Contractors

- (a) The Borrower may request [*or* acknowledges and accepts that the [Final Recipient] [Final Beneficiary] [Implementing Agency] may request] the Lender to make direct payments to the beneficiaries of contracts awarded for the supply of goods, services and works for the implementation of the Project.

In that respect, the Borrower shall deliver to the Lender [*or* shall procure that the [Final Recipient] [Final Beneficiary] [Implementing Agency] delivers to the Lender] all necessary instructions so as to allow the Lender to make the requested direct payment. Such instructions shall be delivered together with bills of costs, invoices or down payment requests satisfactory to the Lender which may be submitted in the form of photocopy or duplicate certified true by the Borrower [*or* the [Final Recipient] [Final Beneficiary] [Implementing Agency]].

- (b) The Parties agree that the Lender shall act as an agent for the Borrower [and of the [Final Recipient] [Final Beneficiary] [Implementing Agency]] and shall not be under the obligation to verify whether it exists an impediment of whatever nature with respect to the requested Drawdown. However, in the event the Lender becomes aware of any such impediment, the Lender reserves the right to reject any such requests.

The Borrower holds the Lender free and clear of any responsibility with respect to any Drawdown made pursuant to this Clause 3.4.2 (*Direct Payment by the Lender to Contractors*) and waives any action and recourse against the Lender. The Borrower shall be liable for any

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<sup>7</sup> Insert (and delete “Borrower”) in the case of [On-granting/On-lending] or Implementing Agency, if funds are released directly to the Final Recipient or Beneficiary or the Implementing Agency.

possible consequences arising from third parties actions against the Lender in the context of performance of such agency.

The Borrower acknowledges its debt to the Lender for all amounts paid under the Facility pursuant to this Clause 3.4.2 (*Direct Payment by the Lender to Contractors*) as well as any accrued interest on these amounts as of the value date of such Drawdowns.

- (c) To the extent any down payment would be made directly to the contractor in connection with contracts entered into for the implementation of the Project, the Borrower hereby undertakes to promptly assign [*or procure that the [Final Recipient] [Final Beneficiary] [Implementing Agency] assigns*] to the Lender, upon the Lender's request, any bank guarantee covering such down payments.

In addition, in the event the contracts entered into for the implementation of the Project and financed by the Lender provide for the issuance of performance bond (*garantie de bonne fin*) or guarantee replacing the holdback guarantee (*retenue de garantie*), the Borrower shall promptly assign [*or procure that the [Final Recipient] [Final Beneficiary] [Implementing Agency] assigns*] to the Lender, upon the Lender's request, all or part of such guarantee.

## 4. INTEREST

### 4.1 Interest Rate

#### 4.1.1 Floating Interest Rate

- (a) Any portion of the Facility of less than three million Euros (EUR 3,000,000) shall bear interest at a floating rate.

The Interest Rate applicable to each Interest Period shall be the aggregate rate per annum of:

- EURIBOR; plus
- the Margin.

- (b) For each portion of the Facility of an amount equal to or exceeding three million Euros (EUR 3,000,000) (hereinafter a "Tranche"), the Borrower may select any of the following options:

- (i) to apply a floating rate under the same terms and conditions as those mentioned in Clause 4.1.1 (a) above; or
- (ii) to apply a fixed rate, as of the Drawdown Date, by requesting such fixed rate in a Drawdown Request in the form attached hereto in Schedule 5A (*Form of Drawdown Request*);

The Borrower may indicate in the Drawdown Request the maximum fixed Interest Rate above which its Drawdown Request shall be cancelled.

For each Tranche drawn down, the applicable Interest Rate shall be the Fixed Reference Rate increased or reduced by the Index Rate fluctuation between the Signing Date and the Rate Setting Date, or

- (iii) to request that a Tranche be converted into a fixed rate by sending to the Lender a Rate Conversion Request letter substantially in the form attached hereto as Schedule 5C (*Form of Rate Conversion Request*) at least thirty (30) calendar days before the Interest Period to which it intends the Rate Conversion to apply.

In the Rate Conversion Request letter, the Borrower may indicate the maximum fixed interest rate above which such Rate Conversion Request shall be cancelled.

For each converted Tranche, the applicable Interest Rate shall be the Fixed Reference Rate increased or reduced by the Index Rate fluctuation between the Signing Date and the Rate Setting Date.

The Lender shall promptly send the Borrower a Rate Conversion confirmation letter substantially in the form attached hereto as Schedule 5D (*Form of Rate Conversion Confirmation Letter*).

The Rate Conversion is not subject to payment of any costs.

(c) The Interest Rate determined in accordance with this Clause 4.1.1 (*Floating Interest Rate*) shall not:

- exceed [*percentage in words*] ([●]%) per annum<sup>8</sup>; nor
- be less than zero point twenty-five percent (0.25%) per annum, notwithstanding any downwards in rates.

#### 4.1.2 Automatic Conversion Following the Drawdown Period

The Interest Rate applicable to each Interest Period following the Triggering Date shall be equal to the Fixed Reference Rate increased or reduced by the fluctuation of the Index Rate between the Signing Date and the Rate Setting Date following the Triggering Date.

The Interest Rate fixed in accordance with this Clause 4.1.2 (*Automatic Conversion Following the Drawdown Period*) shall not:

- exceed [*percentage in words*] ([●]%) per annum<sup>9</sup>; nor
- be less than zero point twenty-five percent (0.25%) per annum, notwithstanding any downwards in rates.

The Rate Conversion is not subject to payment of any costs.

#### 4.2 Calculation and Payment of Interest

The Borrower shall pay interest in arrears on each Payment Date.

Interest payable by the Borrower on any given Payment Date and for a given Interest Period shall be equal to the aggregate of interest due on the Outstanding Principal owed by the Borrower in respect of all Drawdowns or Tranches, as the case may be, on the immediately preceding Payment Date.

Interest owed by the Borrower on a Drawdown or Tranche, as the case may be, shall be calculated on the basis of:

- (i) the Outstanding Principal owed by the Borrower on the relevant Drawdown or Tranche, as the case may be, on the immediately preceding Payment Date or on the Drawdown Date if the relevant Interest Period is the first Interest Period;
- (ii) the actual number of days elapsed in the relevant Interest Period based on a 360-day year; and
- (iii) the Interest Rate as set in accordance with Clause 4.1 (*Interest Rate*).

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<sup>8</sup> This cap rate, settled by AFD, does not apply to non-concessionnal loans.

<sup>9</sup> This cap rate, settled by AFD, does not apply to non-concessionnal loans.

#### 4.3 Late-payment Interest

(a) Late-payment Interest on Overdue Amounts (other than interest):

If the Borrower fails to pay to the Lender on its due date any amount payable by it under the Agreement (in principal, prepayment compensation indemnity or incidental expenses of any kind, other than overdue interest), interest shall accrue on the overdue amount, within the limits permitted by law, from the due date up to the date of actual payment (whether before or after an arbitral award, if any), at the Interest Rate applicable to the relevant Interest Period plus [amount in words ([●]%)<sup>10</sup>, without the need for formal notice from the Lender.

(b) Late-payment Interest on Overdue Interest

Late-payment interest shall accrue, within the limits permitted by law, on interest overdue for one year or more at the Interest Rate applicable to the relevant Interest Period plus [amount in words ([●]%)<sup>11</sup>, without any formal notice from the Lender.

The Borrower shall pay any accrued interest pursuant to this Clause 4.3 (*Late-payment Interest*) upon the Lender's first demand, or on any Payment Date following the date of the outstanding payment.

(c) The collection of late-payment interest by the Lender shall neither imply the grant of term of payment, nor constitute a waiver of any of its rights hereunder.

#### 4.4 Communication of Interest Rates

The Lender shall promptly inform the Borrower of each Interest Rate fixed in accordance with the Agreement.

#### 4.5 Effective Global Rate (*Taux effectif global*)

The Parties acknowledge that by virtue of certain characteristics of the Facility (in particular the variability of the applicable Interest Rate), the effective global rate cannot be calculated at the Signing Date.

In order to comply with French law and to enable the Borrower to know the actual cost of the Facility, the Lender specifies, assuming that (i) the Facility will be entirely drawn down on the Signing Date with an indicative rate on [date] of [percentage in words] ([●]%) per annum, that the Facility Effective Global Rate (*Taux effectif global*) would be [percentage in words] ([●]%) for a half-yearly period and that the Effective Global Rate (*Taux effectif global*) per annum would be [percentage in words] ([●]%)<sup>12</sup>.

### **5. CHANGE TO THE CALCULATION OF INTEREST**

#### 5.1 Notification

The Lender shall notify the Borrower in the event that for any Interest Period EURIBOR cannot be determined as a result of any circumstances affecting the European interbank market.

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<sup>10</sup> The rate is decided by AFD.

<sup>11</sup> The rate is decided by AFD

<sup>12</sup> The indicative fixed rate is provided by AFD a few days before the Signing Date. The effective global rate is computed by AFD.

## 5.2 Replacement Rate

During a thirty (30) calendar day period starting from the notification given by the Lender in compliance with Clause 5.1 (*Notification*) above, the Lender and the Borrower shall negotiate a replacement rate applicable to the Facility, provided that such replacement rate shall not be refused without reasonable grounds. The replacement rate (if any) shall apply retroactively as from the first day of the relevant Interest Period.

## **6. [FEES]<sup>13</sup>**

### 6.1 Commitment Fees

As of the Signing Date, the Borrower shall pay to the Lender commitment fees computed at a rate of [*percentage in words*] ([●]%)<sup>14</sup> per annum.

The commitment fees shall be computed, based on the actual number of days elapsed, on the amount of the Facility reduced by any amount drawn down, and, as the case may be, the portions of the Facility cancelled pursuant to Clause 8.3 (*Cancellation by the Borrower*) and Clause 8.4 (*Cancellation by the Lender*).

The first commitment fees shall accrue from (i) the Signing Date up to (ii) the following Payment Date. Subsequent commitment fees shall accrue from the date immediately following a Payment Date up to the next Payment Date.

