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**KOCAELİ**

**HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ**as the ***Borrower***

**BANCA IMI S.P.A., EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT,**

**EXPORT DEVELOPMENT CANADA, INTESA SANPAOLO S.P.A., INDUSTRIAL AND COMMERCIAL BANK OF CHINA LTD DUBAI BRANCH,**

**OVERSEAS PRIVATE INVESTMENT CORPORATION,**

**UNICREDIT S.P.A.**as the ***Arrangers***

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT,**

**EXPORT DEVELOPMENT CANADA,**

**OVERSEAS PRIVATE INVESTMENT CORPORATION**

as the ***FI Lenders***

**UNICREDIT BANK AG**  
as the ***Intercreditor Agent***

**UNICREDIT BANK AG**as the ***Security Agent***

**KOCAELİ INTEGRATED HEALTH CAMPUS PPP PROJECT  
COMMON TERMS AGREEMENT**

**NOTE:**

**THIS DRAFT IS FOR DISCUSSION PURPOSES ONLY AND HAS NOT BEEN APPROVED BY OPIC, EBRD AND EDC. THIS DRAFT DOES NOT CONSTITUTE AN AGREEMENT BY OPIC, EBRD OR EDC, OR A COMMITMENT BY OPIC, EBRD OR EDC TO ENTER INTO AN AGREEMENT AND REMAINS SUBJECT TO CHANGE. ANY REPRESENTATION TO THE CONTRARY IS VOID.**

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**THIS AGREEMENT** is dated and made between:

1. **KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ**, a company incorporated under the laws of Turkey, with registered offices at Çukurambar Mah. 1480. Sok, No:2, Besa Plaza, A Blok Kat:18 Daire:68-70, 06530, Çankaya/Ankara, the Republic of Turkey (the ***Borrower***);
2. **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, EXPORT DEVELOPMENT CANADA, OVERSEAS PRIVATE INVESTMENT CORPORATION** (whether acting individually or together, the ***FI Arrangers***);
3. **EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**, an international organisation established by treaty (***EBRD***);
4. **EXPORT DEVELOPMENT CANADA**, the export credit agency of Canada (***EDC***);
5. **OVERSEAS PRIVATE INVESTMENT CORPORATION**, an agency of the United States of America(***OPIC*** and, together with EBRD and EDC, the ***FI Lenders*** or the ***Original Senior Lenders***);
6. **UNICREDIT BANK AG**, a company limited by shares incorporated under the laws of Germany, with registered offices located at Arabellastrasse 12, 81925 Munich, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich under number HRB 42148, as intercreditor agent for and on behalf of the Finance Parties (the ***Intercreditor Agent***); and
7. **UNICREDIT BANK AG**, a company limited by shares incorporated under the laws of Germany, with registered offices located at Arabellastrasse 12, 81925 Munich, registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich under number HRB 42148, as security agent for and on behalf of the Secured Creditors (the ***Security Agent***).

**WHEREAS**

1. The Borrower has been granted the right by the Ministry of Health of Turkey, on the terms set out in the Project Agreement, to develop, construct and operate the Project.
2. The Key Shareholders have agreed to contribute Equity and Permitted Subordinated Loans to finance expenditures of the Borrower.
3. The Original Senior Lenders have agreed to provide credit facilities to the Borrower, on the terms and conditions set out in the Finance Documents, and in the case of OPIC, pursuant to Section 234(b) of the U.S. Foreign Assistance Act of 1961 to enable it to fund part of the costs of the Project.

**IT IS AGREED** as follows:

1. Definitions and Interpretation
   1. Definitions

In this Agreement:

1. ***Acceptable Bank*** means:
   1. any of:
      1. Akbank T.A.Ş.;
      2. T. Garanti Bankası A.Ş.;
      3. ING Bank A.Ş.;
      4. Türkiye İş Bankası A.Ş.;
      5. Türk Ekonomi Bankası A.Ş.;
      6. Türkiye Halk Bankası A.Ş.;
      7. Türkiye Vakıflar Bankası T.A.O.;
      8. Yapı ve Kredi Bankası A.Ş.; and
      9. T.C. Ziraat Bankası A.Ş.;

provided that if, in relation to any person referred to in this paragraph:

* + - 1. in the reasonable opinion of the Intercreditor Agent (acting on the instructions of the Instructing Creditors), the creditworthiness of such financial institution materially deteriorates from that existing at the Signing Date; or
      2. the Intercreditor Agent (acting on the instructions of the relevant FI Lender) informs the Borrower that such financial institution no longer remains compliant with the policy requirements of an FI Lender; or
      3. the Intercreditor Agent (acting on the instructions of the relevant FI Lender) informs the Borrower that an FI Lender is restricted from doing business with such financial institution under Applicable Law; or
      4. such financial institution becomes an Excluded Person,

such financial institution shall cease to be an Acceptable Bank;

* 1. any other bank or financial institution which, in each case, has a Minimum Rating, and which, the Intercreditor Agent (acting on the instructions of the Instructing Creditors) has confirmed in advance as (i) satisfying the “know your customer” requirements of the Senior Lenders, (ii) satisfying the policy requirements of the FI Lenders, (iii) otherwise being a bank with which the Senior Lenders are not restricted from doing business under Applicable Law, and (iv) not being an Excluded Person; or
  2. any other financial institution approved in advance by the Intercreditor Agent (acting on the instructions of the Instructing Creditors).

1. ***Accession Agreement*** means an accession agreement substantially in the form set out in Part B (Form of Accession Agreement) of Schedule 4 (Forms).
2. ***Accounting Principles*** means:
   1. in respect of financial statements, IFRS; and
   2. in respect of the Financial Model, Turkish GAAP,
3. in each case, consistently applied.
4. ***Administration*** or ***MoH*** means the Ministry of Health of the Republic of Turkey.
5. ***Advisers*** means:
   1. the Lenders’ Insurance Adviser;
   2. the Lenders’ Technical & Environmental Adviser;
   3. the Model Auditor;
   4. the Lenders’ Legal Advisers; and
   5. any additional adviser as the Intercreditor Agent may appoint in relation to the Project pursuant to Clause 24 (Advisers).
6. ***Affiliate*** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.
7. ***Agent*** means:
   1. the Intercreditor Agent; and
   2. the Security Agent.

***Annual Financial Statements*** means each set of annual financial statements of the Borrower delivered pursuant to Clause 16.1(a) (Financial statements).

1. ***Anti-Corruption Guidelines*** means anti-corruption guidelines attached hereto as Part A (Anti-Corruption Guidelines) of Schedule 10 (Anti-Corruption Guidelines and Prohibited Activities).
2. ***Anti-Money Laundering Laws*** means (a) the USA PATRIOT Act of 2001, (Pub.L. No. 107-56) and (b) any other Applicable Law relating to anti-money laundering.
3. ***Applicable Law*** means any applicable law (including statutory and common law), constitution, decree, judgment, legislation, order, ordinance, statute, treaty or other legislative measure, directive, regulation, practice, concession or requirement whether or not having the force of law (but if not having the force of law being of a kind which is generally complied with by the persons to whom it is addressed or applied or, if issued by a central bank or tax authority, expected to be applied by such issuer) and which is issued by any Governmental Authority, including any applicable Environmental and Social Law and any Applicable Law with respect to Tax.
4. ***Applicable Margin*** means the margin applicable to Senior Loans under a Senior Loan Facility, as specified in the relevant Senior Loan Agreement.
5. ***Assignment Agreement*** means an agreement substantially in the form set out in Part A (Form of Assignment Agreement) of Schedule 4 (Forms) or any other form agreed between the relevant assignor and assignee.
6. ***Assumptions*** means the economic, financial and technical assumptions as set out in the “Assumptions” tab within the Financial Model and any other applicable assumptions agreed between the Borrower and the Intercreditor Agent or as otherwise determined under this Agreement.
7. ***Auditor Letter*** means a letter from the Borrower to the Auditors, substantially in the form set out in Part E (Form of Auditors’ Letter) of Schedule 4 (Forms) authorising the Auditors to communicate directly with the Senior Lenders and the Intercreditor Agent.
8. ***Auditors*** means:
   1. either one of PricewaterhouseCoopers, Ernst & Young, Deloitte or KPMG; or
   2. such other firm of independent auditors of recognised international standing approved in advance by the Intercreditor Agent acting on the instructions of the Instructing Creditors (such approval not to be unreasonably withheld or delayed).
9. ***Authorisation*** means any authorisation, consent, registration, filing, agreement, notarisation, certificate, license, approval, permit, agreement, authority or exemption from, by or with any Governmental Authority (including the Project Permits), whether given by express action or deemed given by failure to act within any specified time period, and all corporate, creditors’ and shareholders’ and board of directors’ approvals or consents, including but not limited to any Environmental and Social License, in each case which are required by any relevant person under Applicable Law in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, the Transaction Documents or to otherwise implement the Project.
10. ***Authorised Signatory*** means, in relation to any person, any individual authorised to execute and/or deliver any document pursuant to that person’s constitutional documents or board resolutions.
11. ***Availability Period*** means, in relation to each of the Senior Loan Facilities, the period from and including the date of the Financial Close to and including the earlier of:
    1. the date falling six (6) months after the Actual Completion Date;
    2. the date when two (2) Availability Payments have been paid in full to the Borrower;
    3. the date falling forty-two (42) months after the Financial Close;
    4. the date when such Senior Loan Facility is fully drawn; and
    5. the date when the Total Commitments are cancelled in accordance with the Finance Documents.
12. ***Available Commitment*** means at any time, in relation to a Senior Lender and a Senior Loan Facility, that Senior Lender’s Commitment for that Senior Loan Facility at that time minus:
    1. the amount of its participation in any outstanding Senior Loans; and
    2. in relation to any proposed Utilisation, the amount of its participation in any Senior Loans that are due to be made on or before the proposed Utilisation Date.
13. ***Available Facility*** means at any time, in relation to a Senior Loan Facility, the aggregate at that time of the Available Commitments of each Senior Lender participating in that Senior Loan Facility.
14. ***Available Resources*** means, without double-counting, the aggregate as at the date of calculation of:
    1. the aggregate amount of Required Equity Contributions which the Key Shareholders remain obliged to contribute to the Borrower under the Equity Support and Subordination Deed;
    2. Delay Liquidated Damages;
    3. the aggregate Available Facilities;
    4. the credit balance on the Insurance Proceeds Account as at such date and the amount of such Insurance claims as the Borrower and the Intercreditor Agent agree to include for the purposes of calculating any Funding Shortfall (to the extent that such amounts relate to proceeds received or to be received by the Borrower and which are to be applied towards meeting Project Costs); plus
    5. the credit balance on the Proceeds Accounts and the Payments Account.
15. ***Base Case*** means the output of the Financial Model in relation to the forecast financial performance of the Project, including budgeted Project Costs, being as at the date of Financial Close reviewed and verified by the Model Auditor and in the agreed form.
16. ***BITT*** means the banking and insurance transaction tax imposed under the Expenditure Taxes Law (Law No 6802) of Turkey published in the Official Gazette dated 23 July 1956 and No. 9362 on all revenues, including interest, received by banks and insurance companies in Turkey with respect to their banking and insurance transactions.
17. ***Break Costs*** means the break or unwinding costs of a Senior Lender specified in the relevant Senior Loan Agreement, provided that any such break or unwinding costs shall at all times exclude any Applicable Margin (as defined in the relevant Senior Loan Agreement).
18. ***Bridge Financing*** means the bridge financing provided to the Borrower for the purposes of implementing the Project, from Türkiye Halk Bankası A.Ş. under the general cash and non-cash credit agreement dated [•][[1]](#footnote-1) for a maximum principal amount of twenty million Euros (EUR 20,000,000).

***Business Day*** means a day, other than a Saturday or Sunday and:

* 1. for the purposes of the determination of interest under any EBRD Loan Facility or EDC Facility, which is a TARGET Day and a day on which banks are open for general business in London;
  2. for the purposes of determination of interest under the OPIC Facility, on which commercial banks are open for general business in London, the City of New York and Washington D.C.;
  3. for the purposes of giving Requests and making Utilisations, on which commercial banks are open for general business in Istanbul, Dubai, London, Munich, City of New York, Rome, Toronto and Washington D.C. (excluding any day which OPIC has notified the Borrower that either it or the United States Department of the Treasury is not open for business;
  4. for the purposes of Clause 20.1 (Non-payment by the Borrower), on which commercial banks are open for general business in Istanbul; and
  5. for all other purposes, on which commercial banks are open for general business in Istanbul, London, Munich, New York, Toronto and Washington D.C.;

provided that:

* + 1. in relation to any date for payment or purchase of Euro, that day is also a TARGET Day and a day on which banks are open for general business in London, New York and Toronto; and
    2. in relation to any date for payment or purchase of USD, that day is also a day on which banks are open for general business in London, City of New York and Washington D.C.

1. ***Calculation Date*** means:
   1. each 20 January and 20 July of each year following the last day of the Availability Period; and
   2. to the extent falling at least ten (10) Business Days’ after one of the dates specified in paragraph (a) above:
      1. each date falling ten (10) Business Days’ after the Borrower has received a notice from the Intercreditor Agent that the Instructing Creditors request a special Financial Report on the basis that they reasonably consider that an Event of Default has occurred and is continuing; and
      2. each date falling ten (10) Business Days’ after the Borrower has notified the Intercreditor Agent that it wishes to apply Insurance Proceeds to repair or reinstate the Project or replace the relevant assets under Clause 6.3(b) (Mandatory prepayment – Insurance Proceeds); and
      3. such other date as may be notified by the Intercreditor Agent (acting reasonably) to the Borrower by not less than ten (10) Business Days’ notice following the occurrence of a Force Majeure Event.
2. ***Calculation Period*** means the period starting from (and excluding) a Calculation Date and ending on (and including) the Calculation Date falling twelve (12) Months after such Calculation Date, provided that the first Calculation Period shall start on the last day of the Availability Period and end on the first Calculation Date (or, if the Calculation Period so determined would be less than fifteen (15) days, on the second Calculation Date).
3. ***Capital Expenditure*** means, in any period, the sum, without duplication, of all expenditures made, directly or indirectly, during such period for equipment, fixed assets, real property (including improvements, replacements or substitutions thereof or additions thereto, that have been or should be, in accordance with IFRS, reflected as additions to property, plant or equipment on a consolidated balance sheet of such Person or having a useful life of more than one year).
4. ***Cash Waterfall*** means the order of priority and timing for payments set out in clause 8.2 (*Cash waterfall*) of the Project Accounts Agreement
5. ***Code*** means the US Internal Revenue Code of 1986.

***Coercive Practice*** has the meaning specified in the Anti-Corruption Guidelines.

1. ***Collusive Practice*** has the meaning specified in the Anti-Corruption Guidelines.
2. ***Commercial Area Agreement*** means the agreement to be entered into in the agreed form between the Borrower and the Commercial Area Real Estate Company in connection with the operation of the Commercial Areas by the Commercial Area Real Estate Company.
3. ***Commercial Area Indemnity Letter*** means a letter from Gama Holding and Türkerler to the Borrower, the Intercreditor Agent and the Security Agent, dated on or about the Signing Date, setting out the indemnity obligations of Gama Holding and Türkerler in relation to the Commercial Areas.
4. ***Commercial Area Real Estate Company*** means a real estate development company to be established under the laws of Turkey as a joint stock company (*Anonim Şirketi*) for the purposes of managing the Commercial Areas in accordance with Clause 18.9 (Commercial Areas).
5. ***Commercial Area Revenues*** means any revenues accruing for the benefit of the Borrower under the Commercial Area Agreement.