The commitment fees will be due and payable (i) on each Payment Date within the Availability Period, (ii) on the Payment Date following the last day of the Drawdown Period and, (iii) in the event the Available Credit is cancelled in full, on the Payment Date following the effective date of such cancellation.

### 6.2 Front-end Fee

The Borrower shall pay to the Lender a flat front-end fee of [*percentage in words*] ([●]%)<sup>15</sup> computed on the principal amount of the Facility. The front-end fee shall be paid as instructed by the Lender and no later than on the Signing Date.

## **7. REPAYMENT**

As of the end of the Grace Period, the Borrower shall repay to the Lender the principal amount of the Facility in [*number in words*] ([●]) half-yearly instalments due and payable on each Payment Date.

The first instalment shall be due and payable on [●] and the last instalment shall be due and payable on [●].

At the end of the Drawdown Period, subject to the potential cancellation of the Facility pursuant to Clause 8.3 (*Cancellation by the Borrower*) and Clause 8.4 (*Cancellation by the Lender*), the Lender shall send the Borrower an amortization schedule of the Facility.

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<sup>13</sup> AFD shall decide whether commitment fees and front-end fee are applicable to the Borrower.

<sup>14</sup> Percentage is decided by AFD.

<sup>15</sup> Percentage is decided by AFD.

## **8. PREPAYMENT AND CANCELLATION**

### **8.1 Voluntary Prepayment**

No prepayment of all or part of the Facility shall occur before [●] [*insert the date corresponding to the middle term of the Facility*].

As from [●] [*date corresponding to the middle term of the Facility*], the Borrower may prepay all or part of the Facility pursuant to the following conditions:

- (a) the Lender has received a written and irrevocable prior notice no later than thirty (30) calendar days prior to the date of the contemplated prepayment date;
- (b) the amount to be prepaid is equal to an integer number of instalments in principal.

Prepayments shall be permitted only on Payment Dates.

### **8.2 Mandatory Prepayment**

The Borrower shall immediately prepay the Facility in whole or in part after being informed by the Lender of any of the following events:

- (a) the Lender accelerates the Facility pursuant to Clause 13 (*Events of Default*); or
- (b) in the event the Borrower prepays all or part of the sums due to a Co-Financier, in which case the Lender shall be entitled to require prepayment, on a pro rata basis, of the remaining sums due under the Facility<sup>16</sup>.

### **8.3 Cancellation by the Borrower**

Up to the Deadline for Drawdown, the Borrower may cancel all or part of the Available Credit, by serving to the Lender not less than three (3) Business Days prior notice.

Upon receipt of the Borrower's written cancellation, the Lender shall cancel the amount notified, provided that the Project financing requirements, as determined in the Financing Plan, are covered in a manner satisfactory to the Lender, except for the case where the Project is abandoned by the Borrower.

### **8.4 Cancellation by the Lender**

The Lender will be entitled to cancel all or part of the Available Credit upon delivery of a written notice to the Borrower, which shall be immediately effective, if:

- (a) the Available Credit is not equal to zero on the Deadline for Drawdown; or
- (b) the first Drawdown Request has not been made by the Borrower and the conditions precedent to first Drawdown listed in Schedule 4 (*Conditions Precedent*) have not been fulfilled to the satisfaction of the Lender within a maximum period of eighteen (18) months from the date of approval of the Facility by the Lender's competent bodies; or
- (c) an Event of Default has occurred and is continuing.

### **8.5 Restrictions**

- (a) Any notice of cancellation or prepayment given by a Party pursuant to this Clause 8 (*Prepayment and Cancellation*) shall be irrevocable and final, and, unless otherwise provided in

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<sup>16</sup> Delete if no Co-Financier.

this Agreement, shall specify the date or dates on which the cancellation or repayment will be made and the relevant amounts to be repaid or cancelled.

- (b) The Borrower may only prepay or cancel all or part of the Facility on the dates and in accordance with the terms and conditions provided in this Agreement.
- (c) All prepayments shall be made together with the payment of accrued interest on the amount prepaid and the indemnity set out in Clause 9.2 (*Prepayment Compensatory Indemnity*) below.
- (d) Prepaid amounts shall be applied to the remaining instalments, in reverse order of maturity.
- (e) The Borrower shall not re-borrow all or part of the Facility which is prepaid or cancelled.

## 9. ADDITIONAL PAYMENT OBLIGATIONS

### 9.1 Incidental Expenses

9.1.1 The Borrower shall pay directly to the Lender or, as the case may be, shall reimburse the Lender, in the event that the Lender has made any advances thereon, the amount of any reasonable fees and expenses (in particular lawyer's fees) which the Lender incurs in relation to the negotiation, preparation and signing of [the Agreement *or* any Financing Documents]<sup>17</sup> or any document relating thereto (including the legal opinion) and (ii) any other financing documents signed after the Signing Date.

9.1.2 In the event an amendment to [the Agreement *or* any Financing Documents]<sup>18</sup> is required, the Borrower shall reimburse to the Lender all fees (in particular lawyer's fees) which it will have reasonably incurred in connection with the assessment, negotiation or compliance with any such amendments.

9.1.3 The Borrower shall reimburse to the Lender any fees and expenses (in particular lawyer's fees) which it will have reasonably incurred in reserving or in enforcing its rights pursuant to [the Agreement *or* any Financing Documents]<sup>19</sup>.

9.1.4 The Borrower shall pay directly to the Lender – or shall reimburse the Lender in case the payments were made by the Lender – any and all fees and expenses related to transfers of funds to or for the account of the Borrower from the Paris financial market to any other financial market agreed with the Lender, as well as any transfer fees and expenses relating to payment of all sums due under the Facility.

### 9.2 Prepayment Compensatory Indemnity

With respect to any breakage cost (or other similar losses) incurred by the Lender as a result of the prepayment of all or part of the Facility pursuant to Clause 8.1 (*Voluntary Prepayment*) and Clause 8.2 (*Mandatory Prepayment*), the Borrower shall indemnify the Lender by payment of an amount calculated on the Facility or on Tranches of the Facility by applying the following rules to the Facility or each of the Tranches:

- in the event the interest rate applicable to the Facility or a Tranche increased by [percentage in words]<sup>20</sup> ([●]%), is less than or equal to the Reinvestment Rate, no indemnity shall be due;
- in the event the interest rate applicable to the Facility or a Tranche increased by [percentage in words]<sup>21</sup> ([●]%) (the “Increased Rate”), exceeds the Reinvestment Rate,

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<sup>17</sup> In case of [On-granting/On-lending] replace “the Agreement” by “the Financing Documents”.

<sup>18</sup> In case of [On-granting/On-lending] replace “the Agreement” by “the Financing Documents”.

<sup>19</sup> In case of [On-granting/On-lending] replace “the Agreement” by “the Financing Documents”.

<sup>20</sup> Applicable rate decided by AFD.

the Borrower shall pay to the Lender an indemnity equal to the discounted difference, which should come to the Lender's prejudice between the amount of the interest borne by the Facility or the Tranche at the Increased Rate if no prepayment had been made and the amount of the interest obtained by placing an amount equal to the prepaid amount with the same amortization schedule.

The discount rate used shall be equal to the Reinvestment Rate. The date used to calculate the present value shall be the date of the prepayment.

### 9.3 Taxes and Duties

#### 9.3.1 Registration Costs

The Borrower shall pay directly or, as the case may be, reimburse to the Lender, if the Lender has made any advances thereon, any stamp duty, registration costs and other similar taxes to which the Agreement would be subject.

#### 9.3.2 Withholding Tax

The Borrower undertakes that all payments made under this Agreement shall be free of any levies, taxes, duties, or withholding taxes, and expressly undertakes to increase the amount of any such payments to such amount which leaves the Lender with an amount equal to the payment which would have been due if no deduction of tax and rights had been required. The Borrower shall reimburse to the Lender all expenses, taxes and duties to be borne by the Borrower and which, as the case may be, would have been paid by the Lender, other than levies, taxes and duties payable in France.

### 9.4 Additional Costs

The Borrower shall pay to the Lender, within five (5) Business Days from the Lender's request, all additional costs and compensate all cut of the Lender's net income generated by the Facility or any amount due and payable under the Agreement, as a result of the introduction of or change in any legal or regulatory provisions, or any change in the application or interpretation whether made by a French or foreign competent authority, of a law or regulation, following the Signing Date.

### 9.5 Currency Indemnity

In the event any sum due by the Borrower under the Agreement, or under any order, judgment or arbitral award given relating to this sum, has to be converted from the currency in which that sum is denominated into another currency, the Borrower shall indemnify the Lender against all its expenses and losses, and shall indemnify the Lender against all cost, loss or liability arising out of or as a result of the said conversion including any discrepancy between (i) the exchange rate between the two currencies used to convert that sum and (ii) the exchange rate(s) available to the Lender at the time of receipt of that sum. Such indemnification obligation is independent from any other obligations of the Borrower under the Agreement.

### 9.6 Payment Dates

Any indemnification or repayment from the Borrower to the Lender under this Clause 9 (*Additional Payment Obligations*) is due and payable on the Payment Date immediately following the events that have given rise to the relevant indemnification or repayment.

Notwithstanding the foregoing, indemnities relating to prepayment pursuant to Clause 9.2 (*Prepayment Compensatory Indemnity*) shall be due and payable on the prepayment date.

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<sup>21</sup> Applicable rate decided by AFD.

## 10. REPRESENTATIONS AND WARRANTIES

The Borrower makes the representations and gives the warranties set out in this Clause 10 (*Representations and Warranties*) to the Lender on the Signing Date. The representations and warranties shall be deemed repeated on the date of each Drawdown Request and on each Payment Date.

### 10.1 Binding Obligations

The Borrower's obligations under the Agreement [*or*: the Financing Documents]<sup>22</sup> are in compliance with the laws and regulations applicable in the jurisdiction of the Borrower and constitute valid and binding obligations of the Borrower, enforceable in accordance with their terms. They may be enforced by a court of law or by means of arbitration according to Clause 17 (*Governing Law, Arbitration and Choice of Residence*).