***Commitment*** means the Term Facility Commitments and the Contingent Facility Commitments.

1. ***Compliance Certificate*** means a certificate substantially in the form set out in Part C (Form of Compliance Certificate) of Schedule 4 (Forms).
2. ***Confidential Information*** means all information relating to the Borrower, the Finance Documents or the Project which the Intercreditor Agent or the Security Agent (as applicable) becomes aware in its capacity as, or for the purpose of becoming, the Intercreditor Agent or the Security Agent (as applicable) or which is received by the Intercreditor Agent or the Security Agent (as applicable) in relation to, or for the purpose of becoming the Intercreditor Agent or the Security Agent (as applicable) under the Finance Documents from the Borrower, any of the Shareholders or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:
   1. information that:
      1. is or becomes public information other than as a direct or indirect result of any breach by the Intercreditor Agent or the Security Agent (as applicable) of its confidentiality obligations under any Applicable Law; or
      2. is identified in writing at the time of delivery as non-confidential by the Borrower, any Shareholder or any of its advisers; and
      3. is known by the Intercreditor Agent or the Security Agent (as applicable) before the date the information is disclosed to it by the Borrower, any Shareholder or any of its advisers, or is lawfully obtained by the Intercreditor Agent or the Security Agent (as applicable) after that date, from a source which is, as far as the Intercreditor Agent or the Security Agent (as applicable) is aware, unconnected with the Borrower or any of the Shareholders and which, in either case, as far as the Intercreditor Agent or the Security Agent (as applicable) is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.
3. ***Confidentiality Undertaking*** means a confidentiality undertaking substantially in the recommended form of the LMA Master Confidentiality Undertaking or in any other form agreed between the Borrower and the Intercreditor Agent.
4. ***Constitutional Documents*** means with respect to the Borrower, its articles of association (*esas sözleşme*), as amended from time to time in accordance with the terms thereof and of the Finance Documents.
5. ***Construction Budget*** means:
   1. the Initial Construction Budget; or
   2. a Draft Construction Budget which has been approved by the Intercreditor Agent (acting on the instructions of the Instructing Creditors) pursuant to paragraph 1.3 of Part B (Project Budgets) of Schedule 5 (Information, Budgets and Reporting).
6. ***Construction Budget Template*** means the construction budget template in the agreed form.
7. ***Construction Costs*** means all costs, expenses and fees properly incurred by the Borrower in connection with the planning, design, construction and commissioning of the Works in accordance with the EPC Contract as specified in the then-current Construction Budget (other than any EPC Contract Deferred Amount).
8. ***Construction Monitoring Report*** has the meaning specified in paragraph 2.2 of Part C (Project Reports) of Schedule 5 (*Information, Budgets and Reporting*).
9. ***Construction Report*** means a report from the Borrower covering the matters listed in paragraph 1 of Part C (Project Reports) of Schedule 5 (Information, Budgets and Reporting).
10. ***Construction Use Permit*** means the construction use permit to be obtained by the Borrower for the Facilities after completion of the construction of the Facilities pursuant to the Zoning Law No: 3194 published on the Official Gazette dated 9 May 1985 and numbered 18749.
11. ***Contingent Facility Commitment*** means:
    1. in relation to each of EBRD and EDC, the amount set out opposite its name under the heading “Contingent Facility Commitment” as set out in Part A (The Original Senior Lenders and Commitments) of Schedule 1 (*The Original Senior Lenders*) and the amount of any other Contingent Facility Commitment assigned to it under this Agreement or the relevant Senior Loan Agreement; or
    2. in relation to any other Senior Lender (other than OPIC):
       1. the amount of any Contingent Facility Commitment assigned to it under this Agreement or any Senior Loan Agreement; and
       2. the amount of any commitment made by it or to provide Replacement Senior Loans under this Agreement or the relevant Senior Loan Agreement,

in each case to the extent not cancelled, reduced or assigned by it in accordance with this Agreement or the relevant Senior Loan Agreement.

1. ***Contingent Loan Facility*** means:
   1. the EBRD B Loan Contingent Loan Facility;
   2. the EDC Contingent Loan Facility; and
   3. upon the relevant Replacement Senior Lender having become a Senior Lender in accordance with Clause 21.9 (Accession of Replacement Senior Lenders), each Replacement Loan Facility.
2. ***Control*** means the ability of one person to control the affairs of another person. Without prejudice to the generality of this principle, one person (the controller) shall have ***control*** over another (the controlled person):
   1. if the controller has the power directly or indirectly to direct the management and policies of the controlled person, whether such power is derived through contract, the right to control the majority of the voting share capital of a person, the right to appoint a majority of the board of directors of that person or otherwise;
   2. if the controlled person is a company of which the controller owns not less than fifty per cent. (50%) of the ordinary share capital and the controller is able to direct or prevent the taking of material decisions of the controlled person; or
   3. in relation to a limited partnership, if the general partner of that limited partnership is a controlled person of the controller within the scope of paragraphs (a) or (b) above,
3. and ***Controlled*** shall be construed accordingly.
4. ***Corrupt Practice*** has the meaning specified in the Anti-Corruption Guidelines.
5. ***Corrupt Practices Laws*** means:
   1. the United States Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95-213, §§101-104), as amended; and
   2. any other Applicable Law relating to bribery, kick-backs, or similar business practices.
6. ***Creditors’ Long Stop Date*** means the date that falls thirty nine (39) months after the Site Delivery Date.
7. ***Debt Service*** means the aggregate amount required to be paid by the Borrower during any specified period under the Finance Documents, including scheduled repayments of the Senior Loans, payments of interest, fees (including commitment fees), commissions, costs and expenses under the Finance Documents, payments by the Borrower under any Hedging Arrangement (less any amounts received by the Borrower in such period on account of any Hedging Arrangement) and all fees payable by the Borrower in relation to the Operation Term Performance Bond, but for the avoidance of doubt, shall not include any amounts to be prepaid under Clause 6 (Prepayment and Cancellation).
8. ***Debt to Equity Ratio*** means the ratio A:B where:

***A*** is the aggregate of the Senior Loans; and

***B*** is the aggregate of the Equity Contributions which are fully paid or advanced to the Borrower.

1. ***Default*** means an Event of Default or any event or circumstance specified in Clause 20 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

***Defaulting Lender*** means any Senior Lender, except for an FI Lender, which has failed to make its participation in a Senior Loan available by the Utilisation Date of that Senior Loan in accordance with Clause 4.4 (Advance of Senior Loans), unless its failure to pay is caused by:

* 1. an administrative or technical error; or
  2. a Disruption Event, and in each case, payment is made within ten (10) Business Days of its due date.

1. ***Delay Liquidated Damages*** means any delay liquidated damages or penalties for delay which are due and payable to the Borrower under the EPC Contract.
2. ***Development Costs*** means the development, establishment, incorporation and start-up costs incurred prior to Financial Close in an amount not exceeding four million, one hundred eight thousand Euros (EUR 4,108,000).
3. ***Development Impact Report*** means a report delivered in accordance with Part D (Environmental and Social Reports) of Schedule 5 (*Information, Budgets and Reporting*).
4. ***Direct Agreement*** means:
   1. the Funders’ Direct Agreement;
   2. the EPC Direct Agreement; and
   3. the O&M Direct Agreement.
5. ***Discharge Date*** means the date on which the Intercreditor Agent is satisfied that all the Secured Debt has been fully and irrevocably paid and discharged (as confirmed by the Instructing Creditors) and all Commitments of the Senior Lenders and (unless otherwise agreed by the Hedging Counterparties) all obligations of the Hedging Counterparties under the Hedging Arrangements have been cancelled and the Borrower does not have any payment obligations under any Finance Document.
6. ***Dispute*** has the meaning specified in Clause 35.1 (Submission to Arbitration).
7. ***Disruption Event*** means either or both of:
   1. a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Senior Loan Facilities (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
   2. the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
      1. from performing its payment obligations under the Finance Documents; or
      2. from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

1. ***Distribution*** means:
   1. a dividend or other distribution (in cash or in kind) in respect of any share capital of the Borrower;
   2. any repayment or distribution of share premium;
   3. the purchase, cancellation, reduction or redemption by the Borrower of any of its share capital;
   4. any payment of interest, fees or other amounts (other than payments of Project Costs or Operating Costs permitted under the Cash Waterfall) or repayment of principal made by the Borrower in favour of any Shareholder or any Affiliate thereof; and
   5. any payment of management, royalty, advisory or other fees made by the Borrower to any Shareholder or any Affiliate thereof, other than to the extent the same is a Project Cost or an Operating Cost permitted under the Cash Waterfall.
2. ***Distribution Calculation Date*** means each Calculation Date immediately following delivery of the Annual Financial Statements or the audited Semi-Annual Financial Statements in respect of which the Borrower wishes to make a transfer to the Distributions Account.
3. ***Draft Construction Budget*** means a draft Construction Budget prepared and delivered in accordance with the provisions of Part A (Information) of Schedule 5 (Information, Budgets and Reporting).
4. ***Draft Operating Budget*** means a draft Operating Budget prepared and delivered in accordance with the provisions of Part A (Information) of Schedule 5 (Information, Budgets and Reporting).
5. ***Early Completion Bonus*** means an early completion bonus under clause 25.5 (*Early Completion*) of the EPC Contract.
6. ***Early Completion Bonus Release Date*** means the date when all of the following conditions are satisfied:
   1. the conditions under the definition of Project Completion Date, except the condition under paragraph (b) thereof;
   2. the First Repayment Date has occurred;
   3. no Default has occurred and is continuing (or would result from the payment or transfer); as at the most recent Calculation Date:
      1. the HADSCR is equal to or greater than 1.15x; and
      2. the FADSCR is equal to or greater than 1.15x,

in each case as shown by the most recent Compliance Certificate delivered to the Intercreditor Agent;

* 1. the balance on the Debt Service Reserve Account is no less than the Debt Service Reserve Required Balance;
  2. the balance on the EMRS Reserve Account is no less than the EMRS Required Balance;
  3. such transfer is otherwise in accordance with the Cash Waterfall; and
  4. a certified copy of the O&M Performance Bond has been submitted to the Intercreditor Agent.

1. ***EBRD A Loan*** means a Senior Loan provided under the EBRD A Loan Facility.
2. ***EBRD A Loan Facility*** has the meaning given to such term in the EBRD Loan Agreement.
3. ***EBRD B Loan*** means a Senior Loan provided under the EBRD B Loan Facility.
4. ***EBRD B Loan Contingent Loan Facility*** means the credit facility designated as such in the EBRD Loan Agreement.
5. ***EBRD B Loan Facility*** has the meaning given to such term in the EBRD Loan Agreement comprising the EBRD B Loan Term Loan Facility and the EBRD B Loan Contingent Loan Facility.
6. ***EBRD B Loan Term Loan Facility*** means the credit facility designated as such in the EBRD Loan Agreement.
7. ***EBRD Loan*** means an EBRD A Loan or an EBRD B Loan.
8. ***EBRD Loan Agreement*** means the loan agreement dated on or about the Signing Date between EBRD and the Borrower.
9. ***EBRD Loan Facility*** means the EBRD A Loan Facility or the EBRD B Loan Facility.
10. ***Economic Sanctions Law*** means any economic or financial sanctions administered by any Sanctions Authority.
11. ***EDC Contingent Loan Facility*** means the credit facility designated as such in the EDC Loan Agreement.
12. ***EDC Loan*** means a Senior Loan provided under the EDC Loan Facility.
13. ***EDC Loan Agreement*** means the loan agreement dated on or about the Signing Date between EDC and the Borrower.
14. ***EDC Loan Facility*** means the EDC Contingent Loan Facility and the EDC Term Loan Facility.
15. ***EDC Term Loan Facility*** means the credit facility designated as such in the EDC Loan Agreement.
16. ***EHS Guidelines*** means the World Bank Group Environment, Health and Safety General Guidelines (dated 30 April 2007) and Environmental, Health, and Safety Guidelines for Health Care Facilities (30 April 2007).
17. ***Environmental and Social Annual Monitoring Report*** means the annual monitoring report substantially in the form attached as Schedule 12 (Environmental and Social Annual Monitoring Report Template) setting out the specific social, environmental and developmental impact information to be provided by the Borrower in respect of the Project, as such form of Environmental and Social Annual Monitoring Report may be amended or supplemented from time to time with the consent of the Intercreditor Agent.
18. ***Environmental and Social Law*** means all Applicable Laws, including licenses, permits or other governmental Authorisations setting standards concerning environmental, social, labour, health and safety or security risks, indigenous peoples, cultural heritage or resettlement or economic displacement of persons of the type contemplated by the Lenders’ Performance Standards or imposing liability for the breach thereof, in each case, to which the Borrower and/or the Project is subject.
19. ***Environmental and Social Licence*** means any Authorisation required at any time under applicable Environmental and Social Law.
20. ***Environmental and Social Management System*** means the Borrower’s environmental and social management system used to identify, assess and manage Project risks on an ongoing basis as specified in the ESAP.
21. ***Environmental and Social Requirements*** means all applicable Environmental and Social Laws, Lenders’ Performance Standards, relevant sections of the EHS Guidelines, the ESAP and the Environmental and Social Management System and the relevant defined plans listed in the ESAP.
22. ***Environmental Claim*** means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental and Social Law.
23. ***Environmental Permits*** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental and Social Law for the operation of the business of the Borrower.
24. ***Environmental Remediation Plan*** means a report setting out the nature of the relevant Environmental Claim or non-compliance with Environmental and Social Laws, Environmental and Social Licences or the ESAP, the effects resulting therefrom and any steps required to remedy the same, together with a proposed timetable for remediation.
25. ***EPC Advance Payment Bond*** means each advance payment bond to be provided by the EPC Contractor to the Borrower under clause 13.6 (*Advance Payment Bond*) of the EPC Contract.
26. ***EPC Contract*** means the construction contract to be entered into in the agreed form between the Borrower, the EPC Contractor, Gama Endüstri and Türkerler relating to the design, procurement and construction of the Project.
27. ***EPC Contract Deferred Amount*** means any amount payable by the Borrower to the EPC Contractor as loss of profit in accordance with clause 51.8(f) of the EPC Contract.
28. ***EPC Contract Sum*** has the meaning given to such term under the EPC Contract.
29. ***EPC Contractor*** means an ordinary partnership (*adi ortaklik*) established by Türkerler and Gama Endüstri, acting jointly and severally, with the execution of the Joint Venture Agreement on 10 November 2014 under the laws of Turkey, with its office at Çukurambar Mah. 1480 Sok. No:2 Besa Plaza, A Blok, Kat:17-18, Daire 63-64-67, 06530, Çankaya/ANKARA.
30. ***EPC Contractor Member*** means:
    1. Gama Endüstri;
    2. Türkerler; and
    3. any other person which has acquired any participating share (*katilim payi*) in the EPC Contractor in accordance with the EPC Direct Agreement.
31. ***EPC Direct Agreement*** means the direct agreement to be entered into in the agreed form between the EPC Contractor, the EPC Guarantor, each EPC Contractor Member, the Intercreditor Agent, the Security Agent and the Borrower.
32. ***EPC Guarantee*** means the parent company guarantee to be provided by Gama Holding to the Borrower, for the obligations of Gama Endüstri under the EPC Contract, as per clause 13.16 (*Parent Company Guarantee*) of the EPC Contract.
33. ***EPC Guarantor*** means Gama Holding in its capacity as the guarantor under the EPC Guarantee.
34. ***EPC Performance Bond*** means each performance bond to be provided by the EPC Contractor to the Borrower under clause 13.1 (*EPC Performance Bonds*) of the EPC Contract.
35. ***EPC Programme*** has the meaning given to the term “Programme” in the EPC Contract.
36. ***Equator Principles*** means those principles so entitled and described in “The ‘Equator Principles III’ – A financial industry benchmark for determining, assessing and managing Environmental and Social risk in project financing” (June 2013) available at http://www.equator principles.com/resources/equator\_principles\_III.pdf, as adopted in such form by certain financial institutions.
37. ***Equity Documents*** means:
    1. the Constitutional Documents; and
    2. each Permitted Subordinated Loan Agreement.
38. ***Equity Support and Subordination Deed*** means the equity support and subordination deed dated on or about the Signing Date among the Borrower, the Shareholders, the Security Agent and the Intercreditor Agent pursuant to which, amongst other things, the Key Shareholders agree to make Equity Contributions available to the Borrower.
39. ***ESA*** means the Environmental and Social Assessment dated June 2016 prepared by the Borrower in accordance with the Lenders’ Performance Standards and subsequently disclosed in accordance with regulatory and FI Lender requirements.
40. ***ESAP*** means the Environmental and Social Action Plan referred to in Clause 17.17 (Environmental and Social Matters), prepared on the basis of the ESA findings and the applicable ESAP Conditions and which stipulates actions and related timelines to ensure that the Project will be compliant with the Environmental and Social Requirements and the Worker Rights Requirements once fully implemented, as set out in Schedule 11 (*Environmental and Social Action Plan*).
41. ***ESAP Conditions*** means the environmental and social action plan conditions set out in paragraph 2 of Part D (Environmental and Social Reports) of Schedule 5 (*Information, Budgets and Reporting*).
42. ***ESHS Audit Report*** means a certificate issued by an independent environmental and social auditor acceptable to OPIC, confirming the Project’s compliance with all the environmental and social conditions (and underlying representations) listed in the Environmental and Social Management System and the Borrower’s representation to OPIC that any and all environmental and social contractual conditions have been satisfied and including a summary of the auditor’s findings which can be made public on OPIC’s official website.
43. ***ESHS Performance Report*** means the annual performance report that sets out the social and environmental performance of the Project over the preceding year, demonstrates the Borrower’s compliance with the Environmental and Social Requirements and the ESAP and shall include the information set out in paragraph 1(c) of Part D (Environmental and Social Reports) of Schedule 5 (*Information, Budgets and Reporting*) or as may be reasonably requested by OPIC from time to time.
44. ***EURIBOR*** means, in relation to any Senior Loan (unless otherwise provided in a Senior Loan Agreement) in Euro:
    1. the applicable Screen Rate;
    2. (if no Screen Rate is available for the Interest Period of that Senior Loan) the Interpolated Screen Rate for that Senior Loan; or
    3. if:
       1. no Screen Rate is available for the Interest Period of that Senior Loan; and
       2. it is not possible to calculate an Interpolated Screen Rate for that Senior Loan,

the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, the Specified Time on the Quotation Day for Euro and for a period equal in length to the Interest Period of that Senior Loan.

1. ***Event of Default*** means any event or circumstance specified as such in Clause 20 (Events of Default).
2. ***Excluded Claim*** means any dispute, controversy or claim (including any counterclaim, defence or set-off) against OPIC, the United States of America, or any instrumentality or agency of the United States of America sounding in tort or other non-contractual basis for liability.
3. ***Excluded Insurance Proceeds*** means any Third Party Liability Insurances and Loss of Revenue Insurances.
4. ***Excluded Person*** means any person which is:
   1. on any list of sanctioned persons promulgated by the United Nations Security Council or its Committees pursuant to resolutions under Chapter VII of the United Nations’ Charter;
   2. on any similar list promulgated by the European Union, the European Banking Association, the European Savings Banks Association, European Association of Co-operative Banks or the European Association of Public Banks;
   3. on any list of debarred and cross-debarred firms and individuals published by the World Bank Group;
   4. on any OFAC List or otherwise subject to sanctions under OFAC Regulations; or
   5. a Turkish Sanctioned Person.
5. ***Existing Senior Lender*** has the meaning specified in Clause 21.1 (Assignments by the Senior Lenders).
6. ***Expert*** means a person appointed as an expert in accordance with the provisions of Part F (Expert) of Schedule 5 (*Information, Budgets and Reporting*).
7. ***Facility Office*** means:
   1. in respect of a Senior Lender, the office or offices notified by that Senior Lender to the Intercreditor Agent in writing on or before the date it becomes a Senior Lender (or, following that date, by not less than five (5) Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement, provided that unless otherwise notified in accordance with this definition the Facility Office for EBRD shall be London, England, the Facility Office for EDC shall be Ottawa, Canada and the Facility Office for OPIC shall be Washington, D.C., United States; or
   2. in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.
8. ***FATCA*** means:
   1. sections 1471 to 1474 of the Code or any associated regulations;
   2. any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
   3. any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.
9. ***FATCA Application Date*** means:
   1. in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
   2. in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
   3. in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

1. ***FATCA Deduction*** means a deduction or withholding from a payment under a Finance Document required by FATCA.
2. ***FATCA Exempt Party*** means a Party that is entitled to receive payments free from any FATCA Deduction.
3. ***Fee Letter*** means any letter or letters dated on or about the Signing Date setting out any of the fees referred to in Clause 9 (Fees).
4. ***Final Maturity Date*** means:
   1. with respect to a Senior Loan Facility, the date when the last Repayment Instalment for such Senior Loan Facility is due in accordance with the relevant Repayment Schedule; or
   2. when used without reference to a specific Senior Loan Facility, the latest of the dates referred to in paragraph (a) above.
5. ***Finance Document*** means:
   1. this Agreement;
   2. the Financial Close Agreement;
   3. each Senior Loan Agreement;
   4. each OPIC Funding Document;
   5. the Equity Support and Subordination Deed;
   6. the Intercreditor Deed;
   7. the Security Agent and Hedging Deed;
   8. the Project Accounts Agreement;
   9. each Fee Letter;
   10. each Security Document;
   11. each Equity Support Document;
   12. the Direct Agreements;
   13. the Hedging Arrangements;
   14. the Commercial Area Indemnity Letter;
   15. the Independent Technical Certifier Side Letter;
   16. any Assignment Agreement;
   17. any Accession Agreement; and
   18. any other document designated as such by the Intercreditor Agent and the Borrower.
6. ***Finance Party*** (*Finansman Saglayanlar*) means:
   1. each Agent;
   2. each FI Arranger;
   3. each Senior Lender; and
   4. for the purposes of the Funders’ Direct Agreement only, each Hedging Counterparty.
7. ***Financial Close*** means the date on which the Intercreditor Agent sends the confirmation under paragraph (b) of Clause 3.1 (Financial Close documents).
8. ***Financial Close Agreement*** means an agreement to be entered in form and content satisfactory to the Intercreditor Agent (acting on the instructions of the Instructing Creditors) on or about the date of Financial Close between the Borrower, the Original Shareholders, the Senior Lenders, the Intercreditor Agent and the Security Agent, in order to, amongst other purposes, amend and restate the Repayment Schedule and Maximum Drawdown Profile in respect of each Senior Loan Agreement and to restate the shareholding percentages in the Borrower.
9. ***Financial Indebtedness*** means any indebtedness for or in respect of:
   1. moneys borrowed;
   2. any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
   3. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
   4. the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with IFRS, be treated as a finance or capital lease;
   5. the deferred purchase price of assets or services (except trade accounts incurred and payable in the ordinary course of business to trade creditors within ninety (90) days of the date they are incurred and which are not overdue);
   6. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
   7. any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
   8. any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
   9. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
   10. the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.
10. ***Financial Model*** means the Original Financial Model as updated, amended or supplemented from time to time in accordance with this Agreement.
11. ***Financial Report*** means a report delivered by the Borrower in accordance with paragraph 1 of Part E (Financial Reports and Financial Model) of Schedule 5 (*Information, Budgets and Reporting*).
12. ***Financing Costs*** means the aggregate (without double-counting) of:
    1. interest payable by the Borrower under the Finance Documents (including, without limitation, default interest and sums payable under Clauses 10 (Tax Gross-Up and Indemnities) and 11 (Increased Costs) of this Agreement);
    2. all commitment and other fees, premia and commissions and Break Costs payable under the Finance Documents; and
    3. net amounts payable by the Borrower under the Hedging Arrangements (except for any hedging termination payments).
13. ***First Repayment Date*** means the first Interest Payment Date immediately following the earliest of:
    1. the date falling forty-two (42) Months after the Financial Close; and
    2. the date falling six (6) Months after the Scheduled Completion Date.
14. ***Forward Annual Debt Service Cover Ratio*** or ***FADSCR*** means, on any Calculation Date, the ratio  where:

***A*** is the aggregate projected Net Cash Flow; and

***B*** is the Debt Service,

in each case, for the Calculation Period commencing on such Calculation Date.

1. ***Fraudulent Practice*** has the meaning specified in the Anti-Corruption Guidelines.
2. ***Fundamental Event of Default*** means an Event of Default in respect of the Borrower under Clause 20.1 (Non-payment by the Borrower), 20.6 (Insolvency), 20.7 (Insolvency proceedings) or 20.8 (Creditors’ process).
3. ***Funders’ Direct Agreement*** means the direct agreement dated on or about the Signing Date between the Administration, the Security Agent (in its capacity as Funders’ Representative) and the Borrower.
4. ***Funding Shortfall*** means, at any time after Financial Close and prior to the Actual Completion Date, that the remaining Project Costs required to be incurred by the Borrower in order to achieve the Actual Completion Date and to satisfy any other liabilities of the Borrower prior to the Actual Completion Date exceed the Available Resources.
5. ***FX Hedging Rate*** means, in respect of the OPIC Facility, the then applicable exchange rate for conversion of Dollars into Euros under the Hedging Arrangements.

***Gama Emlak*** means Gama Emlak Yatırım ve İnşaat A.Ş., a company incorporated in Turkey, with the trade registry number 242405 and tax registration number 388 058 7665 and with its registered office at Beştepeler Mahallesi, Nergis Sokak No.9, Gama Binası, 06520, Soğutőzu, Yenimahalle, Ankara, the Republic of Turkey.

1. ***Gama Endüstri*** means Gama Endüstri Tesisleri Imalat ve Montaj A.Ş., a company incorporated in Turkey, with the trade registry number 20759 and tax registration number 388 008 2414 and with its registered office at Beştepeler Mahallesi, Nergis Sokak No.9, Gama Binası, 06520, Soğutőzu, Yenimahalle, Ankara, the Republic of Turkey.
2. ***Gama Holding*** means Gama Holding A.Ş., a company incorporated in Turkey, with the trade registry number 46021 and tax registration number 388 008 2908 and with its registered office at Beştepeler Mahallesi, Nergis Sokak No.9, Gama Binası, 06520, Soğutőzu, Yenimahalle, Ankara, the Republic of Turkey.
3. ***GE Belgium*** means GE Healthcare BVBA, a company incorporated in Belgium, having its registered office at Kouterveldstraat 20, 1831 Machelen, Belgium, registered under company number BTW BE 0404.632.629 RPR Brussels, Dutch language division.
4. ***GE Service Supply Contract*** means the agreement to be entered into between the Operator and GEMS Turkey relating to the provision of support services in relation to any medical equipment provided by GEMS Turkey to the Borrower.
5. ***GEMS Turkey*** means GE Medical Systems Turkiye Ltd. Sti., a company incorporated in Turkey, with a tax registration number 389 050 1670 and with its registered office at Esentepe Mahallesi, Talatpaşa Cad. Harman Sok. No:8 Kat:6 34394 Şişli, İstanbul, the Republic of Turkey.
6. ***Good Industry Practice*** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person seeking to comply with its contractual obligations, complying with all applicable laws and engaged in the same or similar type of undertaking and under the same or similar circumstances and conditions to the relevant person who is under an obligation to act in accordance with Good Industry Practice under any Transaction Document.
7. ***Governmental Authority*** means any international body, supra-national organisation, government, governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, or central bank (or any person, whether or not government-owned and howsoever constituted or called, that exercises the functions of a central bank), whether domestic or foreign and whether international, multinational, national, state, provincial or local, having jurisdiction over the matter in question.
8. ***Healthcare PPP Law*** means law No. 6428 on Construction, Renovation and the Purchase of Services by the Ministry of Health by way of the Public-Private Cooperation Model and Amendments to Certain Laws and Decrees with the Force of Law published in the Official Gazette dated 9 March 2013 and numbered 28582 and secondary legislation thereunder.
9. ***Hedging Arrangements*** means any hedging arrangement entered or to be entered into by the Borrower with Hedging Counterparties in accordance with the Hedging Policy.
10. ***Historic Annual Debt Service Cover Ratio*** or ***HADSCR*** means, on any Calculation Date, the ratio  where:

***A*** is the aggregate Net Cash Flow; and

***B*** is the Debt Service,

in each case, for the Calculation Period ending on such Calculation Date.

1. ***Holding Company*** means, in relation to a person, any other person in respect of which it is a Subsidiary.
2. ***IFRS*** means the International Financial Reporting Standards (formerly International Accounting Standards), which are the standards issued by the International Accounting Standards Board together with the interpretations issued by the International Financial Reporting Interpretations Committee of the International Accounting Standards Board (as amended, supplemented or re-issued from time to time), applied on a consistent basis both as to classification of items and amounts.
3. ***Increase Confirmation*** means a confirmation substantially in the form set out in Part G (Form of Increase Confirmation) of Schedule 4 (Forms).
4. ***Increase Lender*** has the meaning specified in Clause 2.2 (Increase).
5. ***Increased Costs*** has the meaning specified in Clause 11.1 (Increased Costs).
6. ***Independent Technical Certifier Commissioning Agreement*** means the agreement to be entered into in accordance with the Funders’ Direct Agreement between the Borrower, the Administration, the Lenders’ Technical & Environmental Adviser and the Intercreditor Agent in the form appended to the Project Agreement, or in such other form as may be acceptable to the Intercreditor Agent.
7. ***Independent Technical Certifier Side Letter*** means the letter to be entered into between the Borrower, the Lenders’ Technical & Environmental Adviser and the Intercreditor Agent in the agreed form.
8. ***Information Memorandum*** means the document in the form approved by the Borrower concerning the Project which at the request of the Borrower and on its behalf has been prepared by the Borrower’s financial adviser (UniCredit Bank Austria AG and Yapı ve Kredi Bankası A.Ş. (Financial Advisory) acting jointly), approved by the Borrower and distributed by the Borrower’s financial adviser (UniCredit Bank Austria AG and Yapı ve Kredi Bankası A.Ş. (Financial Advisory) acting jointly) to the Original Senior Lenders.
9. ***Information Package*** means the Information Memorandum, the Lawsuit Certificate and the Original Financial Model.
10. ***Initial Construction Budget*** means the Construction Budget to be delivered in accordance with paragraph 14 of Part A (Common Financial Close Documents) of Schedule 2 (Conditions Precedent).
11. ***Initial Operating Budget*** means the Operating Budget to be delivered in accordance with paragraph 2.1 of Part B (Project Budgets) of Schedule 5 (Information, Budgets and Reporting).
12. ***Instructing Creditors*** has the meaninggiven to such term in the Intercreditor Deed.
13. ***Insurance Broker’s Letter of Undertaking*** means an insurance broker’s letter of undertaking substantially in the form set out in Part A (Form of Insurance Broker’s Letter of Undertaking) of Exhibit 5 (Form of Broker’s Letters of Undertaking) to Schedule 6 (Insurance) or such other form satisfactory to the Intercreditor Agent.
14. ***Insurance Proceeds*** means all insurance proceeds payable to or received under any Insurance except for the Excluded Insurance Proceeds.

***Insurance Report*** has the meaning specified in paragraph 7 of Part C (Project Reports) of Schedule 5 (Information, Budgets and Reporting).

1. ***Insurances*** means any insurance (including, as applicable, any reinsurances) to be effected or maintained by the Borrower pursuant to Schedule 6 (Insurance).
2. ***Insurers*** means the insurance companies or underwriters (or, if the context so requires, the reinsurance companies or underwriters) providing the Insurances.
3. ***Intellectual Property*** means patents and patent applications, trade and service marks and applications, brand and trade names, copyrights and rights in the nature of copyright, design rights, registered designs and applications for registered designs, trade secrets, know-how and all other intellectual property rights throughout the world and all rights under any agreements relating to the use or exploitation of any such rights.
4. ***Intercreditor Deed*** means the agreement dated on or about the Signing Date between, among others, the Senior Lenders, the Original Hedging Counterparties, the Intercreditor Agent and the Security Agent.
5. ***Interest Payment Date*** means each 20 January, 20 April, 20 July and 20 October of each year.
6. ***Interest Period*** means, in relation to a Senior Loan, each period determined in accordance with Clause 7.4 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 7.3 (Default interest).
7. ***Interface Agreement*** means the interface agreement to be entered into between the Borrower, the Operator and the EPC Contractor.
8. ***Internally Generated Cash*** means:
   1. the sum of:
      1. at least two (2) Availability Payments; and
      2. the Service Payments, in each case as projected in accordance with the Financial Model to be received by the Borrower; less
   2. all O&M Service Payments (as defined in the O&M Contract) projected in accordance with the Financial Model to be paid by the Borrower to the Operator,

in each case in the period from the Actual Completion Date to the date that is six (6) months after the Actual Completion Date.

1. ***Interpolated Screen Rate*** means, in relation to any reference to EURIBOR for any Senior Loan, the rate (rounded to the same number of decimal places as the two (2) relevant Screen Rates) which results from interpolating on a linear basis between:
   1. the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Senior Loan; and
   2. the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Senior Loan,

each as of the Specified Time on the Quotation Day for Euro.