### 10.2 No-conflict with Other Obligations

The execution, delivery and performance of the Agreement [*or* : the Financing Documents] by the Borrower and the performance of the obligations arising therefrom do not conflict with any applicable domestic or foreign law or regulation or any agreement or instrument binding upon the Borrower or affecting any of its assets.

### 10.3 Power and Authority

The Borrower has all requisite power to execute and perform the Agreement [*or* : the Financing Documents] and the Project Documents and to perform the obligations arising therefrom as well as to conduct the Project operations financed by the Facility and has taken all necessary actions in this respect.

### 10.4 Validity and Admissibility in Evidence

All Authorizations required:

- (a) to enable the Borrower to lawfully enter into, exercise its rights and comply with its obligations under the Agreement [*or*: the Financing Documents] and the Project Documents; and
- (b) to make the Agreement [*or*: the Financing Documents] and the Project Documents admissible in evidence in the courts of the Borrower's jurisdiction or in arbitral proceedings,

have been obtained and are in full force and effect, and no proceedings or circumstances of any nature whatsoever could result in the withdrawal, non-renewal, suspension or modification, in whole or in part, of any such Authorizations.

### 10.5 Governing Law and Enforcement

- (a) The choice of French law as the governing law of the Agreement will be recognized and enforced by the arbitral tribunals and courts of the Borrower's jurisdiction.
- (b) Any judgment of a French court and any award by an arbitral tribunal in relation to this Agreement will be recognised and enforceable in the Borrower's jurisdiction.

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<sup>22</sup> In case of [On-granting/On-lending], delete "Agreement" and replace with "Financing Documents".

#### 10.6 Project Authorizations

All Project Authorizations have been obtained and are in full force and effect and there are no circumstances of any kind whatsoever that could result in the withdrawal, non-renewal, or modification, in whole or in part, of any such Project Authorizations.

#### 10.7 Registration Costs and Stamp Duties

Under the laws of the Borrower's jurisdiction the Agreement [*or*: the Financing Documents] shall not be filed, recorded or enrolled with any court or other authority and no stamp duty, registration costs or similar tax are payable on or in relation to the Agreement [*or*: the Financing Documents] or the transactions contemplated herein.

#### 10.8 [Free Transfer of Funds]<sup>23</sup>

The Borrower confirms that all sums owed to the Lender under the Agreement in principal, interest, late-payment interest, prepayment compensatory indemnity, incidental expenses and any other amounts, are freely transferable in France and all other countries.

This provision shall remain in full force and effect until all sums owed to the Lender have been fully repaid and shall not have to be formally reconfirmed in the event that the Lender should postpone the Payment Dates.

The Borrower shall obtain in due course Euros necessary to implement the transfer of funds.

The Borrower authorizes the Lender to make funds available in accordance with the Agreement directly in France or in any other country.]

#### 10.9 No Event of Default

No Event of Default has occurred, is continuing, or is reasonably expected to occur.

#### 10.10 No Misleading Information

Any information and documents provided by the Borrower to the Lender are true and accurate and are up to date as at the date they were provided or, as the case may be, as at the date to which they refer and they have neither been amended, modified, terminated, cancelled or distorted nor are likely to be untrue or misleading in any material respect, due to an omission, the occurrence of new circumstances or as a result of disclosing or not disclosing of information.

#### 10.11 Project Documents

The Project Documents represent the entire agreement relating to the Project and are valid, binding and enforceable against third parties. They have not expired, been amended, or suspended, without the Lender's prior approval, since the date of their delivery to the Lender, and their validity is not being challenged or otherwise disputed.

#### 10.12 *Pari Passu* Ranking

The Borrower's payment obligations under the Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors.

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<sup>23</sup> This representation shall be adapted according to local exchange control regulations.

### 10.13 Licit Origin of Funds

The Borrower represents that [all funds invested in the Project come from government budget appropriations] or [the funds, other than those provided by the government, invested in the Project are not of illicit origin under French law, including but not limited to the fact that they are not linked to drug trafficking, fraud on the financial interest of the European Communities, corruption, organised crime or the financing of terrorism].

### 10.14 No Corruption

The Borrower represents that the Project (in particular the negotiation, award and performance of contracts financed with the Facility) has not given rise to any Corruption.

### 10.15 No Material Adverse Effect

The Borrower represents that no event likely to have a Material Adverse Effect has occurred since the date of its last representations made pursuant to this Clause 10 (*Representations and Warranties*).

***[Other representations to be made depending on the Project]***

## **11. UNDERTAKINGS**

The undertakings set out in this Clause 11 (*Undertakings*) remain in full force and effect from the Signing Date for as long as any amount remains outstanding under the Agreement.

### 11.1 Authorizations

The Borrower undertakes to promptly obtain, renew, comply with and do all that is necessary to maintain in full force and effect any Authorization required under any applicable law or regulation to enable it to perform its obligations under the Agreement [**or:** the Financing Documents]<sup>24</sup> and the Project Documents and to ensure their legality, validity, enforceability and/or admissibility in evidence.

The Borrower undertakes to obtain, maintain and comply with all provisions, conditions and limitations (if any) set forth in or imposed on by any agreement, authorization, approval or public authorities, government services or courts' decisions or orders, except for non significant breach, and to take all actions and steps which should be necessary pursuant to any applicable law for the performance of any of the Borrower's obligations.

### 11.2 Project Documents

The Borrower undertakes to inform the Lender of any amendment, change or modification to the Project Documents and to request the Lender's prior approval with respect to any material change thereto.

### 11.3 Compliance with Laws and Regulations

The Borrower undertakes to comply with all laws and regulations to which it may be subject or which may be applicable to the Project, in particular relating to environmental protection, safety and labour issues. The Borrower shall comply in all respects with all of its obligations under the Project Documents to which it is a party.

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<sup>24</sup> In case of [On-granting/On-lending], delete "Agreement" and replace with "Financing Documents".

#### 11.4 *Pari Passu* Ranking

The Borrower undertakes (i) to maintain that its payment obligations under the Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, (ii) not to contract senior or preferential debt with claims prior to those of the Lender, by borrowing funds or guaranteeing loans from other lenders, and to grant to the Lender, if it so requests, *pari passu* status on any additional guarantee that it may grant to any other lender.

#### 11.5 Audit

The Borrower authorizes the Lender's representatives or advisers to proceed with monitoring and auditing missions to assess the conditions of the Project implementation and operation, as well as assessment of the impacts and attainment of the Project's objectives.

For that purpose, the Borrower undertakes to grant access to the Lender to any document or on site to allow such missions to be conducted pursuant to a schedule and conditions which will be determined by the Lender, following consultations with the Borrower.

#### 11.6 Procurement

Regarding the procurement and award of contracts relating to the implementation of the Project, the Borrower undertakes:

- (a) To comply with the principles of competition and transparency, in accordance with internationally recognized standards recommended by OECD and the United Nations' convention against corruption for the award and procurement of contracts, in particular concerning the information and pre-selection of suppliers, the content and publication of tender specifications, the assessment of offers and award of contracts.
- (b) To take any and all steps required to adapt these principles to locally applicable public procurement regulations.
- (c) To award contracts for the execution of works and the provision of services necessary for the implementation of the Project to companies offering sufficient guarantees in all respects in relation to their capacity to successfully perform such works or services. No exception pertaining to contracts awarded may be raised or enforced against the Lender.
- (d) To use its best efforts to introduce, in the invitations to tender to be used within the context of the implementation of the Project a clause aiming at favouring the recruiting of local unskilled workforce.
- (e) To (i) submit the Procurement Plan to the Lender's prior approval, (ii) update the Procurement Plan on, at least, an annual basis according to the Project's development and to provide the Lender with such update, and (iii) implement the Procurement Plan pursuant to the conditions approved by the Lender.
- (f) To guarantee that requests for expression of interest and invitation to tender be subject to a large publicity. The publication of such invitations shall be operated through the press and appropriate websites, comprising at least one publication on the Lender's website.
- (g) For each procurement to be financed by the Facility, to submit to the Lender for its written no-objection :
  - (i) in case of invitation to tender with pre-qualification, the pre-qualification file including the pre-qualification notice and contemplated method of assessment;
  - (ii) in case of invitation to tender with pre-qualification, the list of proposed pre-qualified candidates or the limited list as well as the assessment report of candidates;
  - (iii) the file for invitation to tender or the consultation documents of the companies;

- (iv) the name of the temporary beneficiary of the awarded contracts (to that effect, the Borrower shall deliver a detailed assessment and comparison report of the offers received, the recommendations concerning the award of contracts and a copy of the offer made by the temporary beneficiary of the contract, provided that the Lender shall be entitled to request a copy of all offers received).

In the event the method of assessment of tenders is carried out in two steps (one concerning the technical offer and the other concerning the financial offer), the Lender's no-objection shall be requested in respect of the assessment of technical offers and after the assessment of the financial offers, in respect of the temporary beneficiary of the awarded contract.

The Borrower also undertakes to invite the Lender, if the Lender so requests, as an observer, to attend the opening tenders committee and to provide it with the minutes relating to the opening of tender offers.

- (h) To submit to the Lender's written no-objection the execution versions of the order letters, contracts or amendments thereto in connection with the implementation of the Project prior to their execution.

In the event that the works are executed by the Borrower itself, the Borrower undertakes to submit to the Lender the plans and estimates regarding the works for the Lender's prior written no-objection.

- (i) To insert in all contracts financed by the Lender a clause pursuant to which the contracting company represents that "*it has not engaged in any practice likely to influence the Project's implementation process at the Borrower's expense and in particular that there was not and shall not be any Collusion.*"
- (j) To insert in all contracts financed by the Lender a clause pursuant to which the contracting company represents that "*the negotiation, procurement and performance of the contract has not given rise to and shall not give rise to a corruption, as defined in the United Nations convention against corruption dated October 31, 2003*".