1. ***ISMF Consultancy Agreement*** means an agreement to be entered into in form and substance satisfactory to the Intercreditor Agent (acting on the instructions of the Instructing Creditors) between the Operator and an ISMF Consultant in connection with the integrated services management function of the Project.
2. ***ISMF Consultant*** means one of:
   1. Interserve PLC (Facility Management Ltd.);
   2. Vamed Engineering GmbH & CO KG, Vamed Management und Service GmbH & CO KG;
   3. Carillion Construction Limited;
   4. Royal Haskoning DHV;
   5. SHP (Strategic Healthcare Planning UK) / SHP Sağlık Tasarım Danışmanlığı Hizmetleri A.Ş;
   6. Interhealth Canada; and
   7. AECOM GROUP / Aecom Turkey Danışmanlık Ltd..
3. ***Key Milestone*** ***Dates*** has the meaning given to such term under the EPC Contract.
4. ***Lawsuit Certificate*** means the certificate to be prepared by the Borrower providing factual information regarding lawsuits against İzmir Bayraklı and Kocaeli Health PPP Projects, in form and substance satisfactory to the Intercreditor Agent (acting on the instructions of the Instructing Creditors).
5. ***LCIA*** has the meaning specified in Clause 35.1 (Submission to Arbitration).
6. ***Legal Reservations*** means the reservations set out in Schedule 16 (Legal Reservations).
7. ***Lenders’ Insurance Adviser*** means JLT Specialty Limited or such other firm of insurance advisers as the Intercreditor Agent may appoint in relation to the Project pursuant to Clause 24 (*Advisers*).
8. ***Lenders’ Legal Advisers*** means Freshfields Bruckhaus Deringer LLP (as to English law), Herguner Bilgen Ozeke Attorney Partnership (as to Turkish law) and such other firm of legal advisers as the Intercreditor Agent may appoint in relation to the Project pursuant to Clause 24 (Advisers).
9. ***Lenders’ Performance Standards*** means each of:
   1. IFC’s Lenders’ Performance Standards 1 through 4 (or, as the context may require, any one of such Performance Standards) dated 1 January 2012;
   2. EBRD and IFC Workers’ Accommodation: Processes and Standards guidance note dated August 2009;
   3. EBRD Performance Requirements 1 through 8 and 10 (or, as the context may require, any one of such Performance Requirements) dated 2008 and related to EBRD’s Environmental and Social Policy dated 2008;
   4. OPIC’s Consolidated Environmental and Social Policy Statement/Labor and Human Rights Policy Statement dated 15 October 2010, which is posted on OPIC’s website at <http://www.opic.gov/environment>, as the same may be revised and supplemented by OPIC from time to time; and
   5. to the extent applicable to the Project, the Equator Principles.
10. ***Lenders’ Technical & Environmental Adviser*** means BTY Group or such other independent technical and environmental advisers as the Intercreditor Agent may appoint in relation to the Project pursuant to Clause 24 (Advisers).
11. ***Limitation Acts*** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.
12. ***Loan Life Cover Ratio*** or ***LLCR*** means on any Calculation Date the ratio  where:

***A*** is the Net Present Value of projected Net Cash Flow from such Calculation Date until the Final Maturity Date *plus* the credit balance on the Debt Service Reserve Account on that Calculation Date; and

***B*** is the aggregate amount of the Senior Loans outstanding on that Calculation Date.

1. ***Loss of Revenue Insurances*** means Insurances against loss of income or revenue resulting from delays in start-up or business interruption.
2. ***Major Project Party*** means:
   1. the Borrower;
   2. the Administration;
   3. each Key Shareholder;
   4. the EPC Contractor;
   5. each EPC Contractor Member;
   6. the EPC Guarantor;
   7. the Operator;
   8. each O&M Guarantor; and
   9. in each case, their respective successors and assigns under the Transaction Documents to which they are party,
3. provided that any such person shall cease to be a Major Project Party upon full and final discharge of all material obligations of that person under each Transaction Document to which it is a party, and, in the case of GE Belgium, upon expiry of the GE Share Retention Period, and, in the case of any successor or assign to Gama Holding and Türkerler as a Key Shareholder, upon such successor and assign having no actual or contingent payment obligation under clause 5 (*Equity Contribution*) and clause 7 (*Acceleration of Equity Contributions*) of the Equity Support and Subordination Deed.
4. ***Market Disruption Event*** has the meaning specified in Clause 8.2 (*Market disruption*).
5. ***Material Adverse Effect*** means an event or circumstance which has a material adverse effect on:
   1. the ability of the Borrower or of any other Major Project Party to comply with any of its material obligations under any Transaction Document to which it is a party;
   2. (i) the legality, the validity or enforceability of any of the Transaction Documents; or

(ii) the effectiveness or ranking of any Security Interest over the rights and/or assets covered (or purported to be covered) by the Security Documents; or

* 1. the business, operations or financial condition of the Borrower or any Key Shareholder, EPC Contractor Member, EPC Guarantor or O&M Guarantor.

1. ***Maximum Drawdown Profile*** means the schedule of maximum quarterly Utilisations set out in Schedule 15 (Maximum Drawdown Profile).
2. ***Minimum Rating*** means, in relation to any person, a rating for its long-term unsecured and non-credit-enhanced debt obligations of:
   1. for the purposes of Clause 2.3 (Replacement Senior Loans) and Clause 21 (Changes to the Senior Lenders), BBB- or higher by Standard & Poor’s or Baa3 or higher by Moody’s; and
   2. for all other purposes, BBB+ or higher by Standard & Poor’s or Baa1 or higher by Moody’s.
3. ***Misuse of an FI Lender’s Resources*** has the meaning specified in the Anti-Corruption Guidelines.
4. ***Model Auditor*** means Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft or such other independent model auditors as the Intercreditor Agent may appoint in relation to the Project pursuant to Clause 24 (Advisers).
5. ***Month*** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
   1. if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and
   2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month,

provided that, the above rules will only apply to the last Month of any period.

1. ***Moody’s*** means Moody’s Investor Services, Inc. and includes any successor to its rating business.
2. ***Mortgage of Servitude Rights*** has the meaning specified in Schedule 3 (Project Security).
3. ***Net Cash Flow*** means for any period, **A** minus **B**, where:

**A** is the aggregate of all amounts received (or projected to be received in accordance with the then-current Operating Budget) by the Borrower during that period in respect of:

* 1. Project Revenues;
  2. proceeds received by the Borrower from Loss of Revenue Insurances;
  3. all income received in respect of Permitted Investments and all gains and other returns received on the disposal of Permitted Investments;
  4. all interest accruing on the Project Accounts other than the Distributions Account; and
  5. any other amount agreed between the Borrower and the Intercreditor Agent from time to time.

1. **B** is the aggregate of all amounts paid (or projected to be paid in accordance with the then-current Operating Budget) by the Borrower during that period in respect of:
   1. Operating Costs;
   2. Taxes; and
   3. expenses (including legal and other adviser’s fees) under the Finance Documents.
2. ***Net Present Value*** means, in relation to an amount, the figure produced by applying the formula in Schedule 13 (Net Present Value) to that amount.
3. ***New Senior Lender*** has the meaning given to that term in Clause 21 (Changes to the Senior Lenders).
4. ***Notices and Acknowledgements*** means, in relation to the Security Documents, any notices given and/or acknowledgements obtained, pursuant to the Security Documents.
5. ***Obstructive Practice*** has the meaning specified in the Anti-Corruption Guidelines.
6. ***OECD*** means the Organisation for Economic Co-operation and Development.
7. ***OFAC*** means the Office of Foreign Assets Control of the U.S. Department of the Treasury, which administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted individuals, organizations, and foreign countries and regimes.
8. ***OFAC List*** means the Specially Designated Nationals and Blocked Persons List, and any other lists administered or enforced by OFAC, including but not limited to the Palestinian Legislative Council list and the Part 561 list, in each case, as published by OFAC from time to time, and is available at the
9. following website: http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf or any official successor website.
10. ***OFAC Regulations*** means: 
    1. the rules and regulations promulgated by OFAC, as may be published in Chapter 31, Part 500 of the Code of Federal Regulations from time to time; and
    2. any U.S. executive orders administering or imposing economic sanctions on individuals, organizations or foreign countries and regimes.
11. ***Official*** means any officer of a political party or candidate for political office in Turkey or the U.S. or any officer or employee: 
    1. of the Government of Turkey or the U.S. (including any Governmental Authority of Turkey or the U.S.); or
    2. of a public international organization.

***O&M Contract*** means the O&M contract to be entered into in the agreed form between the Borrower, the Operator and the O&M Guarantors relating to the provision of the Services.

1. ***O&M Direct Agreement*** means the direct agreement to be entered into in the agreed form between the Operator, each O&M Guarantor, the Intercreditor Agent, the Security Agent and the Borrower.

***O&M Guarantee*** means each parent company guarantee to be provided to the Borrower under clause 13.10 of the O&M Contract.

1. ***O&M Guarantor*** means:
   1. Gama Holding;
   2. Türkerler; and
   3. any person which has issued an O&M Guarantee in accordance with the O&M Contract.
2. ***O&M Performance Bond*** means each performance bond to be provided by the Operator to the Borrower under clause 13.1(b) of the O&M Contract.
3. ***O&M Service Payment*** has the meaning given to such term under the O&M Contract.
4. ***Onshore Accounts Pledge Agreement*** has the meaning specified in Schedule 3 (Project Security).
5. ***Operating Budget*** means a Draft Operating Budget which has been approved by the Intercreditor Agent pursuant to paragraph 2.5 of Part A (Information) of Schedule 5 (Information, Budgets and Reporting).
6. ***Operating Budget Template*** means the operating budget template in the agreed form.
7. ***Operating Costs*** meansall costs, liabilities and expenses incurred in connection with the operation, management, maintenance, repair, reinstatement and management of the Facilities as identified in the then-current Operating Budget, including:
   1. any payments by the Borrower under the Project Documents (other than amounts payable under any Equity Documents);
   2. Borrower overhead costs and expenses;
   3. all insurance premiums payable by the Borrower in respect of the Insurances during the Operation Term;
   4. all costs and expenses incurred or payable by the Borrower in connection with obtaining and maintaining any Project Permits after the commencement of the Operation Term;
   5. all other costs and expenses of the Borrower as contained in an Operating Budget;
   6. any other costs or expenses (including staff costs of the Borrower) that the Borrower and the Intercreditor Agent (each acting reasonably) agree shall be Operating Costs; and
   7. any Taxes in respect of any of the above,

but excluding, for the avoidance of doubt:

* + 1. all amounts of Financing Costs;
    2. any costs, fees or expenses in connection with obtaining or maintaining the Operation Term Performance Bond, and any indemnity or counter-indemnity payments thereunder;
    3. the reimbursement of any costs or expenses (including those referred to in Clause 14.3 (Enforcement costs)) incurred by the Finance Parties in enforcing or preserving rights or enforcing any Security Interests under the Finance Documents;
    4. any costs or expenses incurred in relation to the Commercial Areas; and
    5. Distributions.

1. ***Operator*** means Kocaeli GT İşletme Hizmetleri A.Ş., a company incorporated in Turkey, with a tax registration number 565 062 8571 and with its registered office at İlkbahar Mahallesi Galip Erdem Cad. No: 11 Çankaya, Ankara, the Republic of Turkey.
2. ***Operating Report*** means a report from the Borrower covering the matters listed in paragraph 5 of Part C (Project Reports) of Schedule 5 (Information, Budgets and Reporting).
3. ***OPIC Funding Agreement*** means the Funding and OPIC Guaranty Agreement to be entered into among the Borrower, the OPIC Paying Agent (as described therein), the OPIC Placement Agent (as described therein) and OPIC.
4. ***OPIC Funding Documents*** means the OPIC Funding Agreement and all other agreements and documents required in connection with the funding arrangements established therein.
5. ***OPIC Loan*** means a Senior Loan provided under the OPIC Facility.
6. ***OPIC Facility*** means the credit facility designated as such and made available by OPIC in Dollars, which is to be converted into Euros as per the FX Hedging Rate, on and subject to the terms and conditions of this Agreement and the OPIC Finance Agreement.
7. ***OPIC Finance Agreement*** means the finance agreement dated on or about the Signing Date between OPIC and the Borrower.
8. ***OPIC Notes*** has the meaning given to it in the OPIC Funding Agreement.
9. ***Original Financial Model*** means the excel spreadsheet delivered to the Intercreditor Agent in accordance with paragraph 13 of Part A (Common Financial Close Documents) of Schedule 2 (Conditions Precedent).
10. ***Original Financial Statements*** means in relation to each of:
    1. the Borrower;
    2. each Key Shareholder;
    3. GE Guarantor; and
    4. each EPC Guarantor and each O&M Guarantor (if different from the persons referred to in paragraph (b) above),

the most recently available audited year-end financial statements.

1. ***Parallel Debt*** has the meaning specified in Clause 25.12 (Parallel debt).
2. ***Participant*** means a person (other than EBRD) that has entered into a Participation Agreement.
3. ***Participating Member State*** means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.
4. ***Participation*** in relation to the EBRD Loan Facility, has the meaning given to it in the Participation Agreement.
5. ***Participation Agreement*** means any participation agreement to be entered into between EBRD and a Participant under the EBRD A Loan Facility or EBRD B Loan Facility.
6. ***Party*** means a party to this Agreement.
7. ***Permitted Capital Expenditure*** means:
   1. Project Costs;
   2. any Capital Expenditure made with Insurance Proceeds in respect of physical loss or damage and in accordance with Clause 6.3 (Mandatory prepayment – Insurance Proceeds); or
   3. any Capital Expenditure made with any amounts that would otherwise be available for Distributions in accordance with the Finance Documents.
8. ***Permitted Disposal*** means:
   1. to the extent permitted by the terms of the Project Agreement:
      1. disposals of any asset for which the consideration received does not exceed five-hundred thousand Euros (EUR 500,000) for single occurrence and two million Euros (EUR 2,000,000) in the aggregate in any calendar year (or, in each case, its equivalent in any other currency);
      2. disposals for fair market value of assets which are obsolete or redundant;
      3. disposals in the ordinary course of trading of the Project for fair market value or in exchange for other assets comparable or superior as to type, value and quality; or
      4. any disposal which is due to any express obligation imposed by the terms of any Project Document;
   2. entry into the Commercial Area Agreement;
   3. disposals of Permitted Investments in accordance with the Project Accounts Agreement; or
   4. such other transactions as the Intercreditor Agent shall approve in writing for the purposes of Clause 17.5 (Disposals).
9. ***Permitted Indebtedness*** means any of the following:
   1. Financial Indebtedness incurred under the Finance Documents;
   2. until the first Utilisation Date, the Bridge Financing;
   3. Financial Indebtedness incurred under any Permitted Subordinated Loan or other Financial Indebtedness which is subordinated to the Secured Debt in accordance with the terms of the Equity Support and Subordination Deed or otherwise to the satisfaction of the Intercreditor Agent;
   4. in respect of trade creditors in the ordinary course of business;
   5. Financial Indebtedness of the Borrower which is included in an Operating Budget; or
   6. any other Financial Indebtedness approved in writing by the Intercreditor Agent.
10. ***Permitted Security Interests*** means any of the following:
    1. Security Interests created by the Security Documents;
    2. any Security Interests for Tax, assessments or other governmental charges payable by the Borrower;
    3. any statutory and other Security Interests created by operation of law and securing obligations incurred in the ordinary course of business of the Borrower;
    4. any Security Interest over any Permitted Investment in favour of a clearing or custody system holding the Permitted Investment;
    5. any Security Interest created in respect of any retention of title arrangement incurred in the ordinary course of business of the Borrower under a supplier’s standard conditions of supply for amounts outstanding for a period not exceeding one hundred and eighty (180) days; and
    6. any other Security Interests approved by the Intercreditor Agent,
11. but any Security Interest referred to in paragraphs (b) or (c) above which is not discharged before the relevant secured obligation becomes overdue will cease to be a Permitted Security Interest.
12. ***Person*** means an individual, a legal entity, including, a partnership, a joint venture, a corporation, a trust, and an unincorporated organization, and a government or any department or agency thereof.
13. ***Prepayment Fee*** has the meaning specified in Clause 6.7 (Voluntary prepayment of Senior Loans).
14. ***Principals*** means, with respect to any Person: 
    1. any officer, director, owner, partner or key employee of such Person or any other natural person with primary management or supervisory responsibilities with respect to such Person; or
    2. any other Person (whether or not an employee) who has critical influence on or substantive control over the transaction covered by the Transaction Documents.
15. ***Prohibited Activity*** means any of the activities listed in Part B (Prohibited Activities) of Schedule 10 (Anti-Corruption Guidelines and Prohibited Activities).
16. ***Prohibited Payment*** means:
    1. the giving or making by any Person (such Person, the ***Payor***) of any offer, gift, payment, promise to pay or authorization of the payment of any money or anything of value, directly or indirectly, to or for the use or benefit of any Official (including to or for the use or benefit of any other Person if the Payor knows, or has reasonable grounds for believing, that the other Person would use such offer, gift, payment, promise or authorization of payment for the benefit of any such Official), for the purpose of influencing any act or decision or omission of any Official in order to obtain, retain or direct business to, or to secure any improper benefit or advantage for, the Borrower or the Project, or any other Person; provided that any such offer, gift, payment, promise or authorization of payment shall not be considered a Prohibited Payment if it: 
       1. is expressly permitted by Applicable Law; or
       2. is made for the purpose of expediting or securing the performance of a routine governmental action (as such term is construed under Applicable Law);
    2. making, authorizing, offering or promising to make any offer, gift, payment, promise to pay, commission, fee, loan, unlawful bribe, rebate, payoff, influence payment or kickback or other consideration or taking any action which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997 or that would violate any Corrupt Practices Laws binding on such Person or in effect in any jurisdiction in which such action is taken.
17. ***Project Accounts Agreement*** means the agreement to be entered into in the agreed form between the Borrower, the Operator, the Offshore Account Bank, the Onshore Account Bank, the Security Agent and the Intercreditor Agent.
18. ***Project Agreement*** means the agreement dated 6 September 2014 between the Administration and the Borrower providing for the implementation of the Project, including all schedules thereto.
19. ***Project Agreement Bond*** means the Investment Term Performance Bond or the Operation Term Performance Bond.
20. ***Project Budget*** means:
    1. in relation to the Construction Term, each Construction Budget; and
    2. in relation to the Operation Term, each Operating Budget.
21. ***Project Completion Date*** means the date on which each of the following has occurred:
    1. the Actual Completion Date has occurred and the Administration has issued the Actual Completion Certificate;
    2. the Lenders’ Technical & Environmental Adviser has issued a report in accordance with paragraph 4 of Part C (Project Reports) of Schedule 5 (Information, Budgets and Reporting), in form and substance satisfactory to the Senior Lenders, confirming that:
       1. the Actual Completion Date has occurred in accordance with the Project Agreement;
       2. the Construction Use Permit has been obtained;
       3. all the Project Permits required to be obtained by the Borrower as at the Actual Completion Date have been obtained; and
       4. all Construction Costs have been paid in full (or money has been set aside by the Borrower for payment of same);
    3. the Lenders’ Technical & Environmental Adviser has issued a report in accordance with paragraph 3.1(c) of Part C (Project Reports) of Schedule 5 (*Information, Budgets and Reporting*) in form and substance satisfactory to the Senior Lenders;
    4. the Borrower has delivered to OPIC and completed to OPIC’s satisfaction the ESHS Audit Report;
    5. the Borrower has delivered to OPIC and completed to OPIC’s satisfaction the most recent report required under Clause 17.19(b) (Workers’ Rights); and
    6. the Insurances required to be in effect for the Operation Term are in full force and effect (as confirmed by an Insurance Report in form and substance satisfactory to the Senior Lenders) in accordance with the Finance Documents.
22. ***Project Contractor*** means the EPC Contractor, the Operator or any other person (other than the Administration) that is a party to a Project Document with the Borrower, related to the development or operation of the Project.
23. ***Project Costs*** means the following costs and expenses (without double‑counting) as set out in the then-current Construction Budget:
    1. Development Costs;
    2. Construction Costs;
    3. initial funding of the Debt Service Reserve Account up to the Initial DSRA Required Balance;
    4. to the extent payable prior to the end of the Availability Period:
       1. Financing Costs;
       2. fees and costs of the Advisers;
       3. fees and costs in relation to Authorisations;
       4. Insurance premiums;
       5. all legal, accounting, consulting, advisory or other professional fees and disbursements incurred in connection with the negotiation and entry into the Transaction Documents; and
       6. Borrower overhead costs;
    5. fees payable in respect of the Investment Term Performance Bond;
    6. without double counting with amounts referred to in paragraphs (a) and (b) above, interest, fees, break costs and principal of the Bridge Financing, provided that:
       1. such interest, fees and break costs do not exceed five per cent. (5%) per annum of the principal amount outstanding under the Bridge Financing; and
       2. the principal amount under the Bridge Financing at Financial Close does not exceed twenty million Euros (EUR 20,000,000);
    7. any other costs or expenses which the Borrower and the Intercreditor Agent agree shall be Project Costs; and
    8. any Taxes in respect of any of the above,