[The Borrower undertakes to take all necessary steps to procure that the Implementing Agency assumes and complies with the undertakings made by the Borrower under this Clause 11.6 (*Procurement*).]<sup>25</sup>

### 11.7 Additional Financing

The Borrower undertakes to obtain the Lender's prior written approval on any modification to the Financing Plan, and in the event additional costs are incurred against the Financing Plan, to obtain the necessary financing, on terms and conditions ensuring the repayment of the Facility.

### 11.8 Implementation of the Project

The Borrower undertakes that the companies participating in the Project shall not be listed on any of the Financial Sanctions Lists (including in particular the fight against financing of terrorism).

The Borrower undertakes not to acquire or supply any equipment or to operate in any sector which is subject to an embargo by:

- the United Nations
- the European Union
- France

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<sup>25</sup> Add in case of contract with Implementing Agency. Otherwise delete.

### 11.9 Licit Origin of Funds

The Borrower undertakes to ensure that the funds, other than those provided by the government, invested in the Project are not of illicit origin under French law, including but not limited to the fact that they are not linked to drug trafficking, fraud on the financial interests of the European Communities, corruption, organised crime or the financing of terrorism.

### 11.10 No Corruption

The Borrower undertakes that the Project (including the negotiation, award and performance of contracts financed with the Facility) shall not give rise to Corruption.

### 11.11 Environmental and Social Liability

In order to promote sustainable development, the Parties agree that it is necessary to ensure compliance with internationally recognised environmental and labour standards, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties.

To that effect, the Borrower undertakes with respect to the Project:

- (a) to insert in the tender specifications and procurement contracts a clause pursuant to which the companies shall undertake and shall procure that their sub-contractors, if any, undertake to comply with such standards consistent with applicable laws and regulations in the country of implementation of the Project. The Lender reserves the right to request a report from the Borrower on the environmental and social aspects of the Project;
- (b) to implement specific impact mitigation measures for the Project, as set out in connection with the Project's environmental and social risks management policy, i.e:
  - (i) (*in case of class A Project*) the measures described in the environmental and social management plan (ESMP) attached as Schedule 6 (*Mitigation Measures within the Context of the Environmental and Social Risks Management Policy*);
  - (ii) (*in case of class B Project*) the measures set out in the environmental and social impact studies attached as Schedule 6 (*Mitigation Measures within the Context of the Environmental and Social Risks Management Policy*)<sup>26</sup>;
- (c) to require that the contractors selected for the implementation of the Project apply the above-referenced mitigation measures and procure that their subcontractors, if any, comply with all the said measures, and in case of failure to implement these mitigation measures, take all appropriate measures; and
- (d) to provide the Lender with [annual] [semi-annual] progress reports on the implementation of the ESMP.<sup>27</sup>

### 11.12 [On-granting/On-lending] – Monitoring of [Final Recipient] [Final Beneficiary] <sup>28</sup>

The Borrower undertakes:

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<sup>26</sup> In the event that the ESMP is not finalized on the Signing Date, the delivery of the ESMP must be a condition precedent to the first disbursement. Moreover, the Borrower shall undertake to implement the ESMP and provide the Lender with follow-up reports.

<sup>27</sup> Only in the case of class A projects.

<sup>28</sup> Delete if no [On-granting/On-lending] nor [Final Recipient] [Final Beneficiary].

- (a) to ensure that the [On-granting/On-lending] Agreement includes, inter alia, all undertakings made by the Borrower on behalf of the [Final Recipient] [Final Beneficiary] under the Agreement, including but not limited to those of Clauses 11 (*Undertakings*) and 12 (*Information Undertakings*) of the Agreement [as well as the agreements granting the [Final Recipient] [Final Beneficiary] with the power to act in the name and on behalf of the Borrower, notably in the case of Drawdown Requests] <sup>29</sup>;
- (b) to collect systematically and make available to the Lender the details of individuals (name, nationality, address) and/or legal persons (company name, registered office, names of owners/partners/shareholders) to which the funds are [on-granted/on-lent];
- (c) to provide the Lender with all data related to the [On-granting/On-lending] [(including the collection status of any on-loan)]<sup>30</sup> to be recorded in the books of the [Final Recipient] [Final Beneficiary];
- (d) to ensure that the [Final Recipient] [Final Beneficiary] fulfils its obligations under the [On-granting/On-lending] Agreement and uses the [on-granted/on-lent] funds exclusively to finance the Project as provided for in the Agreement;
- (e) to procure that the [Final Recipient] [Final Beneficiary] insures the property financed with funds from the Facility against the main risks to which the execution and operation of the Project are likely to be exposed and;
- (f) to procure that the [Final Recipient] [Final Beneficiary] complies with the following financial ratios [●] and undertakes to [●].

***[Other undertakings to be added here depending on the Project]***

## **12. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 12 (*Information Undertakings*) remain in full force and effect from the Signing Date for as long as any amount is outstanding under the Agreement.

### 12.1 Financial Information

The Borrower shall provide the Lender with all information the Lender may reasonably request concerning the Borrower's domestic and foreign debt and the status of any loans guaranteed by the Borrower.

### 12.2 Progress Report

Until the Technical Completion Date, the Borrower shall provide the Lender with:

- at the end of each [quarter/half year/year], a technical and financial progress report relating to the implementation of the Project;
- within three months following the Technical Completion Date, a general progress report.

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<sup>29</sup> Delete if no agency agreement with the [Final Recipient] [Final Beneficiary] regarding the release of funds.

<sup>30</sup> Delete if on-grant.

### 12.3 Co-Financing<sup>31</sup>

The Borrower shall promptly inform the Lender of any total or partial cancellation or any prepayment of any Co-Financing.

### 12.4 Additional Information

The Borrower shall inform the Lender of:

- (a) any event which constitutes or might constitute an Event of Default or might have a Material Adverse Effect, the nature of such event, and all the actions taken to remedy it, if any, as promptly as practicable upon becoming aware of any such event;
- (b) any incident or accident directly related to the implementation of the Project which might have a significant effect on the environment or on the work conditions of its employees or its contracting parties in charge of the implementation of the Project, the nature of such incident or accident and all the actions taken or to be taken, as the case may be, by the Borrower to remedy it, as promptly as practicable following the occurrence of such accident;
- (c) as soon as possible, any decision or event which might affect the organization, completion or continuance of the Project;
- (d) for the entire period in which services are performed, including studies and audits, if any, the interim and final reports prepared by the service providers and, following the performance of work, a general progress report;
- (e) as soon as possible, any other information or any elements or evidence concerning the conditions of performance of the contracts and the Project Documents that the Lender may reasonably request.

### 12.5 Information relating to the [Final Recipient] [Final Beneficiary]<sup>32</sup>

The Borrower undertakes to do all that is necessary to ensure that, during the Project's implementation and operation, the [Final Recipient] [Final Beneficiary]:

- (i) provides the Lender with its annual financial and budgetary documents as soon as they are approved, as well as all information the Lender may reasonably request concerning the [Final Recipient] [Final Beneficiary]'s financial position;
- (ii) provides the Lender, upon request, with the minutes and reports of its board meetings and, where applicable, auditors' reports and financial audit reports or reports on the performance and control of the [Final Recipient] [Final Beneficiary]'s budget and financial years.

*[Other Information undertakings to be added here depending on the Project]*

## **13. EVENTS OF DEFAULT - ACCELERATION**

### 13.1 Events of Default

Each of the events or circumstances set out in this Clause 13 (*Events of Default*) constitutes an Event of Default.

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<sup>31</sup> Delete if no co-financing.

<sup>32</sup> To be deleted if there is no [On-granting/On-lending].

(a) Payment Default

The Borrower does not pay on the due date any amount due pursuant to this Agreement at the agreed location and/or in the agreed currency, unless the payment is fully made by the Borrower within a maximum of five (5) Business Days following its due date.

(b) Project Documents

Any of the Project Documents or any of the rights and obligations set out thereunder, ceases to be in force and effect, is requested to be terminated or its validity or enforceability is disputed.

No Event of Default pursuant to this Clause 13.1 (b) (*Project Documents*) shall be declared if (i) the dispute or the request for termination is withdrawn within thirty (30) days from the date on which the Lender will have informed the Borrower or the Borrower becomes aware of this dispute or request for termination, and if (ii) such dispute or request for termination has no Material Adverse Effect during this thirty (30) days period.

(c) Undertakings and Obligations

The Borrower breaches any of the provisions of the Agreement and in particular, without limitation, any of its undertakings taken pursuant to Clause 11 (*Undertakings*) and Clause 12 (*Information Undertakings*) of this Agreement.

Except for undertakings taken pursuant to Clauses 11.8 (*Implementation of the Project*), 11.9 (*Licit Origin of Funds*) and 11.10 (*No Corruption*) for which no grace period shall be granted, no Event of Default pursuant to this paragraph shall be declared if the breach of such provisions and undertakings has been cured within five (5) Business Days from the date of delivery of a notice by the Lender to the Borrower in that respect or the date the Borrower becomes aware of such breach.

(d) Misrepresentations

Any representation or statement made or reputed to be made by the Borrower pursuant to the Agreement and in particular under Clause 10 (*Representations*) or under any other documents provided by or on behalf of the Borrower pursuant to or relating to the Agreement, is or becomes inaccurate or misleading at the time it was made or considered to be made.

(e) Cross Default

The Lender, in respect of any credit facility (other than the Facility) or of any other financing, [a Co-Financier]<sup>33</sup> or any of the Borrower's lenders or creditors has cancelled or suspended its obligation, or has declared the acceleration or pronounced the prepayment of the indebtedness, as a result of the occurrence of an event of default (or any equivalent name) pursuant to the relevant documentation.

(f) Unlawfulness

It is or becomes unlawful or impossible for the Borrower to perform any of its obligations under the Agreement [or: the Financing Documents]<sup>34</sup>.

(g) New Circumstances

As a result of the implementation of a new law or regulation or of changes thereto or in the interpretation thereof by an Authority having jurisdiction, regardless of whether this pertains to a French, European or other law or regulation,

- (i) it is or becomes unlawful or impossible for the Lender to perform any of its obligations under the Agreement; or
- (ii) the Lender is subject to any new taxation, monetary, financial or banking measure causing it to incur additional costs in respect of its commitments under the Agreement

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<sup>33</sup> Delete if no Co-Financier.