but excluding, for the avoidance of doubt:

* + 1. Operating Costs;
    2. costs and fees in connection with any Equity Support Documents; and
    3. counter-indemnity payments in connection with the Investment Term Performance Bond.

1. ***Project Documents*** means:
   1. the Equity Documents;
   2. the Project Agreement;
   3. each Project Agreement Bond;
   4. the Servitude Right Agreement;
   5. the EPC Contract;
   6. the EPC Guarantee;
   7. each EPC Performance Bond;
   8. each EPC Advance Payment Bond;
   9. the O&M Contract;
   10. each O&M Guarantee;
   11. the O&M Performance Bond;
   12. the Interface Agreement;
   13. the Independent Technical Certifier Commissioning Agreement;
   14. the Service Provider Collateral Agreement (if any); and
   15. any document so designated in writing by the Borrower and the Intercreditor Agent.
2. ***Project Permit*** means each Authorisation set out in Schedule 7 (Project Permits).
3. ***Project Report*** means:
   1. each Construction Report;
   2. each Operating Report;
   3. each Environmental and Social Annual Monitoring Report;
   4. each Insurance Report;
   5. the ESAP; and
   6. each report on the status of implementation of the ESAP.
4. ***Project Revenues*** means all amounts received (or, in the case of projections, projected to be received in accordance with the Operating Budget) by the Borrower from whatever source (without double counting), including:
   1. Availability Payments;
   2. Service Payments;
   3. all liquidated damages and other amounts received under the Project Documents;
   4. all amounts received from Permitted Disposals;
   5. all refunds received in respect of any VAT recoveries or other similar Tax; and
   6. all amounts received under Clause 10.4 (Tax Credit) in respect of Tax Credits;

but excluding:

* + 1. any Equity Contributions;
    2. any Senior Loans;
    3. any Termination Compensation; and
    4. any Commercial Area Revenues.

1. ***Project Security*** means the Security Interests created or expressed to be created in favour of the Security Agent pursuant to the Security Documents.
2. ***Project Subcontractor*** means a person, other than the Borrower or a Project Contractor, that is a party to a Project Document with a Project Contractor, related to the development or operation of the Project.
3. ***Protected Party*** has the meaning specified in Clause 10.1 (Definitions).
4. ***Quasi-Security*** means a transaction where a person:
   1. sells, transfers or otherwise disposes of any of its assets on terms whereby they are or are intended to be leased to or re-acquired by such person;
   2. sells, transfers or otherwise disposes of any of its receivables on recourse terms;
   3. enters into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts; or
   4. enters into any other preferential arrangement having a similar effect,
5. in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
6. ***Quotation Day*** means, in relation to any period for which an interest rate is to be determined, two (2) TARGET Days’ before the first day of that period unless market practice differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the relevant Senior Lender in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one (1) day, the Quotation Day will be the last of those days).
7. ***Reference Bank Rate*** means the arithmetic mean of the rates (rounded upwards to four (4) decimal places) as supplied to the relevant Senior Lender at its request by the Reference Banks as the rate at which the relevant Reference Bank could borrow funds in the European interbank market in Euro for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.
8. ***Reference Banks*** means such banks as may be appointed by the Intercreditor Agent in consultation with the Borrower.
9. ***Reinsurance Assignment Deed*** has the meaning specified in Part A (English Law Security Documents) of Schedule 3 (Project Security).
10. ***Reinsurance Broker’s Letter of Undertaking*** means a reinsurance broker’s letter of undertaking substantially in the form set out in Part B (Form of Reinsurance Broker’s Letter of Undertaking) of Exhibit 5 (Form of Broker’s Letters of Undertaking) to Schedule 6 (Insurance) or such other form satisfactory to the Intercreditor Agent.
11. ***Relevant Interbank Market*** means the European interbank market.
12. ***Relevant Jurisdiction*** means:
    1. Turkey;
    2. England and Wales;
    3. in respect of the OPIC Funding Documents, New York;
    4. any jurisdiction where any asset subject to or intended to be subject to the Project Security is situated; and
    5. any jurisdiction whose laws govern the perfection of any of the Security Documents.
13. ***Repayment Date*** means the First Repayment Date and each Interest Payment Date thereafter until (and including) the Final Maturity Date.
14. ***Repayment Instalment*** means, in respect of each Repayment Date and each Senior Loan Facility, the amount calculated in accordance with the Repayment Schedule for that Senior Loan Facility.
15. ***Repayment Schedule*** means, in respect of a Senior Loan Facility, the repayment schedule appended to the Senior Loan Agreement for that Senior Loan Facility under the heading “Repayment Schedule”, as may be replaced by the Financial Close Agreement.
16. ***Repeating Representations*** means each of the representations set out in Clauses 15.1 (Status), 15.2 (Power and authority), 15.4 (Non-conflict with other obligations), 15.9 (Centre of Main Interests), 15.14 (Tax), 15.15(b), (c) and (e) (Accuracy of information), 15.17 (Related party transactions), 15.23 (No breach of laws), 15.26 (Land rights), 15.34 (Sanctionable practices, corrupt practices and anti-money laundering), 15.35 (No Prohibited Payments), 15.36 (Sanctions and OFAC Lists) and 15.37 (Suspension and debarment).
17. ***Replacement Loan Facility*** means any credit facility for the provision of Replacement Senior Loans.
18. ***Replacement Senior Lender*** means an Acceptable Bank, a multilateral agency or an export credit agency that is a participant to the OECD Arrangement on Guidelines for Officially Supported Export Credits, which, in each case, has provided a Replacement Loan Facility.
19. ***Replacement Senior Loan*** means any Senior Loan provided in accordance with Clause 2.3 (*Replacement Senior Loans*).
20. ***Representative*** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
21. ***Request*** has the meaning specified in Clause 4.1 (Giving of Requests).
22. ***RUSF*** means a Tax in the name of Resource Utilisation Support Fund (*Kaynak Kullanımını Destekleme Fonu*) regulated under the Decree of the Council of Ministers of Turkey (Decree No. 88/12944) (as amended), which is applicable by virtue of the Law No. 4684 announced in the Official Gazette dated 3 July 2001 and numbered 24451, or any other levy or Tax replacing or superseding or altering RUSF.
23. ***Sanctionable Practice*** any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice, Obstructive Practice, Misuse of EBRD’s Resources, or Theft as those terms are defined herein or in the EBRD’s Enforcement Policy and Procedures dated 5 November 2015 (as referred to in the EBRD website) and interpreted in accordance with the Anti-Corruption Guidelines.
24. ***Sanctions Authority*** means:
    1. the United Nations;
    2. the European Union or any member state thereof;
    3. the United Kingdom;
    4. the U.S. Department of Treasury’s Office of Foreign Assets Control, the U.S. State Department, any other agency of the U.S. government; and
    5. Canada.
25. ***Scheduled Completion Date*** means the completion date for the Project that is specified in schedule 9 of the Project Agreement that is delivered to the Intercreditor Agent pursuant to Clause 3.1(a) (Financial Close Documents) and Part A (Common Financial Close Documents) of Schedule 2 (Conditions Precedent).
26. ***Screen Rate*** means the Euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Reuters screen (or any replacement Reuters page which displays that rate), on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Intercreditor Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.
27. ***Security Agent and Hedging Deed*** means the agreement dated on or about the Signing Date between, among others, the Senior Lenders, the Original Hedging Counterparties, the Borrower, the Intercreditor Agent and the Security Agent.
28. ***Security Document*** means:
    1. each of the documents listed in Schedule 3 (Project Security);
    2. any Notices and Acknowledgements;
    3. any Security Interest created or expressed to be created by the Borrower in favour of the Security Agent for the benefit of the Secured Creditors in respect of a Permitted Investment;
    4. each blank endorsement (*beyaz ciro*) delivered in accordance with the Share Pledge Agreement; and
    5. any other documents from time to time agreed to be Security Documents by the Borrower and the Intercreditor Agent or executed by the Borrower pursuant to any of the foregoing as a security for the Secured Debt as may be required in accordance with the provisions of the Finance Documents.
29. ***Security Interest*** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
30. ***Semi-Annual Financial Statements*** means each set of semi-annual financial statements of the Borrower delivered pursuant to Clause 16.1(b) (Financial statements).
31. ***Senior Lender*** means:
    1. any Original Senior Lender;
    2. any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 21 (Changes to the Senior Lenders); and
    3. any Replacement Senior Lender which has become a Senior Lender in accordance with Clause 21.9 (Accession of Replacement Senior Lenders),

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

1. ***Senior Loan*** means:
   1. in relation to EBRD, “EBRD Loan” (as defined in the EBRD Loan Agreement);
   2. in relation to EDC, “Loan” (as defined in the EDC Loan Agreement);
   3. in relation to OPIC, “Loan” (as defined in the OPIC Finance Agreement); and
   4. in relation to a Replacement Senior Lender which has become a Senior Lender in accordance with Clause 21.9 (*Accession of Replacement Senior Lenders*), a loan made or to be made under the relevant loan or facility agreement entered between the Borrower and such Replacement Senior Lender.
2. ***Senior Loan Agreement*** means:
   1. the EBRD Loan Agreement;
   2. the EDC Loan Agreement;
   3. the OPIC Finance Agreement; and
   4. any loan or facility agreement entered between the Borrower and a Replacement Senior Lender which has become a Senior Lender in accordance with Clause 21.9 (Accession of Replacement Senior Lenders).
3. ***Senior Loan Facility*** means:
   1. any Term Loan Facility; and
   2. any Contingent Loan Facility.
4. ***Service Provider Collateral Agreement*** means the service provider collateral agreement to be entered into between the Administration, the Borrower, the Operator and the Intercreditor Agent.
5. ***Servitude Right Agreement*** means the servitude right agreement to be entered into between the Ministry of Finance of the Republic of Turkey, General Directorate of National Property (*Maliye Bakanlığı Milli Emlak Genel Müdürlüğü*) and the Borrower granting servitude rights to the Borrower in accordance with the terms of the Project Agreement.
6. ***Share Pledge Agreement*** has the meaning specified in Schedule 3 (*Project Security*).
7. ***Side Plants*** means the side projects to be constructed as part of the Project including but not limited to the concrete batching plant to be used during the Investment Term and the trigeneration plant to be used during the Operation Term.
8. ***Signing Date*** means the date of this Agreement.
9. ***Specified Time*** means, in relation to a Senior Loan Facility, a time determined in accordance with the Senior Loan Agreement for that Senior Loan Facility.
10. ***Speculative Lender*** means any of the following:
    1. a collateralised debt obligation or collateralised loan obligation;
    2. a mutual fund or hedge fund; or
    3. a person whose main activity consists of buying distressed debt and/or non-performing loans and to pursue active enforcement policies in respect thereof.
11. ***Stakeholder Engagement Plan*** means stakeholder engagement plan dated 15 August 2016 prepared by the Borrower in accordance with the Lenders’ Performance Standards and subsequently disclosed in accordance with regulatory and Senior Lender requirements.
12. ***Standard & Poor’s*** means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc.
13. ***Subsidiary*** means, with respect to any person, any entity which is Controlled by that person.
14. ***TARGET Day*** means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system (which utilises a single shared platform and which was launched on 19 November 2007) is open for the settlement of payments in Euro.
15. ***Tax*** means any tax (including BITT and RUSF), levy, impost, duty (including stamp duty) or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
16. ***Tax Credit*** has the meaning specified in Clause 10.1 (Definitions).
17. ***Tax Deduction*** has the meaning specified in Clause 10.1 (Definitions).
18. ***Tax Payment*** has the meaning specified in Clause 10.1 (Definitions).
19. ***Term Facility Commitments*** means:
    1. in relation to an Original Senior Lender and a Senior Loan Facility, the amount set opposite its name under the heading “Term Facility Commitment” for that Senior Loan Facility in Part A (The Original Senior Lenders and Commitments) of Schedule 1 (The Original Senior Lenders) and the amount of any other Term Facility Commitment assigned to it under this Agreement or any Senior Loan Agreement; or
    2. in relation to any other Senior Lender:
       1. the amount of any Term Facility Commitment assigned to it under this Agreement or the relevant Senior Loan Agreement; and
       2. the amount of any commitment made by it to provide Replacement Senior Loans under this Agreement or the relevant Senior Loan Agreement,

to the extent not cancelled, reduced or assigned by it under this Agreement or the relevant Senior Loan Agreement.