<sup>34</sup> In case of [On-granting/On-lending], delete "Agreement" and replace with "Financing Documents".

(such as, for instance, due to a change in its local status) or causing a reduction in the income to which it is entitled.

(h) Material and Adverse Change

An event (including a change in the political situation of the country of the Borrower) or a measure likely to have a Material Adverse Effect occurs or is likely to occur.

(i) Withdrawal from or Suspension of the Project

One of the following events occurs:

- the implementation of the Project is suspended or postponed for a period exceeding six (6) months; or
- the Project has not been completed on the Technical Completion Date; or
- the Borrower [or the [Final Recipient] [Final Beneficiary]]<sup>35</sup> withdraws from the Project or ceases to be part of the Project.

(j) Authorizations

Any Authorization required for the Borrower [or the [Final Recipient] [Final Beneficiary]]<sup>36</sup> to perform or to comply with its obligations under the Agreement [*or*: the Financing Documents]<sup>37</sup> or other material obligations set forth in any Project Documents, or which is required in the normal and ordinary course of the Project is not obtained within the required timeframe, is cancelled or becomes invalid or ceases to be in full force and effect, for any reason whatsoever.

(k) Judgments, Rulings or Decisions causing a Material Adverse Effect

Any judgment, arbitral award or judicial or administrative decision or order is issued and has or may reasonably have a Material Adverse Effect.

(l) Implementation of the Project

The Borrower had or has contractual relationship with any company participating in the implementation of the Project and which is listed on any of the Financial Sanctions Lists (including in particular the fight against financing of terrorism).

The Borrower purchases or supplies any equipment or performs works in any sector under embargo by:

- the United Nations
- the European Union
- France

(m) Illicit Origin of Funds

All or part of the funds invested in the Project, other than those provided by the government, are of illicit origin pursuant to French law, in particular, without limiting the generality of the foregoing, are linked to drug trafficking, fraud against the financial interests of European Communities, corruption, organized criminal activities or the financing of terrorism.

(n) Corruption

The Project (in particular at the time of the negotiation, procurement and performance of the contracts financed through the Facility) has given rise to Corruption.

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<sup>35</sup> Add if [On-granting/On-lending].

<sup>36</sup> Add if [On-granting/On-lending].

<sup>37</sup> In case of [On-granting/On-lending], delete “Agreement” and replace with “Financing Documents”.

(o) Default by the [Final Recipient] [Final Beneficiary] <sup>38</sup>

The [Final Recipient] [Final Beneficiary] (i) fails to fulfil any of its obligations with respect to the [On-granting/On-lending] Agreement, including but not limited to those set out in Clauses 11 (*Undertakings*) and 12 (*Information Undertakings*) of the Agreement, which must be restated by the [Final Recipient] [Final Beneficiary] in the [On-granting/On-lending] Agreement, or (ii) fails to fulfil any of its obligations in respect of any Project Document or other documents executed in connection with the implementation of the Project, or (iii) suspends payments under the Project.

Except for events referred to in Clauses 11.8 (*Implementation of the Project*), 11.9 (*Licit Origin of Funds*) and 11.10 (*No Corruption*) for which no grace period shall be granted, no Event of Default pursuant to this paragraph shall be declared if the failure can be and has been remedied within fifteen (15) Business Days from the date on which the Lender notifies the Borrower that it is in default or on which the Borrower becomes aware thereof.

(p) Suspension of Currency Convertibility and Free Transfers <sup>38</sup>

The free conversion and transfer of repayments, interest payments and any sums owed to the Lender in respect of the Facility or any other loan extended by the Lender to the Borrower or to any borrower in that country are jeopardized.

### 13.2 Acceleration

On and at any time after the occurrence of an Event of Default, the Lender may, without any formal notice or any other judicial or extrajudicial action, by written notice given to the Borrower, declare that all or part of the Facility, together with accrued or outstanding interest and all other amounts outstanding under the Agreement, shall become immediately due and payable.

Without prejudice to the foregoing, in the event of occurrence of an Event of Default set out in Clause 13.1 (*Events of Default*), the Lender reserves the right, following a written notice delivered to the Borrower, to (i) suspend or postpone Drawdowns under the Facility and/or (ii) suspend the finalization of agreements relating to any potential additional financing offers which would have been notified by the Lender to the Borrower and / or (iii) postpone or suspend any drawdown under any other credit facility or financing agreement entered into between the Borrower and the Lender.

Should drawdowns be postponed or suspended by a Co-Financier under an agreement between the said Co-Financier and the Borrower, the Lender reserves the right to postpone or suspend the Drawdowns under the Facility. <sup>39</sup>

### 13.3 Notification of an Event of Default

As provided for in Clause 12.4 (*Additional Information*), the Borrower undertakes to promptly notify the Lender upon becoming aware of any event constituting or likely to constitute an Event of Default, and to inform the Lender of all the measures contemplated by the Borrower to remedy it.

## **14. ADMINISTRATION OF THE FACILITY**

### 14.1 Payments

All payments received by the Lender under the Agreement shall be applied towards payment of expenses, interest, principal repayments or any other sum owed under the Agreement in the following order:

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<sup>38</sup> Delete if no [On-granting/On-lending].

<sup>39</sup> Delete if no co-financing.

- 1) incidental expenses;
- 2) late-payment interest;
- 3) interest; and
- 4) principal repayments.

Payments by the Borrower shall be applied first towards sums due and payable under the Facility or under other loans extended by the Lender to the Borrower, whichever one the Lender will have utmost importance to have repaid, in the order set out above.

#### 14.2 Set-off

Without any prior approval of the Borrower or any prior notification to the Borrower, the Lender may, at any time, in compliance with and within the limits of French Law, set off any amounts due and unpaid by the Borrower against any amounts held by the Lender on behalf of the Borrower or any amount due and payable by the Lender to the Borrower. If these amounts are in different currencies, the Lender may convert either amount at the market rate of exchange for the purpose of the set off.

All payments to be made by the Borrower under the Agreement will be calculated without taking into account any possible set off. The Borrower shall be prohibited from applying or making any set off.

#### 14.3 Business Day

Any payment which is due to be made on a day that is not a Business Day shall be made on the preceding Business Day.

#### 14.4 Currency of Payment

Any payment to be made by the Borrower under the Agreement shall be made in Euros, except as provided for in Clause 14.6 (*Closing Place; Payments*).

#### 14.5 Day Count Convention

Any interest, fees or expenses due under the Agreement shall accrue from day to day on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days, in compliance with the European interbank market practice.

#### 14.6 Closing Place; Payments

- (a) The funds of the Facility shall be transferred by the Lender to any bank account in France specifically assigned to that purpose by the Borrower [the Final Recipient/Final Beneficiary] [the Implementing Agency]<sup>40</sup>.

However, and subject to the Lender's prior approval, the funds of the Facility may be transferred to the Borrower [the Final Recipient] [the Final Beneficiary] [the Implementing Agency] on a bank account opened in the Borrower's country or in any other location as agreed with the Lender.

The funds shall be transferred to any financial institution located in the Borrower's country and, upon the Borrower's [the Final Recipient's] [the Final Beneficiary's] [the Implementing Agency's] request, shall be made either (i) in Euros to a bank account denominated in Euros, or (ii) in the currency having legal tender in the Borrower's country

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<sup>40</sup> Insert (and delete "Borrower") in the case of [On-granting/On-lending] or Implementing Agency, if funds are released directly to the Final Recipient, Final Beneficiary or the Implementing Agency.

to a bank account denominated in such currency, at the exchange value on the Drawdown Date or (iii) in a convertible currency to a bank account denominated in such currency.

- (b) All payments shall be made by the Borrower on their due date no later than 11am (Paris time) and shall be transferred to the following bank account:

No. [●] (Details of Account),

No. [●] (IBAN code),

Banque de France SWIFT code (BIC): [●]

opened by the Lender with Banque de France (Central Agency) in Paris, or to any other account notified by the Lender to the Borrower.

- (c) The Borrower undertakes to request from the bank in charge of wiring the amounts to provide comprehensively and in the same order, the following information in wire transfer messages (the caption numbers are referring to SWIFT MT 202 and 103 protocol):
- Principal : name, address, bank account number (field 50)
  - Principal's bank (field 52)
  - Reference : name of the Borrower, name of the Project, number of the Agreement (field 70)
- (d) Notwithstanding anything to the contrary in paragraphs (b) and (c) above, and subject to (i) the Lender's prior approval, (ii) compliance by the Borrower with the undertaking set out in paragraph (c) above concerning instructions to be given to the bank and (iii) the Lender being authorized pursuant to specific regulation to transfer funds locally through its local branch, the Borrower shall be permitted to pay amounts owed by it in the financial market where the Project is implemented, in the currency of the Facility by remitting the equivalent thereof, as calculated on the payment date, in a freely transferable and convertible currency. Funds shall be transferred to the financial institution at that location, as specified by the Lender.
- (e) The exchange rates are those applied by the *Banque de France* on the Drawdown Date.
- (f) Only payments made pursuant to the terms of this Clause 14.6 (*Closing Place; Payments*) will be deemed made in full discharge.

## 15. MISCELLANEOUS

### 15.1 Free Transfer of Funds<sup>41</sup>

[●] shall guarantee to the Lender that all sums owed to it under the Agreement shall be freely transferable.

The above transfer authorization shall be evidenced by an agreement between [●] and the Lender.]

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<sup>41</sup> To be adapted according to local exchange control regulation.

### 15.2 Language

The language of the Agreement is English. If a translation is made thereof, only the English version shall be deemed authentic in the event of conflicting interpretations of the Agreement's provisions or disputes between the Parties.

All communication or document provided under or in connection with this Agreement shall be written in English.

If such communication or document is not written in English and if the Lender so requests, it shall be accompanied with a certified English translation and, in this event, the English translation shall prevail, unless the relevant document is a constitutional or statutory document or any other official document.

### 15.3 Certifications and Determinations

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

### 15.4 Partial Invalidity

If, at any time, any provision of the Agreement is or becomes invalid, the validity of other provisions under the Agreement shall not be affected.