1. ***Term Loan Facility*** means:
   1. the EBRD A Loan Facility;
   2. the EBRD B Loan Term Loan Facility;
   3. the EDC Term Loan Facility; and
   4. the OPIC Facility.
2. ***Termination Compensation*** means compensation payable pursuant to:
   1. schedule 23 (*Compensation on Termination*) of the Project Agreement; or
   2. the Funders’ Direct Agreement,
3. in each case, in connection with a termination of the Project Agreement.
4. ***Theft*** has the meaning specified in the Anti-Corruption Guidelines.
5. ***Third Party Liability Insurances*** means Insurances to cover liability for damages in respect of: 
   1. accidental bodily injury or death of any person; or
   2. accidental loss or damage to physical property of any person which, in each case, will be paid directly to the relevant third party by the Insurer(s).
6. ***Three-Month LIBOR*** has the meaning given to it under the OPIC Notes.
7. ***TMA Lawsuit*** means the lawsuit initiated in 2013 with the case number 2013/300 (E. 2013/300) by the Turkish Medical Association before the Council of State whereby the Turkish Medical Association requested, among other issues, the cancellation of the Tender.
8. ***Total Commitments*** means the aggregate of the Commitments of all the Senior Lenders.
9. ***Transaction Documents*** means the Finance Documents and the Project Documents.
10. ***Transfer Date*** means, in relation to an assignment, the later of:
    1. the proposed Transfer Date specified in the relevant Assignment Agreement; and
    2. the date on which the Intercreditor Agent executes the relevant Assignment Agreement.
11. ***Transfer of Receivables Agreement*** has the meaning specified in Schedule 3 (Project Security).
12. ***Transfer of Subordinated Receivables Agreement*** has the meaning specified in Schedule 3 (Project Security).
13. ***Turkey*** means the Republic of Turkey.
14. ***Turkey Resident Lender*** has the meaning specified in Clause 15.10 (Deduction of Tax).
15. ***Türkerler*** means Türkerler İnşaat Turizm Madencilik Enerji Üretim Ticaret ve Sanayi A.Ş., a company incorporated in Turkey, with the trade registry number 267733 and tax registration number 878 002 96 36 and with its registered office at Sancak Mahallesi, Turan Güneş Bulvarı, 15. Cadde No.11, Yıldız, Çankaya, Ankara, the Republic of Turkey.
16. ***Turkish GAAP*** means Turkish accounting standards (*Türkiye Muhasebe Standartları*) adopted by The Public Surveillance, Accounting and Auditing Standards Board (*Kamu Gözetimi, Muhasebe ve Denetim Standartları Kurulu*), established pursuant to the Decree in the Force of Law (No. 660).
17. ***Turkish Sanctioned Person*** means any person who:
    1. is formally identified by a Turkish Governmental Authority as belonging to or connected with any organisation that is a terrorist organisation under the Laws of Turkey including but not limited to the Decree Law numbered 667 issued in accordance with the state of emergency decision adopted by the Council of Ministers of the Republic of Turkey on 20 July 2016; or
    2. is or has become subject to any investigation, inquiries, administrative proceedings or remedies in connection with the measures adopted in accordance with the state of emergency decision issued by the Council of Ministers of the Republic of Turkey on 20 July 2016 and the associated decree laws provided that the relevant investigation, inquiry, administrative proceeding or remedy continues.
18. ***Türyap*** means Türyap İnşaat İthalat İhracat Sanayi ve Ticaret A.Ş., a company incorporated in Turkey, with a tax registration number 882 031 69 26 and with its registered office at Turan Güneş Bulvarı, 571. Cadde, No.11- Yıldız, Çankaya, Ankara.
19. ***UNCITRAL Rules*** has the meaning specified in Clause 35.1 (Submission to Arbitration).
20. ***Unpaid Sum*** means any sum due and payable but unpaid by the Borrower under the Finance Documents.
21. ***Utilisation*** means a utilisation or disbursement of a Senior Loan Facility.
22. ***Utilisation Date*** means the date of a Utilisation, being the date on which the relevant Senior Loan is to be made.
23. ***VAT*** means:
    1. value added Tax as provided for in the Value Added Tax Law No. 3065 (*Katma Değer Vergisi Kanunu*) published in the Official Gazette dated 2 November 1984 and numbered 18563, as amended from time to time; and
    2. any other Tax of a similar nature, whether imposed in Turkey in substitution for, or levied in addition to, such Tax referred to in paragraph (a) above, or imposed elsewhere.
24. ***Worker Rights Non-Compliance*** has the meaning specified in Clause 17.19(b) (Workers’ rights).
25. ***Worker Rights Requirements*** has the meaning specified in Clause 17.19(a)(i) (Workers’ rights).
26. ***Workers*** means, collectively:
    1. individuals that are employed directly by the Borrower; and
    2. individuals that, under a Project Document related to the development or operation of the Project between the Borrower and a Project Contractor or between a Project Contractor and a Project Subcontractor, perform continuous on-Site work that is either:
       1. of substantial duration; or
       2. material to the primary operations of the Project.

***World Bank Group*** means collectively the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency and the International Centre for Settlement of Investment Disputes.

* 1. Security Agent and Hedging Deed terms

Unless a contrary indication appears, the following words and expressions defined in the Security Agent and Hedging Deed have the same meanings in this Agreement:

* + - 1. Delegate;
      2. Enforcement Event;
      3. Hedging Counterparty;
      4. Hedging Policy;
      5. Original Hedging Counterparty;
      6. Receiver;
      7. Secured Creditor; and
      8. Secured Debt.
  1. Equity Support and Subordination Deed terms

Unless a contrary indication appears, the following words and expressions defined in the Equity Support and Subordination Deed have the same meanings in this Agreement:

* + - 1. Equity;
      2. Equity Contribution;
      3. Equity Letter of Credit;
      4. Equity Support Document;
      5. Equity Support Provider;
      6. GE Guarantee;
      7. GE Guarantor;
      8. GE Share Retention Period;
      9. GE Share Subscription Date[[2]](#footnote-2);
      10. Key Shareholder;
      11. L/C Provider;
      12. Original Shareholder;
      13. Permitted Subordinated Loan;
      14. Permitted Subordinated Loan Agreement;
      15. Project Interest;
      16. Required Equity Contribution;
      17. Share;
      18. Shareholder; and
      19. Subordinated Debt.
  1. Project Accounts Agreement terms

Unless a contrary indication appears, the following words and expressions defined in the Project Accounts Agreement have the same meanings in this Agreement:

* + - 1. Account Bank;
      2. Account Bank Services Agreement;
      3. Debt Service Reserve Account;
      4. Debt Service Reserve Required Balance;
      5. Distributions Account;
      6. EMRS Required Balance;
      7. EMRS Reserve Account;
      8. EUR Proceeds Account;
      9. Initial DSRA Funding Date;
      10. Initial DSRA Required Balance;
      11. Offshore Accounts;
      12. Offshore Account Bank;
      13. Onshore Accounts;
      14. Onshore Account Bank;
      15. OPIC Prepayment Account;
      16. Permitted Investment;
      17. Payments Account;
      18. Proceeds Accounts; and
      19. Project Accounts.
  1. Project Agreement terms

Unless a contrary indication appears, the following words and expressions defined in the Project Agreement have the same meanings in this Agreement:

* + - 1. Actual Completion Certificate (*Fiili Tamamlama Belgesi*);
      2. Actual Completion Date (*Fiili Tamamlama Tarihi*);
      3. Administration Event of Default (*İdare’nin Sözleşme Hükümlerini İhlali*);
      4. Availability Payment (*Kullanım Bedeli*);
      5. Building and Site Services or Estate Services (*Bina ve Arazi Hizmetleri*);
      6. Change in Control (*Kontrol Değişikliği*);
      7. Commencement Date (*İşler’in Başlama Tarihi*);
      8. Commercial Areas or Commercial Activity Areas (*Ticari Alan/Ticari Faaliyet Alanları*);
      9. Commissioning Programme (*Kabul Programı*);
      10. Compensation Event (*Tazminat Nedeni*);
      11. Completion Date (*Tamamlama Tarihi*);
      12. Completion Tests (*Tamamlama Testleri*);
      13. Construction Term (*İnşaat Dönemi*);
      14. Deductions (*Kesintiler*);
      15. Delay Event (*Gecikme Nedeni*);
      16. Excusing Cause (*Mazeret Nedeni*);
      17. Extraordinary Maintenance and Repair Services (*Olağanüstü Bakım ve Onarım Hizmetleri*);
      18. Facilities (*Tesisler*);
      19. Final Commissioning Programme (*Nihai Kabul Programı*);
      20. GFA Failure Limit Points (*BİZA Hata Limiti Puanı*);
      21. Health Facility (*Sağlık Tesisi*);
      22. Investment Term (*Yatırım Dönemi*);
      23. Investment Term Performance Bond (*Yatırım Dönemi Kesin Teminatı*);
      24. Learning Curve Period (*Öğrenme Eğrisi Dönemi*);
      25. Medical Equipment (*Tıbbi Ekipman*);
      26. Non-Medical Services (*Tıbbi Hizmetler Dışındaki Hizmetler*);
      27. Operation Term (*İşletme Dönemi*);
      28. Operation Term Performance Bond (*İşletme Dönemi Kesin Teminatı*);
      29. Programme (*Program*);
      30. Project (*Proje*);
      31. Project Company Event of Default (*Şirket’in Sözleşme Hükümlerini İhlali*);
      32. Service Payments (*Hizmet Ödemeleri*);
      33. Superficies Right (*Üst Hakkı*);
      34. Site (*Arazi*);
      35. Site Delivery Date (*Yer Teslim Tarihi*);
      36. Site Transfer Date (*Arazi Devri Tarihi*);
      37. Tender (*İhale*);
      38. Uninsurable Risk (*Sigorta Edilemez Riskler*);
      39. Variation (*Değişiklik*);
      40. Variation Enquiry (*Değişiklik İncelemesi*); and
      41. Works (*İşler*).
  1. Construction
     + 1. Unless a contrary indication appears, any reference in this Agreement to:
          1. the ***Borrower***, the ***Intercreditor Agent***, each ***FI Arranger***, any ***Finance Party***, any ***Senior Lender***, the ***Offshore Account Bank***, the ***Onshore Account Bank***, any ***Party***, any ***Secured Creditor***, the ***Security Agent*** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Intercreditor Agent, the Offshore Account Bank, the Onshore Account Bank or Security Agent, any person for the time being appointed as such in accordance with the Finance Documents;
          2. a document in ***agreed form*** is a document which is previously agreed in writing by or on behalf of the Borrower and the Intercreditor Agent;
          3. ***assets*** includes present and future properties, revenues and rights of every description;
          4. a ***disposal*** of assets includes a sale, transfer and any other kind of disposal of, and the grant of any option in respect of, any right or interest, legal or equitable, in such assets, and any agreement for any of the foregoing, and any reference to ***dispose*** shall be construed accordingly;
          5. a ***Finance Document***, a ***Project Document*** or a ***Transaction Document*** or any other agreement or instrument is a reference to that Finance Document, Project Document or Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
          6. a ***group of Senior Lenders*** includes all the Senior Lenders;
          7. ***guarantee*** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
          8. ***indebtedness*** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
          9. an amount being ***indexed*** means such amount being adjusted in direct proportion to the change in the consumer price index (***CPI***) published by the Turkish Institute of Statistics for the month in which the Signing Date occurs to the published CPI immediately prior to the relevant calculation;
          10. a ***person*** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
          11. a ***regulation*** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
          12. the words ***include***, ***includes*** and ***including*** shall be deemed to be followed by the phrase ***without limitation***;
          13. the word ***will*** shall be construed to have the same meaning and effect as the word ***shall***;
          14. the words ***herein***, ***hereof*** and ***hereunder***, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;
          15. a bank account includes each sub or ledger account of that account and any replacement account;
          16. a specified Article, Section, Schedule or Exhibit shall be construed as a reference to that specified Article or Section of, or Schedule or Exhibit to, this Agreement;
          17. the ***Euro-zone*** is a reference to the region comprised of the Participating Member States;
          18. a provision of law is a reference to that provision as amended or re-enacted; and
          19. a time of day is a reference to London (England) time (except in relation to paragraph (d) of Clause 27.3 (Delivery) and paragraph (c) of Clause 27.5 (Electronic communication)).
       2. Article, Section, Clause, Schedule and Exhibit headings are for ease of reference only.
       3. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
       4. A Default (other than an Event of Default) is ***continuing*** if it has not been remedied or waived and an Event of Default is ***continuing*** if it has not been remedied or waived.
       5. In relation to each Finance Party that is incorporated in Germany or otherwise notifies the Intercreditor Agent to this effect (each a ***Restricted Finance Party***), Clauses 15.34 (Sanctionable practices, corrupt practices and anti-money laundering), 15.35 (No Prohibited Payments), 15.36 (Sanctions and OFAC Lists), 15.37 (Suspension and debarment), 17.3(b) (*Compliance with Applicable Laws*), 17.13 (*Sanctionable Practices*), 17.15 (*Sanctions and OFAC Compliance*) and 20.29 (*Sanctionable Practices*) shall only apply for the benefit of that Restricted Finance Party to the extent that the sanctions provisions would not result in (i) any violation of, conflict with or liability under EU Regulation (EC) 2271/96 or (ii) a violation or conflict with section 7 foreign trade rules (*AWV*) (*Außenwirtschaftsverordnung*) (in connection with section 4 paragraph 1 no. 3 foreign trade law (*AWG*) (*Außenwirtschaftsgesetz*)) or a similar anti-boycott statute. In connection with any amendment, waiver, determination or direction relating to any part of Clauses referred to in this paragraph (e) of which a Restricted Finance Party does not have the benefit, the commitments of that Restricted Finance Party will be excluded for the purpose of determining whether the consent of the Instructing Creditors has been obtained or whether the determination or direction by the Instructing Creditors has been made.
  2. Turkish terms

In the Finance Documents, where it relates to a person incorporated or organised under the laws of Turkey, a reference to:

* + - 1. a ***winding up***, ***administration*** or ***dissolution*** or the like includes, without limitation, any *tasfiye, infisah* or *fesih*, and any other proceedings or legal concepts similar to the foregoing;
      2. a ***receiver****,* ***administrative receiver****,* ***administrator*** or the like includes, without limitation, a *tasfiye memuru*, *iflas müdürü*, *konkordato komiseri*, *kayyum*, *icra veya iflas memuru*, *iflas masası* or any other person or committee performing the same function of each of the foregoing;
      3. an ***insolvency*** includes any *borca batıklık*, as per the Turkish Commercial Code (Law No. 6102), *aciz hali, tasfiye halinde olma, iflas* and an insolvency proceeding includes *iflas davası açılması* as per Articles 154 – 256of the Turkish Execution and Bankruptcy Law (Law No. 2004), *konkordato* or *iflas ertelemesi talebi*, *yeniden yapılandırma* pursuant to Articles 285 – 309 of the Turkish Execution and Bankruptcy Law (Law No. 2004), and any other proceedings or legal concepts similar to the foregoing;
      4. an ***attachment*** includes a *haciz* as per Articles 74 – 144 of the Turkish Execution and Bankruptcy Law (Law No. 2004) and any other proceedings or legal concepts similar to the foregoing; and
      5. an ***enforcement*** or ***execution*** includes any *icra takibi*, including *ilamların icrası* as per Articles 24-41 of the Turkish Execution and Bankruptcy Law (Law No. 2004), *ilamsız takip* as per Articles 42 – 73 of the Turkish Execution and Bankruptcy Law (Law No. 2004), *haciz yoluyla takip* as per Articles 74-144 of the Turkish Execution and Bankruptcy Law (Law No. 2004), enforcement against security (*rehnin paraya çevrilmesi*)as per Articles 145 – 153 of the Turkish Execution and Bankruptcy Law (Law No. 2004) and any other proceedings or legal concepts similar to the foregoing.
  1. Currency symbols and definitions
     + 1. ***€***, ***EUR*** and ***Euro*** denote the single currency of the Participating Member States.
       2. ***TRY*** and ***Turkish Lira*** denote the lawful currency of Turkey.
       3. ***$***, ***USD*** and ***Dollars*** denote the lawful currency of the United States of America.
  2. Third party rights
     + 1. Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the ***Third Parties Act***) to enforce or to enjoy the benefit of any term of this Agreement.
       2. Notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
  3. No Rights Against Participants

No Party has any rights under this Agreement against any Participant or against any person who is party to this Agreement in another capacity solely by reason of that person also being a Participant.

* 1. Conflicts between Finance Documents

In the event of a conflict between the terms of this Agreement on the one hand and the terms of:

* + - 1. the EBRD Loan Agreement;
      2. the EDC Loan Agreement; or
      3. the OPIC Finance Agreement,

(the ***FI Documents***) on the other hand, the terms of the relevant FI Document will prevail only between the respective parties to these documents.

1. The Facilities
   1. The Senior Loan Facilities

On and subject to the terms of this Agreement and the Senior Loan Agreements:

* + - 1. EBRD makes available to the Borrower the EBRD A Loan Facility and the EBRD B Loan Facility pursuant to the terms of the EBRD Loan Agreement;
      2. EDC makes available to the Borrower the EDC Loan Facility pursuant to the terms of the EDC Loan Agreement; and
      3. OPIC makes available to the Borrower the OPIC Facility pursuant to the terms of the OPIC Finance Agreement.
  1. Increase
     + 1. Subject to paragraph (h) below, the Borrower may by giving prior notice to the Intercreditor Agent by no later than the date falling five (5) Business Days’ after the effective date of a cancellation of Available Commitments of a Defaulting Lender in accordance with Clause 6.9 (Right of cancellation in relation to a Defaulting Lender) request that the Commitments relating to any Senior Loan Facility to be increased (and the Commitments relating to that Senior Loan Facility shall be so increased) in an aggregate amount of up to the amount of the Available Commitments or Commitments relating to that Senior Loan Facility so cancelled as follows:
          1. the increased Commitments will be assumed by one or more Senior Lenders or other banks, financial institutions, trusts, funds or other entities (each an ***Increase Lender***) selected by the Borrower (each of which shall not be an Affiliate of the Borrower) and each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Senior Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Senior Lender;
          2. each of the Borrower and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Borrower and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Senior Lender;
          3. each Increase Lender shall become a Party as a "Senior Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Senior Lender;
          4. the Commitments of the other Senior Lenders shall continue in full force and effect; and
          5. any increase in the Commitments relating to a Senior Loan Facility shall take effect on the date specified by the Borrower in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.
       2. An increase in the Commitments relating to a Senior Loan Facility will only be effective on:
          1. the execution by the Intercreditor Agent of an Increase Confirmation from the relevant Increase Lender;
          2. in relation to an Increase Lender which is not a Senior Lender immediately prior to the relevant increase:

the Increase Lender entering into the documentation required for it to accede as a party to the Intercreditor Deed; and

the Intercreditor Agent being satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender. The Intercreditor Agent shall promptly notify the Borrower upon being so satisfied.

* + - 1. Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Intercreditor Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Senior Lender or Senior Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
      2. The Borrower shall, within five (5) Business Days’ of demand, pay the Intercreditor Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.
      3. The Increase Lender shall, on the date upon which the increase takes effect, pay to the Intercreditor Agent (for its own account) a fee in an amount equal to the fee which would be payable under Clause 21.4 (Assignment fee) if the increase was an assignment pursuant to Clause 21.6 (Procedure for assignment) and if the Increase Lender was a New Lender.
      4. The Borrower may pay to the Increase Lender a fee in the amount and at the times agreed between the Borrower and the Increase Lender in a fee letter.
      5. Clause 21.5 (Limitation of responsibility of Existing Senior Lenders) shall apply *mutatis mutandis* in this Clause 2.2 (Increase) in relation to an Increase Lender as if references in that Clause to:
         1. an ***Existing Senior Lender*** were references to all the Senior Lenders immediately prior to the relevant increase;
         2. the ***New Senior Lender*** were references to that **Increase Lender**; and
         3. a "**re-assignment**" were references to an "**assignment**".
      6. This Clause 2.2 (Increase) shall not apply in respect of any FI Lender or any of their respective Senior Loan Facilities.
  1. Replacement Senior Loans
     + 1. Subject to paragraph (b) below, the Borrower may incur Replacement Senior Loans from, or enter into agreements with, Replacement Senior Lenders who commit to provide Replacement Senior Loans in order to prepay a Participant’s share in existing Senior Loans or, as the case may be, replace existing unutilised Commitments under the EBRD B Loan Facility corresponding to a Participant’s commitment under a Participation Agreement, if:
          1. EBRD has sent a notice under paragraph (b) of Clause 6.1 (Illegality);
          2. any sum payable to EBRD by the Borrower is required to be increased under paragraph (c) of Clause 10.2 (Tax gross-up); or
          3. EBRD claims indemnification from the Borrower under Clause 10.3 (Tax indemnity), Clause 11.1 (Increased costs) or any equivalent provision in a Senior Loan Agreement,

in each case, as a result of a corresponding claim made by that Participant under the relevant Participation Agreement.

* + - 1. The right of the Borrower to incur Replacement Senior Loans in accordance with paragraph (a) above is subject to fulfilment of each of the following conditions:
         1. each Replacement Senior Lender:

is an Acceptable Bank, a multilateral agency or an export credit agency that is a participant to the OECD Arrangement on Guidelines for Officially Supported Export Credits; and

is not a Speculative Lender or an Excluded Person;

* + - * 1. the Replacement Senior Loans have:

an average loan life equivalent to (or longer than);

a repayment profile equivalent to (or longer than), and a final repayment date at the same time as (or later than); and

a margin, rate of interest, fees or other commission or premia equivalent to (or lower than),

in each case, that of the Senior Loans or the Commitments being prepaid or replaced, taken as a whole;

* + - * 1. the commitments under the Replacement Loan Facility do not, when aggregated with the Commitments of the other Senior Lenders, exceed the Total Commitments;
        2. the date on which the interest under the Replacement Senior Loans is scheduled to be paid shall be an Interest Payment Date only, and the dates on which the principal of the Replacement Senior Loans is scheduled to be repaid shall be a Repayment Date only;
        3. the Intercreditor Agent is satisfied (acting reasonably and having received an updated Financial Model audited by the Model Auditor) that, after giving effect to the incurrence or commitment of the Replacement Senior Loans, each of the HADSCR, FADSCR and LLCR until the Final Maturity Date is equal to or greater than the levels demonstrated by the then current Financial Model;
        4. the Replacement Senior Loans are incurred solely for the prepayment in whole or in part of existing Senior Loans or the replacement of any existing unutilised Commitments in accordance with paragraph (a) above;
        5. the Intercreditor Agent has been provided with a copy of the proposed Senior Loan Agreement relating to Replacement Senior Loans (which must disclose the rate or rate basis at which the Replacement Senior Loans will bear interest (and, in the case of a floating rate, the margin) and the amounts of any fees or commissions); and
        6. the Replacement Senior Loan is provided expressly subject to the terms and conditions of this Agreement and the Intercreditor Deed.
      1. Replacement Senior Loans will be considered Senior Loans for all purposes under the Finance Documents, and the loan agreements pursuant to which such Replacement Senior Loan is provided will be considered Senior Loan Agreements for the purposes of this Agreement, upon:
         1. accession by the relevant Replacement Senior Lender to this Agreement in accordance with Clause 21.9 (Accession of Replacement Senior Lenders), to the Intercreditor Deed in accordance with clause 7.2 (Replacement Senior Lenders) of the Intercreditor Deed and to the Security Agent and Hedging Deed in accordance with clause 7.3 (Replacement Senior Lenders) of the Security Agent and Hedging Deed; and
         2. in relation to an Replacement Senior Lender which is not a Senior Lender immediately prior to the relevant accession, the Intercreditor Agent being satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to accession of the Replacement Senior Lender.
      2. In no event shall a Replacement Senior Lender become, or be deemed to be, a Participant.
      3. The Intercreditor Agent will amend Schedule 1 (The Original Senior Lenders) as necessary to reflect any Replacement Senior Loan and to delete reference to any Senior Loan Agreement or Senior Loan Facility replaced in its entirety.
  1. Finance Parties’ rights and obligations
     + 1. The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
       2. The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower is a separate and independent debt, in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Senior Loan or any other amount owed by the Borrower which relates to a Finance Party's participation in a Senior Loan Facility or its role under a Finance Document (including any such amount payable to the Intercreditor Agent on its behalf) is a debt owing to that Finance Party by the Borrower.
       3. Subject to the terms of the Intercreditor Deed, a Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.
  2. Purpose
     + 1. The Borrower shall apply all amounts borrowed by it under the Term Loan Facilities towards payment of Project Costs.
       2. The Borrower shall apply all amounts borrowed by it under the Contingent Loan Facilities to cover Variations under paragraph (b) of clause 44.2 (Variation Procedure) of the Project Agreement in relation to the increase in costs of the Works, in an aggregate amount of up to four per cent. (4%) of the EPC Contract Sum.
       3. The Borrower shall comply with the requirements of Clause 17.15 (Sanctions and OFAC compliance) in relation to the use of the proceeds of the Senior Loans.
  3. Monitoring

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

1. Conditions Precedent
   1. Financial Close documents
      * 1. The Borrower may not deliver a Request under any Senior Loan Facility (except to OPIC), unless:
           1. the Intercreditor Agent (acting on the instructions of the Instructing Creditors) has notified each Senior Lender that it is satisfied that each of the documents and other evidence set out in Part A (Common Financial Close Documents) of Schedule 2 (*Conditions Precedent*) either:

has been delivered to the Intercreditor Agent in form and substance satisfactory to it; or

has been waived by the Intercreditor Agent (acting on the instructions of the Instructing Creditors) on such conditions as it may specify;

* + - * 1. EBRD has notified the Intercreditor Agent that it is satisfied that each of the documents and other evidence set out in Part B (EBRD Financial Close Documents) of Schedule 2 (Conditions Precedent) either:

has been delivered to EBRD in form and substance satisfactory to it; or

has been waived by EBRD on such conditions as it may specify;

* + - * 1. OPIC has notified the Intercreditor Agent that it is satisfied that each of the documents and other evidence set out in Part C (OPIC Financial Close Documents) of Schedule 2 (Conditions Precedent) either:

has been delivered to OPIC in form and substance satisfactory to it; or

has been waived by OPIC on such conditions as it may specify;

* + - * 1. the Intercreditor Agent is satisfied (in its own discretion) that the document set out in Part D (*Agent Financial Close Document*) of Schedule 2 (*Conditions Precedent*) either:

has been delivered to the Intercreditor Agent in form and substance satisfactory to it; or

has been waived by the Intercreditor Agent on such conditions as it may specify.

* + - 1. No Senior Lender will be obliged to make available such Senior Loan Facility (or any part thereof) unless all notifications referred to under paragraph (a) above are given.
      2. The Intercreditor Agent shall notify the Original Senior Lenders and the Borrower upon being satisfied that all conditions precedent referred to under paragraph (a) above are satisfied or waived.
      3. The Intercreditor Agent shall deliver any notice under paragraph (c) above promptly upon being satisfied of the matters referred to in paragraph (a) above.
      4. Other than to the extent that the Original Senior Lenders notify the Intercreditor Agent in writing to the contrary before the Intercreditor Agent gives the notification to the Borrower described in paragraph (c) above, the Original Senior Lenders authorise (but do not require) the Intercreditor Agent to give that notification. The Intercreditor Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification (unless it is caused by its gross negligence or wilful misconduct).
  1. Further conditions precedent

A Senior Lender will only be obliged to make a Senior Loan under the relevant Senior Loan Agreement if the Intercreditor Agent has determined (acting on the instructions of the Instructing Creditors) that each of the conditions precedent set out below has been satisfied or waived:

* + - 1. **Requests**: Requests for each relevant Senior Loan Facility have been duly completed and delivered in accordance with this Agreement and the relevant Senior Loan Agreement;
      2. ***Pro Rata* Drawdown**: the amount of Senior Loans requested by the Borrower are such as to ensure that Utilisations under the Term Loan Facilities will be made *pro rata* across the Term Loan Facilities and the Utilisations under the Contingent Loan Facilities will be made *pro rata* across the Contingent Loan Facilities;
      3. **No Default**: on the date of the relevant Requests and on the Utilisation Date, no Default is continuing or would result from the proposed Utilisations;
      4. **Repeating Representations**: on the date of the relevant Requests and on the Utilisation Date, the Repeating Representations to be made by the Borrower are true in all material respects;
      5. **Use of Proceeds**: the Borrower has certified to the Intercreditor Agent that:
         1. the Utilisation is required to meet Project Costs; and
         2. the proceeds of the Senior Loans will be applied in compliance with Clause 17.1 (Use of proceeds);
      6. **Required Equity Contributions**: the Borrower has requested the advance of a Required Equity Contribution pursuant to the Equity Support and Subordination Deed (to the extent necessary) and, no later than eight (8) Business Days’ prior to the Utilisation Date, has delivered evidence (which shall be satisfactory to the Intercreditor Agent in form and substance (acting on the instructions of the Instructing Creditors)) that such Required Equity Contribution has been paid to the Borrower so that as at the date of each Request (after taking into account the proposed Utilisations) the Debt to Equity Ratio is not greater than 80:20;
      7. **Construction Reports**: receipt of the most recent Construction Report and Construction Monitoring Report confirming that the Borrower is in material compliance with the Programme;
      8. **Adviser’s Certificates**: in relation to a Utilisation which is being drawn to pay Construction Costs, the Intercreditor Agent has received a certificate from the Lenders’ Technical & Environmental Adviser to the effect that:
         1. the Utilisation is in line with the latest Construction Report and Construction Monitoring Report and the then-current Construction Budget;
         2. the Borrower is not currently entitled to terminate the EPC Contract pursuant to clause 47.1(b)(i) to (iii) of the EPC Contract;
      9. **Environmental**: the Borrower has certified to the Intercreditor Agent under the relevant Request that it complies with Environmental and Social Requirements and that all deliverables required under the ESAP have been delivered, or in the case of a Request to OPIC, will be delivered, to the Intercreditor Agent within the deadlines set out therein;
      10. **Litigation**: the Intercreditor Agent has received a certificate signed by an Authorised Representative of the Borrower, dated as of a date falling no earlier than ten (10) Business Days prior to the Utilisation Date, certifying that the Council of State has not issued a decision for the cancellation of the Tender under the TMA Lawsuit or no stay of execution decision has been issued under the TMA Lawsuit.
      11. **Availability notices**: the Intercreditor Agent has received confirmations:
          1. from each Senior Lender, that the further conditions precedent to the Utilisation under their respective Senior Loan Agreements are satisfied or waived in accordance with their respective Senior Loan Agreements;
          2. from OPIC, that:

suitable arrangements have been made for funding such Utilisation by OPIC in accordance with the OPIC Funding Documents, which arrangements and OPIC Funding Documents shall be satisfactory to OPIC in form and substance, including, without limitation, the satisfaction by the Borrower of all conditions precedent to the obligations of any other party to the OPIC Funding Documents and performance by the Borrower of all other obligations on its part to be performed prior to the making of such Utilisation pursuant to any Transaction Document;

the Borrower has furnished OPIC with an executed OPIC Note issued in connection with the Utilisation, dated the Utilisation Date;

* + - 1. **No funding gap**: there is no Funding Shortfall;
      2. **No Material Adverse Effect**: no event or circumstance the consequences of which has a Material Adverse Effect has occurred and is continuing;
      3. **Utilisation of Contingent Loan Facilities**: In respect of Utilisation under the Contingent Loan Facilities only:
         1. issuance of a Variation Enquiry and approval by the Administration in respect of cost increases in the Works falling under paragraph (b) of clause 44.2 (Variation Procedure) of the Project Agreement;
         2. delivery of evidence by the Borrower to the Intercreditor Agent of the amounts in which the Availability Payments will be adjusted in accordance with paragraph (b) (Variation Procedure) of clause 44.2 of the Project Agreement and schedule 22 (Variation Procedure) of the Project Agreement;
         3. delivery by the Borrower to the Intercreditor Agent of an updated Financial Model, demonstrating FADSCR and LLCR as seen in the Base Case (using the base case macro-economic assumptions from the Original Financial Model) after taking into account the relevant Variation and delivered and accepted by the Administration;
         4. delivery by the Borrower to the Intercreditor Agent of an updated Maximum Drawdown Profile, based on the Financial Model referred to under sub paragraph (iii) above, in form and substance satisfactory to the Intercreditor Agent (acting on the instructions of the Instructing Creditors); and
         5. a report and confirmation by the Lenders’ Technical & Environmental Adviser in respect of the relevant Variation.
  1. Notice of non-availability

Each Senior Lender must give prompt written notice to the Borrower and the Intercreditor Agent if:

* + - 1. it reasonably believes that one or more conditions precedent to the obligations to make Senior Loans under the relevant Senior Loan Agreement will not be satisfied or waived;
      2. the obligation to make Senior Loans under the relevant Senior Loan Agreement is suspended for any reason other than the occurrence of a Default; or
      3. the Senior Lenders under the relevant Senior Loan Agreement reinstate their obligation to make Senior Loans,

provided that any failure by any Senior Lender to give such notice will not affect the rights or remedies of the relevant Senior Lenders under the Finance Documents.

1. Utilisation
   1. Giving of Requests
      * 1. The Borrower may borrow a Senior Loan by delivery of a duly completed Request, which shall be sent to each Senior Lender, with a copy to the Intercreditor Agent, and be in the form set out in Part D (Form of Request) of Schedule 4 (*Forms*) (a ***Request***).
        2. Unless the Intercreditor Agent otherwise agrees, the latest time for receipt by the Intercreditor Agent of a duly completed Request is:
           1. for OPIC, 15:00 twenty (20) Business Days’; and
           2. for any other Senior Lender, 10:00 seven (7) Business Days’,

before the proposed Utilisation Date.

* 1. Completion of Requests
     + 1. Each Request is irrevocable and will not be regarded as having been duly completed unless:
          1. the proposed Utilisation Date is a Business Day within the Availability Period;
          2. the currency and amount of the Utilisation comply with Clause 4.3 (Currency and amount);
          3. the proposed Interest Period complies with Clause 7 (Interest); and
          4. such Request is in respect of the Term Loan Facilities or the Contingent Loan Facilities (but not both).
       2. Only one (1) Senior Loan under each Senior Loan Facility may be requested in each Request.
  2. Currency and amount
     + 1. The currency specified in a Request must be:
          1. in relation to any Senior Loan except for the OPIC Loan, Euro; and
          2. in relation to the OPIC Loan, Dollars.
       2. The aggregate amount of each proposed Senior Loan under each Senior Loan Facility must be an amount which:
          1. will not result in the Maximum Drawdown Profile being exceeded;
          2. is not more than the Available Facility under the Term Loan Facilities or the Contingent Loan Facilities (as the case may be);
          3. is at, a minimum of:

for the EBRD Loan, seven hundred thousand Euros (EUR 700,000) except that in relation to one Utilisation, the minimum amount shall be five hundred thousand Euros (EUR 500,000);

for the EDC Loan, one million seven hundred fifty thousand Euros (EUR 1,750,000) except that in relation to one Utilisation, the minimum amount shall be one million three hundred thousand Euros (EUR 1,300,000);

for the OPIC Loan, ten million Dollars (USD 10,000,000), except that in relation to up to five (5) Utilisations, the minimum amount shall be the lowest amount of a Utilisation for the OPIC Loan Facility shown by the Original Financial Model, provided that such amount shall exceed five million Dollars (USD 5,000,000),

or, in each case, if less, the Available Facility under the Term Loan Facilities or the Contingent Loan Facilities (as the case may be).