Invalidity of a provision under any law of any jurisdiction shall not affect its validity under the law of another jurisdiction.

### 15.5 No Waiver

No failure to exercise, nor delay in exercising, on the part of the Lender, any right under this Agreement shall operate as a waiver to exercise such right.

No partial exercise of a right shall prevent any further exercise of such right, nor more generally the exercise of rights and remedies provided by law.

The rights and remedies set forth in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

### 15.6 Assignment

The Borrower may not assign or transfer, in any manner whatsoever, all or part of its rights and/or obligations under the Agreement without the prior written consent of the Lender.

The Lender may assign or transfer to any third party its rights and/or obligations under the Agreement and enter into any sub-participation agreement relating thereto.

### 15.7 Legal Value

The Schedules hereto and the recitals hereof represent the entire Agreement and have the same legal value.

### 15.8 Entire Agreement

As of the Signing Date, the Agreement represents the entire agreement between the Parties relating to the subject matter hereof, and supersedes and replaces all previous documents, agreements or understandings which could have been exchanged or communicated as part of the negotiation of the Agreement.

### 15.9 Amendment

No provision of the Agreement shall be amended, unless such amendment shall be expressly agreed in writing between the Parties.

### 15.10 Disclosure of Information

Notwithstanding any existing confidentiality agreement, the Lender may disclose all information or document in relation to the Project (i) to its auditors, rating agencies, advisors and counsels (ii) to any person or entity to whom it may potentially assign or transfer all or part of its rights and obligations under the Agreement and (iii) to any person or entity for the purpose of taking any protective measures or protecting its rights under the Agreement.

## **16. NOTICES**

### 16.1 Written Notices

Any notice, request or other communication to be given or made under this Agreement or relating to it shall be made in writing and, except anything to the contrary herein, and shall be delivered by way of facsimile or by way of letter to the Party's following address and number:

To the Borrower:

**[BORROWER]**

Address: [●]

Facsimile: [●]

Attention: [●]

To the Lender:

**AFD –PARIS HEAD OFFICE**

Address: 5, rue Roland Barthes – 75598 Cedex 12

Facsimile: [●]

Attention: [●]

**With copy to:**

**AFD [Insert the relevant country] OFFICE**

Address: [●]

Facsimile: [●]

Attention: [●]

or at such other address, facsimile number, department or person in charge as the Party may notify to the other Party by not less than five (5) Business Days' notice.

## 16.2 Receipt

Any notice, request or communication made or any document sent by a person to another under or relating to the Agreement shall be effective:

- (i) for a facsimile, when received in a readable form; and
- (ii) for letter when deposited at the relevant address;

and in the event a person in charge or a department is specified as part of the detailed address, if addressed to that person or department.

## 16.3 Electronic Communications

- (a) Any communication made under or in connection with this Agreement may be made by electronic mail or other electronic means if the Parties:
  - (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 provide any other contact 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 contact information provided by them.
- (b) Any electronic communication made between the Parties will be effective only upon receipt in a readable form.

## **17. GOVERNING LAW, ARBITRATION AND CHOICE OF RESIDENCE**

### 17.1 Governing Law

This Agreement is governed by French law.

### 17.2 Arbitration

All disputes arising from or relating to this Agreement shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in effect on the starting date of the arbitration proceeding, by one or more arbitrators to be appointed in accordance with these Rules.

Arbitration shall take place in Paris. The language of the arbitration proceeding shall be English.

This arbitration clause shall remain in effect even in the event that the Agreement is void, terminated, cancelled or expires. The contractual obligations arising from this Agreement shall not be suspended by the fact that a Party initiates legal proceedings against the other Party.

The Parties expressly agree that, by accepting this arbitration clause, the Borrower waives any jurisdictional immunity or immunity from execution on which it could rely.

### 17.3 Choice of Domicile

For the purpose of service of judicial and extrajudicial documents relating to the aforementioned actions or proceedings, without prejudice to any applicable legal provision, the Borrower irrevocably chooses as domicile its address indicated in Clause 16.1 (*Written Notices*) and the Lender chooses as residence at its address indicated as “AFD Paris Head Office” in Clause 16.1 (*Written Notices*).

## 18. EFFECTIVENESS AND TERMINATION

This Agreement will come into force as of the Signing Date provided that all formalities required by the laws and regulations of the Borrower's jurisdiction to ensure the validity of the Agreement have been fulfilled in a manner satisfactory to the Lender, and shall remain in full force and effect for so long as any amount is outstanding under the Agreement.

## 19. [CAISSE AUTONOME D'AMORTISSEMENT]

[An original copy of the Agreement shall be delivered to the *Caisse Autonome d'Amortissement* of [●], with the understanding that the Borrower shall fulfil the formalities required by the *Caisse Autonome* to monitor flows of funds in its books.]<sup>42</sup>

Executed in [*number in words*] ([●])<sup>43</sup> originals, at [●], on [●].

### THE BORROWER

**[INSERT THE NAME OF THE BORROWER]**

Represented by:

\_\_\_\_\_

### THE LENDER

**AGENCE FRANCAISE DE DEVELOPPEMENT**

Represented by:

\_\_\_\_\_

**Cosignatory : His Excellency M [●], Ambassador of France<sup>44</sup>**

\_\_\_\_\_

\_\_\_\_\_

<sup>42</sup> If applicable.

<sup>43</sup> Two original copies for AFD + the number of original copies required by the Borrower.

<sup>44</sup> To be replaced par "Cosignatory, Mr or Ms Minister [●]" if the Agreement is signed by a French minister.

## SCHEDULE 1 - A - DEFINITIONS <sup>45</sup>

<b>Agreement</b>	means this credit facility agreement, including its recitals, clauses, Schedules, and, as the case may be, any future amendments.
<b>Authority(ies)</b>	means any government or any body, department, commission exercising a public prerogative, administration, court, agency or state, governmental, administrative, tax or judicial entity.
<b>Authorization(s)</b>	means any consents, registrations, filings, conventions, certificates, authorizations, approvals, permits and/or mandates, or any exemptions thereof, obtained from or provided by an Authority, whether granted by means of an explicit act or due to an absence of answer within a defined time limit.
<b>Availability Period</b>	means the period from the Signing Date to the Deadline for Drawdown.
<b>Available Credit</b>	means, at a given period of time, the maximum principal amount set out in Clause 2.1 ( <i>Facility</i> ), less (i) the amount of any Drawdowns previously made, (ii) the amount of the Drawdowns to be made pursuant to the ongoing Drawdown Requests and (iii) the portions of the Facility cancelled pursuant to the provisions of Clause 8.3 ( <i>Cancellation by the Borrower</i> ) and Clause 8.4 ( <i>Cancellation by the Lender</i> ).
<b>Average Residual Term</b>	means the average, expressed as a number of calendar days, of terms remaining for each instalment, weighted by the corresponding amounts of flows in principal.
<b>Business Day</b>	means a full day other than a Saturday or a Sunday on which banks are open for business in Paris.
<b>Co-Financier(s)</b> <sup>46</sup>	means:  [●] for an amount (known or contemplated) of [ <i>amount in words</i> ] ([●] <i>amount in numbers</i> ) [ <i>currency</i> ]  And separately any of them.
<b>Co-Financing</b> <sup>47</sup>	means together the [●] [ <i>insert the co-financing facilities</i> ] and separately any of them.
<b>Collusion</b>	means concerted action, agreements, express or implied collusion or alliances, including through the intermediary of an affiliate operating in any country whatsoever, intended or likely to prevent, restrain or distort competition in a market, including by:  - restricting access to the market or the free play of competition by

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<sup>45</sup> Delete optional definitions that are not applicable.

<sup>46</sup> Delete if no Co-Financier.

<sup>47</sup> Delete if no co-financing.

- other businesses;
- impeding the determination of free market prices by artificially raising or lowering them;
- limiting or controlling production, outlets, capital expenditures or technical advances;
- allocating markets and supply sources.

**Corruption**

means the following acts:

- the promise, offer or giving, to a Public Official, directly or indirectly, of an undue advantage of any nature, for the Public Official himself or herself or another person or entity, in order that the Public Official acts or refrains from acting in the exercise of his or her official duties;
- the solicitation or acceptance by a Public Official, directly or indirectly, of an undue advantage of any nature, for the Public Official himself or herself or another person or entity, in order that the Public Official acts or refrains from acting in the exercise of his or her official duties.

**Deadline for Drawdown**

means [●], date after which no Drawdown may be made. The last Drawdown Request must be received by the Lender no later than fifteen (15) Business Days prior to the Deadline for Drawdown.

**Drawdown**

means the payment of all or part of the funds made available by the Lender to the Borrower in connection with the Facility pursuant to the conditions set out in Clause 3 (*Drawdown of Funds*).

**Drawdown Date**

means the date on which a Drawdown is made available by the Lender.

**Drawdown Period**

means the period from the first Drawdown Date to the earliest of the following dates:

- (a) the date on which the Available Credit is equal to zero (0); and
- (b) the Deadline for Drawdown.

**Drawdown Request**

means a notice substantially in the form attached as Schedule 5A (*Form of Drawdown Request*).

**Environmental and Social Impact Notice<sup>48</sup>**

means the brief impact study describing the impact of the Project on the environment as well as the conditions for satisfying environmental and social concerns.

**ESMP<sup>49</sup>**

means the Environmental and/or Social Management Plan attached as Schedule 6 (*Mitigation Measures Within The Context Of The Environmental And Social Risks Management Policy*) hereof. This plan includes, inter alia, the operational documents presenting and describing all measures to mitigate and compensate negative impacts of the Project, the contemplated monitoring measures as

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<sup>48</sup> To be deleted if the Project is not a class B project.

well as institutional agreements necessary to implement such measures.

<b>EURIBOR</b>	means the interbank rate applicable to the Euro for the deposits in Euros with a term comparable to the Interest Period (the “Reference Term”), as determined by the European Union Banking Federation at 11 am, Brussels time, two Business Days before the first day of the Interest Period. The parties agree that the Reference Term will be of one (1) month if the Interest Period is less than sixty (60) days, of three (3) months if it is between sixty (60) and one hundred and thirty five (135) days, of six (6) months if it is between one hundred and thirty five (135) and two hundred and seventy (270) days and twelve (12) months in other cases.
<b>Euro(s) or EUR</b>	means the single European currency of member States of the European Economic and Monetary Union, including France, and having legal tender in such States.
<b>Event of Default</b>	means any of the events or circumstances set out in Clause 13 ( <i>Events of Default</i> ) or which may constitute any events or circumstances set out in Clause 13 ( <i>Events of Default</i> ).
<b>Facility</b>	means the facility granted by the Lender in accordance with this Agreement in a maximum principal amount set forth in Clause 2.1 ( <i>Facility</i> ).
<b>Final [Recipient] / or / [Beneficiary]</b> <sup>50</sup>	means [●], which is responsible for the implementation of the Project for its own account and in its capacity as owner and principal in respect of capital expenditures financed with funds from the Facility [on-granted/on-lent] to it by the Borrower.
<b>Financial Sanctions Lists</b>	<p>means the list of persons, groups or entities which are subject to United Nations, European Union or French financial sanctions.</p> <p>For information purpose only and not to the benefit of the Borrower (who may not take any advantage whatsoever of or rely on the references listed below and provided by the Lender):</p> <ul style="list-style-type: none"><li>- <b>As regards the United Nations</b>, the lists may be consulted at the following address :  <a href="http://www.un.org/french/sc/committees/1267/consolist.shtml">http://www.un.org/french/sc/committees/1267/consolist.shtml</a>(Tali ban/AlQaida), <a href="http://www.un.org/Docs/sc/committees/INTRO.htm">http://www.un.org/Docs/sc/committees/INTRO.htm</a> including <a href="http://www.un.org/french/sc/committees/1737/index.shtml">http://www.un.org/french/sc/committees/1737/index.shtml</a> (Iran)</li><li>- <b>As regards the European Union</b>, the lists may be consulted at the following address: <a href="http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm">http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm</a></li><li>- <b>As regard France</b>, lists the lists may be consulted at the</li></ul>

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<sup>49</sup> Delete if not a class A project.

<sup>50</sup> Delete if no [On-granting/On-lending] nor [Final Recipient/ Final Beneficiary].

following address:

[http://www.minefe.gouv.fr/directions\\_services/dgtpe/sanctions/sanctionsliste\\_nationale.php](http://www.minefe.gouv.fr/directions_services/dgtpe/sanctions/sanctionsliste_nationale.php).

<b>Financing Documents</b> <sup>51</sup>	means the Agreement, the [On-granting/On-lending] Agreement as well as any documents directly relating thereto.
<b>Financing Plan</b>	means the financing plan of the Project, attached hereto as Schedule 3 ( <i>Financing Plan</i> ).
<b>Fixed Reference Rate</b>	means [ <i>percentage in words</i> ] ([●]%) per annum.
<b>Grace Period</b>	means the period from the Signing Date and expiring [ <i>number in words</i> ] [●]months thereafter during which no repayment of the principal of the Facility is due.
<b>Implementing Agency</b> <sup>52</sup>	means [●], in charge of implementing the Project in the name and on behalf of the Borrower [[the [Final Recipient] [Final Beneficiary] and authorized by the Borrower the [[Final Recipient] [Final Beneficiary]] for that purpose.
<b>Index Rate</b>	means the daily CNO-TEC 10 index, 10-year constant maturity rate published daily by the CNO ( <i>Comité de Normalisation Obligataire</i> ) on the quotation pages of the Reference Financial Institution. On the Signing Date, the Index Rate on [●] is [ <i>percent in words</i> ] ([●]%) per annum.
<b>Interest Period</b>	means the period from a Payment Date (exclusive) to the next Payment Date (inclusive). For each Drawdown made under the Facility, the first interest period shall start on the Drawdown Date (exclusive) and end on the first following Payment Date (inclusive).
<b>Interest Rate</b>	means the interest rate in percentage determined pursuant to the provisions of Clause 4.1 ( <i>Interest Rate</i> ).
<b>Margin</b> <sup>53</sup>	means [ <i>percentage in words</i> ] ([●]%) per annum.
<b>Material Adverse Effect</b>	means any event or circumstance adversely and durably affecting the Borrower [or the [Final Recipient] [Final Beneficiary]], which is likely to affect the Borrower's ability to fulfil any of its obligations under the Agreement.
<b>OAT</b>	means the French Treasury bonds ( <i>obligations assimilables du Trésor</i> ) denominated in Euros as valued by the Reference Financial Institution as from 11 am Paris time.
<b>[On-granting/On-lending] Agreement</b> <sup>54</sup>	means the agreement setting forth the terms and conditions on which the Borrower shall [on-grant/on-lend] part or all of the funds from the Facility to the [Final Recipient] [Final Beneficiary].

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<sup>51</sup> Delete this definition if there is no [On-granting/On-lending] Agreement.

<sup>52</sup> Delete if no Implementing Agency.

<sup>53</sup> The Margin is fixed by AFD.

<b>Outstanding Principal</b>	means, in respect of a given Drawdown or, where applicable, a Tranche, the outstanding amount owed on this Drawdown or Tranche, which corresponds to the aggregate of the sums made available by the Lender to the Borrower in respect of the said Drawdown or Tranche less all principal repayments made by the Borrower in respect of the said Drawdown or Tranche.
<b>Payment Date(s)</b>	means the [●] and [●] of each year.
<b>Procurement Plan</b>	means the procurement plan to be set up by the Borrower and providing at least for (i) contracts for supply, works and/or services necessary to the implementation of the Project on a minimum schedule of eighteen (18) months (as from the beginning of the implementation of the Project) and (b) the proposed methods for the award of such contracts (procurement rules, deadline for the presentation of offers, name and address of the persons or entities to be contacted) which should allow the Lender to deliver a prior notification to the Development Assistance Committee of the OECD no later than thirty (30) calendar days before the beginning of the period of presentation of offers (DAC Recommendation on Untying Official Development Assistance of May 14, 2001).
<b>Project</b>	means the project as described in Schedule 2 ( <i>Project Description</i> ).
<b>Project Authorizations</b>	means the Authorizations required for (i) the Borrower [Final Recipient] [Final Beneficiary] to implement the Project and sign all Project Documents to which it is a party, exercise its rights, perform its obligations relating thereto and (ii) the Project Documents to which the Borrower [Final Recipient] [Final Beneficiary] is a party to be admissible in evidence before courts of the Borrower's jurisdiction or before the competent arbitral tribunals.
<b>Project Documents</b>	means all documents, including contracts, delivered or executed by the Borrower [Final Recipient] [Final Beneficiary] in connection with the implementation of the Project [i.e., the following documents in particular: the Implementing Agency agreement between the Borrower and [●], the project manager contract between the Borrower and [●], [● <i>other contracts/documents to be specified</i> ]].
<b>Public Official</b>	means: <ul style="list-style-type: none"> <li>- any holder of legislative, executive, administrative or judicial office appointed or elected, serving on a permanent basis or otherwise, paid or unpaid, regardless of rank;</li> <li>- any other person exercising a public function, including for a public agency or enterprise, or providing a public service;</li> <li>- any other person defined as a public official under the domestic law of the Borrower's jurisdiction.</li> </ul>

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<sup>54</sup> To be deleted if no [On-granting/On-lending].

<b>Rate Conversion</b>	means the conversion of the floating rate applicable to all or part of the Facility into fixed rate pursuant to Clause 4.1 ( <i>Interest Rate</i> ). The determined fixed rate shall take effect the day immediately following a Payment Date.
<b>Rate Conversion Request</b>	means a notice substantially in the form attached as Schedule 5C ( <i>Form of Rate Conversion Request</i> ).
<b>Rate Setting Date</b>	means the date on which the Lender determines the interest rate of its loans which is the first Wednesday (or, if that is a public holiday, the following Business Day) following the date of receipt by the Lender of a Drawdown Request or Rate Conversion Request, provided that said date of receipt is at least two Business Days prior to the relevant Wednesday. Otherwise, the Rate Setting Date shall be the second Wednesday (or the immediately following Business Day if that is a public holiday) after the said date of receipt.
<b>Reference Financial Institution</b>	means a financial institution chosen as a stable reference by the Lender which publishes, on a regular basis, on one of the international financial information networks, its quotations of financial instruments according to the practices recognized by the banking industry. On the Signing Date, the reference financial institution is the group <i>Caisse des dépôts</i> for the OAT and Garban Intercapital for rate exchanges. In the event of unavailability of a reference rate mentioned in the Agreement, another substitution rate, recognized by the banking industry, shall apply.
<b>Reinvestment Rate</b>	means the yield rate of fixed-rate French Treasury Bonds (OAT) whose maturity date is the closest to the Average Residual Term, calculated at the date of prepayment of all or part of the Facility. Such rate shall be the rate recorded as from 11 am, Paris time, seven (7) Business Days before the prepayment date, recorded on the quotation pages of the Reference Financial Institution.
<b>Schedule</b>	means a schedule or schedules to this Agreement.
<b>Signing Date</b>	means the signing date of this Agreement.
<b>Technical Completion Date</b>	means the date contemplated for the technical completion of the Project, i.e. [●].
<b>Triggering Date</b>	means the first Business Day following the last day of the Drawdown Period.

## **SCHEDULE 1 - B- INTERPRETATION**

- (a) “assets” includes present and future properties, revenues and rights of any nature;
- (b) any reference to the “Borrower”, a “Party” or the “Lender” includes its successors, assigns and beneficiaries;
- (c) any reference to the Agreement, to any other agreement or instrument is a reference to the Agreement, or to such agreement or instrument as amended, restated or supplemented and includes, if applicable, any instrument which replaces it through novation, in accordance with the Agreement;
- (d) a “guarantee” means any security or any guarantee including autonomous and irrevocable guarantee of payment;
- (e) a “person” includes any person, firm, company, corporation, government, state or state agency or any association, or group of two or more of the foregoing (whether or not having separate legal status);
- (f) 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, direction, or any division of any other authority or organization;
- (g) any reference to a provision of law includes a reference to that provision as amended;
- (h) unless otherwise provided, any reference to a time of day is a reference to Paris time;
- (i) section, Clause and Schedule headings are for ease of reference only and shall not influence the interpretation of this Agreement;
- (j) unless otherwise provided, a term used in any other document related to the Agreement or in any notice given under or in connection with the Agreement shall have the meaning ascribed to it in this Agreement;
- (k) an Event of Default is “continuing” if it has not been remedied or if the Lender has not waived any of its rights relating thereto;
- (l) references to a Clause or Schedule shall be a reference to a Clause or Schedule of this Agreement.

**SCHEDULE 2 - PROJECT DESCRIPTION**

**SCHEDULE 3 - FINANCING PLAN**

**SCHEDULE 4 - CONDITIONS PRECEDENT**

**Part I – Conditions Precedent to be satisfied on the Signing Date**

Delivery by the Borrower to the Lender of a copy of the resolutions of the Borrower’s competent Authorities certified true by the Borrower approving the terms of the Agreement, and authorizing appointed person or persons to execute it on its behalf.

**Part II- Conditions Precedent to the first Drawdown**

- (a) Evidence of any filing or registration, deposit or publicity requirements of the Agreement and of the payment of any stamp duty, registration fee or similar duty concerning the Agreement, if applicable.
- (b) Delivery by the Borrower to the Lender of the Project Documents:
  - (i) a certified true copy, issued by an authorized representative of the Borrower, of any of the Project Documents duly signed by each of the Parties;
  - (ii) evidence of the fulfilment of the relevant formalities referred to in the Project Documents in order to ensure that they enter into force and become enforceable against third parties;
  - (iii) evidence of the granting of any Authorization which the Lender considers to be necessary or desired to certify the validity of the Project Documents or to carry out the operations set forth therein and delivery of a certified true copy of any relevant Authorization.
- (c) Delivery by the Borrower of a certificate issued by an authorized signatory of the Borrower listing the person(s) authorized to sign, on behalf of the Borrower, the Drawdown Requests and any certificate under this Agreement and to take all measures or sign all other authorized or required documents on behalf of the Borrower under this Agreement, as well as the certified form of signature of such person(s).
- (d) Opening of and making required Facility on the Project account(s).
- (e) Delivery by the Borrower to the Lender of the finalized ESMP which shall have been previously submitted to the AFD’s no-objection<sup>55</sup>.
- (f) Prior no-objection of the Lender to the provisions of the [On-granting/On-lending] Agreement and delivery to the Lender of a signed copy thereof.<sup>56</sup>
- (g) Prior no-objection of the Lender to the provisions of the agency agreement between the Borrower and the Implementing Agency and delivery to the Lender of a signed copy thereof.<sup>57</sup>
- (h) Execution of the fund transfer authorization agreement referred to in Clause 15.1 (*Free Transfer of Funds*).<sup>58</sup>

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<sup>55</sup> Insert only for Class A Projects or if the ESMP has not been delivered prior to the Signing Date.  
<sup>56</sup> Delete if no [On-granting/On-lending].  
<sup>57</sup> Delete if no Implementing Agency.  
<sup>58</sup> To be deleted or to be adapted according to exchange control in the relevant jurisdiction.

- (i) Delivery to the Lender of the documents attesting that the governing bodies of the Co-Financiers have agreed to extend financing as set out in the Financing Plan.<sup>59</sup>
- (j) Payment of all commissions and fees due under the Agreement.
- (k) Delivery by the Borrower to the Lender of a legal opinion both in the form and substance satisfactory to the Lender issued by an independent and external lawyer of the jurisdiction of incorporation of the Borrower chosen with the Lender's prior approval.

**Part III – Conditions Precedent to each Drawdown (including the first Drawdown)**

- (a) No Event of Default has occurred or is continuing.
- (b) Delivery to the Lender of the contracts, order or procurement letters and, where applicable, plans and estimates previously submitted to the Lender pursuant to the provisions of Clause 11.6 (*Procurement*), pertaining to the requested Drawdowns, as well as the supporting documents as indicated in Clause 3.4 (*Payment Mechanics*).

*[Other conditions precedent to be added depending on the project].*

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<sup>59</sup> To be deleted if no Co-Financier.

## SCHEDULE 5 - FORM OF LETTERS

### A- FORM OF DRAWDOWN REQUEST

*Borrower's letterhead*

From: *the Borrower*

To: Agence Française de Développement

On: [date]

**Borrower's Name – Credit Facility Agreement n°[●]**

Ref: Drawdown Request

1. We refer to the Credit Facility Agreement n° [●] entered into between the Borrower and AFD on [●] (hereinafter the “Agreement”). Unless expressly indicated otherwise, capitalised terms defined in the Agreement have the same meaning when used herein.
2. This letter is a Drawdown Request.
3. We hereby irrevocably request the Lender to make the drawdown of a portion of the Facility on the following terms:  
Amount: [●] or, if less, the Available Credit.
4. The Interest Rate shall be determined in accordance with the provisions of Clause 4 (*Interest*) of the Agreement. The Interest Rate applicable to the Drawdown will be provided to us in writing and we hereby agree on such Interest Rate (subject to, as the case may be, application of the paragraph below).  
In the event the interest rate applicable to the requested Drawdown is greater than [*percentage in words*] ([●]%), we request that you to cancel this Drawdown Request.
5. We confirm that each condition set out in Clause 2.3 (*Conditions of Utilization*) is fulfilled on the date of this Drawdown Request. We undertake to immediately inform the Lender in the event any of the said conditions would appear not to be fulfilled before or on the Drawdown Date.
6. The Drawdown shall be Facilityed to the following bank account:
  - (a) Name [of the Borrower]: [●]
  - (b) Address [of the Borrower]: [●]
  - (c) IBAN Account Number : [●]
  - (d) SWIFT Number: [●]
  - (e) Bank and bank's address [of the Borrower]: [●]

(f) [if currency other than Euro] correspondent bank and account number of the Borrower's bank: [●]

7. This request is irrevocable.
8. We attach hereto all relevant written evidence of expenses as well as the payment requests to be made on behalf of the Borrower:

[List of written evidence of expenses]

Sincerely,

.....  
Authorized signatory of Borrower  
.....

**B- FORM OF DRAWDOWN CONFIRMATION LETTER**

*On AFD letterhead*

From: Agence Française de Développement

To: *the Borrower*

Date:

**Name of the Borrower – Credit Facility Agreement n°[●]**

Re: Drawdown Request of *[date]*

1. We refer to the Credit Facility Agreement n° [●] entered into between the Borrower and AFD on [●] (hereinafter the “Agreement”). Unless expressly indicated otherwise, capitalised terms defined in the Agreement have the same meaning when used herein.
2. By a Drawdown Request dated [●], the Borrower requested the Lender to make a Drawdown in the amount of EUR[●], pursuant to the conditions of the Agreement.
3. The characteristics of the Drawdown made in connection with your Drawdown Request are the following:
  - Amount: *[amount in words]* ([●])
  - Applicable interest rate: *[percentage in words]* ([●]%) per annum
  - Overall effective rate (half-yearly period): *[percentage in words]* ([●]%)
  - Overall effective rate (per annum): *[percentage in words]* ([●]%).

For information purposes:

- Rate Setting Date: [●]
- Fixed Reference Rate: *[percentage in words]* ([●]%) per annum
- Index Rate: *[percentage in words]* ([●]%)
- Index Rate on the Rate Setting Date: [●].

Sincerely,

.....  
Authorized signatory of AFD

**C- FORM OF RATE CONVERSION REQUEST**

*On the Borrower's letterhead*

From: *the Borrower*

To: Agence Française de Développement

Date:

**Name of the Borrower – Credit Facility Agreement n°[●]**

Ref: Conversion of adjustable interest rate to fixed interest rate

1. We refer to the Credit Facility Agreement n° [●] entered into between the Borrower and AFD on [●] (hereinafter the “Agreement”). Unless expressly indicated otherwise, capitalised terms defined in the Agreement have the same meaning when used herein.
2. The Facility bears interest at a floating rate. Please convert this floating rate into a fixed rate pursuant to the conditions set forth in the Agreement.

Amount to be converted: [*amount in words*] EUR ([●])

Maximum interest rate above which the present request shall be deemed cancelled:  
[*percentage in words*] ([●])% per annum.

Sincerely,

.....  
Authorized signatory of *Borrower*

**D- FORM OF RATE CONVERSION CONFIRMATION LETTER**

*On AFD letterhead*

From: Agence Française de Développement

To: *the Borrower*

Date:

**Name of Borrower – Credit Facility Agreement n° [●]**

Re: Conversion of adjustable interest rate to fixed interest rate

We refer to the Credit Facility Agreement no. [●] between the Borrower and AFD, dated [●] (hereinafter the “Agreement”). Unless expressly indicated otherwise, capitalised terms defined in the Agreement have the same meaning when used herein.

In response to your Rate Conversion Application Letter of [●], I hereby confirm the interest rate applicable to the Facility extended by Agence Française de Développement pursuant to the Agreement dated [●].

Accordingly, starting [●], the rate set out in Clause **Erreur ! Source du renvoi introuvable.** (*Interest*) of the Agreement shall be as follows:

Interest rate: [●]% per annum  
Overall effective rate (per annum): [●]%  
[Overall effective rate (yearly) (for three months)]

For information:

Amount to which the conversion applies: [●] Euros  
Theoretical loan rate: [●]% per annum  
Term of theoretical loan: [●]  
Rate Setting Date: [●]

Sincerely yours,

.....

Authorized signatory of AFD

**SCHEDULE 6 - MITIGATION MEASURES WITHIN THE CONTEXT OF THE ENVIRONMENTAL AND SOCIAL RISKS MANAGEMENT POLICY**

**For Class A Projects: Append the ESMP**

**For Class B Projects: Append the notice of environmental and social impact**