* + - 1. Under each Request, the aggregate amount requested under each Senior Loan Facility must be allocated *pro rata* with respect to the undrawn Commitments under that Senior Loan Facility.
  1. Advance of Senior Loans
     + 1. If the conditions set out in this Agreement and the relevant Senior Loan Agreement have been met, each Senior Lender shall make its participation in each Senior Loan under the relevant Senior Loan Agreement available by the relevant Utilisation Date in accordance with this Agreement and relevant Senior Loan Agreement.
       2. The amount of each Senior Lender’s participation in each Senior Loan will be determined in accordance with the relevant Senior Loan Agreement.
  2. Maximum number of Utilisations

No Senior Lender shall be obliged to disburse more than one (1) Utilisation in any ninety (90) day period under the relevant Senior Loan Facility.

1. Repayment
   1. Repayment of Senior Loans
      * 1. The Borrower shall repay each Senior Loan quarterly on each Repayment Date beginning on the First Repayment Date in accordance with this Agreement and the relevant Senior Loan Agreement.
        2. The amount of principal repayable on each Repayment Date is the aggregate of the Repayment Instalments due on that date under each Senior Loan Agreement.
   2. Re-borrowing

The Borrower may not reborrow any part of a Senior Loan Facility which is repaid.

1. Prepayment and Cancellation
   1. Illegality
      * 1. If, in any applicable jurisdiction:
           1. it becomes unlawful (including without limitation, due to any Economic Sanctions Law), for any Senior Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Senior Loan; or
           2. it becomes unlawful for any Affiliate of a Senior Lender to do so;

that Senior Lender shall promptly notify the Intercreditor Agent and the Borrower upon becoming aware of that event.

* + - 1. EBRD shall notify the Borrower and the Intercreditor Agent promptly if it is notified by a Participant that it is unlawful in any applicable jurisdiction for that Participant to perform any of its obligations under the relevant Participation Agreement or to fund or maintain its Participation in the applicable Senior Loan.
      2. After a notification under paragraph (a) above is made:
         1. the Available Commitments of that Senior Lender under the Senior Loan Facilities will be immediately cancelled; and
         2. to the extent that Senior Lender’s participation has not been transferred pursuant to paragraph (d) of Clause 6.8 (Right of replacement or repayment and cancellation in relation to a single Senior Lender), the Borrower shall repay that Senior Lender’s participation in the Senior Loans made to the Borrower on the date specified in paragraph (e) below.
      3. After a notification under paragraph (b) above is made:
         1. the Available Commitments of EBRD under the EBRD Loan Facility will be immediately cancelled in an amount equal to the commitment of the Participant affected by the illegality under the relevant Participation Agreement; and
         2. the Borrower shall repay or prepay an amount of the applicable EBRD Loan equal to the share of the Participant affected by the illegality on the date specified in paragraph (e) below.
      4. The date for repayment or prepayment of a Senior Loan (or, as applicable, a Participant’s share in a Senior Loan) under this Clause 6.1 will be the earlier of:
         1. the Interest Payment Date immediately following such notification to the Borrower; and
         2. the date specified by the Senior Lender in the notice delivered to the Intercreditor Agent and the Borrower (being no earlier than the last day of any applicable grace period permitted by law).
  1. Mandatory prepayment – Termination Compensation

If the Borrower receives any Termination Compensation from the Administration, the Borrower shall immediately:

* + - 1. notify the Intercreditor Agent; and
      2. apply the Termination Compensation towards repayment of the Senior Loans.
  1. Mandatory prepayment – Insurance Proceeds
     + 1. Upon receipt of Insurance Proceeds in respect of physical loss or damage in an amount not exceeding two million, five hundred thousand Euros (EUR 2,500,000), the Borrower shall promptly notify the Intercreditor Agent and:
          1. if those Insurance Proceeds are to be applied for repair or reinstatement of the Project or replacement of the relevant assets, apply any surplus Insurance Proceeds which are in excess of one hundred thousand Euros (EUR 100,000) and are not applied in such repair or reinstatement and which are not required to be repaid to the insurers, towards the repayment of the Senior Loans; or
          2. if the Borrower determines, in compliance with the Project Agreement and with the approval of the Instructing Creditors, not to repair or reinstate the Project or to replace the relevant assets and the Insurance Proceeds exceed one hundred thousand Euros (EUR 100,000), apply those Insurance Proceeds towards repayment of the Senior Loans,

on the Interest Payment Date immediately following (A) in the case of (i) above, the date on which the Borrower has completed replacement or reinstatement of the relevant asset or (B) in the case of (ii) above, the approval by the Instructing Creditors of the Borrower’s decision not to reinstate the relevant assets.

* + - 1. Upon receipt of Insurance Proceeds in respect of physical loss or damage in an amount exceeding two million, five hundred thousand Euros (EUR 2,500,000), the Borrower shall immediately notify the Intercreditor Agent and unless the Borrower is required by clause 8.13 of the Funders’ Direct Agreement to apply such Insurance Proceeds in repair and reinstatement, the Borrower shall apply those Insurance Proceeds towards repayment of the Senior Loans on the Interest Payment Date immediately following receipt of such Insurance Proceeds.
  1. Mandatory prepayment – compensation

If, at any time, the Borrower receives any compensation in respect of the partial or total nationalisation, seizure, confiscation, expropriation, or compulsory purchase of all or any part of its assets or any sums in respect of the revocation, refusal or suspension of any Authorisation, the Borrower shall:

* + - 1. promptly notify the Intercreditor Agent; and
      2. if such compensation exceeds one hundred thousand Euros (EUR 100,000), immediately following receipt of such compensation, apply the compensation towards prepayment of the Senior Loans.
  1. Mandatory prepayment – Permitted Disposal

If, at any time, the Borrower received any proceeds from a Permitted Disposal in an amount greater than five million Euros (EUR 5,000,000) in an aggregate in any calendar year, and has not used the proceeds above such threshold to replace such assets as permitted under the Finance Documents, the Borrower shall:

* + - 1. notify the Intercreditor Agent; and
      2. on the Interest Payment Date immediately following receipt of such proceeds, apply the proceeds above the stated threshold towards prepayment of Senior Loans.
  1. Mandatory prepayment – Early completion

If the Actual Completion Date precedes the Scheduled Completion Date and the Borrower:

* + - 1. receives one (1) full Availability Payment prior to the Scheduled Completion Date, the Borrower may apply an amount up to the first full Availability Payment received by the Borrower following its receipt of the Internally Generated Cash and after applying the same towards funding the DSRA in accordance with the Project Accounts Agreement, as the Early Completion Bonus on the Early Completion Bonus Release Date;
      2. receives two (2) full Availability Payments prior to the Scheduled Completion Date, the Borrower:
         1. may apply an amount up to the first full Availability Payment received by the Borrower following its receipt of the Internally Generated Cash in accordance with paragraph (a) above; and
         2. shall apply the second full Availability Payment received by the Borrower following its receipt of the Internally Generated Cash towards prepayment of Senior Loans, on the Interest Payment Date immediately following the receipt of such Availability Payment; or
      3. receives more than two full Availability Payments prior to the Scheduled Completion Date, the Borrower shall:
         1. apply the first two full Availability Payments received by the Borrower following its receipt of the Internally Generated Cash as per paragraph (b) above, and
         2. apply fifty per cent. (50%) of any subsequent Availability Payment (up to the amount of the Availability Payment received by the Borrower prior to the Scheduled Completion Date) towards prepayment of Senior Loans, on the Interest Payment Date immediately following the receipt of such Availability Payments.
  1. Voluntary prepayment of Senior Loans
     + 1. Subject to Clauses 6.13 (Break Costs) and 6.14 (Restrictions), the Borrower may prepay the whole or any part of the Senior Loans if:
          1. subject to paragraph (v) below, the Actual Completion Date has occurred;
          2. it gives the Intercreditor Agent not less than fifteen (15) Business Days’ (or such shorter period as the Instructing Creditors may agree) prior written notice;
          3. the prepayment is in a total amount as is necessary to ensure that, following the application of such prepayment *amount pro rata* among Senior Loan Facilities under Clause 6.12 (*Order of application*), each FI Lender receives a minimum amount of EUR 2,500,000 (and for OPIC, the dollar equivalent of such Euro amount being determined on the basis of the market rate for exchange at the time of prepayment);
          4. such voluntary prepayment is in compliance with schedule 29 (*Refinancing*) of the Project Agreement; and
          5. in case of any prepayment prior to the Actual Completion Date, the Intercreditor Agent is satisfied (acting on the instructions of the Instructing Creditors, having consulted the Lenders’ Technical & Environmental Adviser) that a Funding Shortfall will not occur as a result of the prepayment and the Borrower will be able to achieve the completion of the Project in accordance with the Transaction Documents by the Scheduled Completion Date.
       2. Any prepayment under this Clause 6.7 (Voluntary prepayment of Senior Loans) shall:
          1. if made to OPIC, be made to the OPIC Prepayment Account, in accordance with Clause 6.14(d) (Restrictions) at the end of the notice period referred to in Clause 6.7(a)(ii) (Voluntary prepayment of Senior Loans) above;
          2. if made to any Senior Lender except for OPIC, be made to such Senior Lender at the end of the notice period referred to in Clause 6.7(a)(ii) (Voluntary prepayment of Senior Loans) above; and
          3. in either case, be made together with a fee (the ***Prepayment Fee***), calculated as a percentage of the principal amount of each Senior Loan prepaid, in accordance with the following schedule:

|  |  |
| --- | --- |
| ***Years following Financial Close*** | ***Prepayment Fee*** |
| Year 1-3 | 1.5% |
| Year 4-8 | 0.5% |
| Year 9 and thereafter | None |

* 1. Right of replacement or repayment and cancellation in relation to a single Senior Lender
     + 1. Except to the extent otherwise provided in a Senior Loan Agreement, if:
          1. any sum payable to any Senior Lender by the Borrower is required to be increased under paragraph (c) of Clause 10.2 (Tax gross-up); or
          2. any Senior Lender claims indemnification from the Borrower under Clause 10.3 (Tax indemnity), Clause 11.1 (Increased costs) or any equivalent provision in a Senior Loan Agreement,

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Intercreditor Agent notice of:

cancellation of the Commitment(s) of that Senior Lender and of its intention to procure the repayment of that Senior Lender's participation in the Senior Loans (or, if the circumstances set out in paragraph (a) above apply in respect of a Participant, an amount equal to that Participant's share of the relevant Senior Loan); or

its intention to replace that Senior Lender in accordance with paragraph (d) below.

* + - 1. On receipt of a notice of cancellation referred to in paragraph (a) above:
         1. the Borrower shall repay or prepay that Senior Lender's Senior Loans (or, if the circumstances set out in paragraph (a) above apply in respect of a Participant, an amount equal to that Participant's share in the applicable Senior Loans) on the date specified in paragraph (c) below; and
         2. the Commitments of that Senior Lender (or, if the circumstances set out in paragraph (a) above apply in respect of a Participant, an amount of the Commitment of the relevant Senior Lender equal to that Participant's share in the applicable Senior Loan Facility) will be immediately cancelled.
      2. The date for repayment or prepayment of a Senior Lender's Senior Loan will be the next Interest Payment Date for that Senior Loan or, if earlier, the date specified by the Borrower in its notification.
      3. If:
         1. any of the circumstances set out in paragraph (a) above apply to a Senior Lender; or
         2. the Borrower becomes obliged to pay any amount in accordance with Clause 6.1 (Illegality),

the Borrower may, in the circumstances set out in paragraph (a) above and subject to paragraphs (e), (f) and (g) below, on fifteen (15) Business Days’ prior notice to the Intercreditor Agent and that Senior Lender, replace that Senior Lender by requiring that Senior Lender to (and, to the extent permitted by law, that Senior Lender shall) assign pursuant to Clause 21 (Changes to the Senior Lenders) all (and not part only) of its rights and obligations under this Agreement to a Senior Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the assigning Senior Lender in accordance with Clause 21 (Changes to the Senior Lenders) for a purchase price in cash payable at the time of the assignment in an amount equal to the outstanding principal amount of such Senior Lender’s participation in the outstanding Senior Loans and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

* + - 1. The replacement of a Senior Lender pursuant to paragraph (d) above shall be subject to the following conditions:
         1. the Borrower shall have no right to replace an Agent;
         2. neither the Intercreditor Agent nor any Senior Lender shall have any obligation to find a replacement Senior Lender;
         3. in no event shall the Senior Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Senior Lender pursuant to the Finance Documents; and
         4. the Senior Lender shall only be obliged to assign its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to that assignment.
      2. A Senior Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Intercreditor Agent and the Borrower when it is satisfied that it has complied with those checks.
      3. This Clause 6.8 (Right of replacement or repayment and cancellation in relation to a single Senior Lender) shall not apply in respect of any FI Lender or any of their respective Senior Loan Facilities.
  1. Right of cancellation in relation to a Defaulting Lender
     + 1. Subject to paragraph (d) below, if any Senior Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Senior Lender continues to be a Defaulting Lender, give the Intercreditor Agent five (5) Business Days’ notice of cancellation of the Available Commitments of that Senior Lender under the Senior Loan Facilities;
       2. Upon the Borrower’s notice under paragraph (a) above becoming effective, the Available Commitments of the Defaulting Lender shall immediately be reduced to zero;
       3. The Intercreditor Agent shall as soon as practicable after receipt of a notice referred to in under paragraph (a) above, notify all the other Senior Lenders;
       4. This Clause 6.9 (Right of cancellation in relation to a Defaulting Lender) shall not apply in respect of any FI Lender or any of their respective Senior Loan Facilities.
  2. Automatic cancellation

Each undrawn Commitment of each Senior Lender under each Senior Loan Facility will be automatically cancelled:

* + - 1. on the date that falls twelve (12) Months after the Signing Date, if Financial Close does not occur on or before such date;
      2. upon termination of the Project Agreement; or
      3. at 17:00, on the last day of the Availability Period.
  1. Voluntary cancellation

The Borrower may, at any time after Financial Close, if it gives the Intercreditor Agent not less than fifteen (15) Business Days’ (or such shorter period as the Instructing Creditors may agree) prior notice, cancel the whole or any part of the Available Commitments, if:

* + - 1. on the date of the notice from the Borrower and on the date of cancellation, no Event of Default is continuing or would result from the cancellation;
      2. the Intercreditor Agent is satisfied (acting on the instructions of the Instructing Creditors, having consulted the Lenders’ Technical & Environmental Adviser) that a Funding Shortfall will not occur as a result of the cancellation and the Borrower will be able to achieve the completion of the Project in accordance with the Transaction Documents by the Scheduled Completion Date; and
      3. the amount of the cancellation (if in part) is not less than two million five hundred thousand Euros (EUR 2,500,000) and an integral multiple of five hundred thousand Euros (EUR 500,000).
  1. Order of application

Any prepayment or cancellation under this Clause 6 (Prepayment and Cancellation) (other than prepayments or cancellations under Clause 6.1 (Illegality), Clause 6.8 (Right of replacement or repayment and cancellation in relation to a single Senior Lender) or Clause 6.9 (Right of cancellation in relation to a Defaulting Lender)) shall:

* + - 1. be applied *pro rata* across the Senior Loan Facilities;
      2. be applied *pro rata* against the Commitments or Senior Loans (as applicable) of each Senior Lender under the relevant Senior Loan Facility; and
      3. in the case of a prepayment, satisfy the obligations under Clause 5 (Repayment) in inverse order of maturity.
  1. Break Costs
     + 1. The Borrower shall, within ten (10) Business Days’ of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Senior Loan or Unpaid Sum being paid on a day other than the last day of an Interest Period or any Break Costs otherwise payable under any Senior Loan Agreement.
       2. Each Senior Lender shall, as soon as reasonably practicable after a demand by the Intercreditor Agent, provide to the Intercreditor Agent and the Borrower a certificate confirming the amount of its Break Costs for any period in which they accrue.
  2. Restrictions
     + 1. Any notice of cancellation or prepayment given by any Party under this Clause 6 (Prepayment and Cancellation) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
       2. Any prepayment under this Agreement or any Senior Loan Agreement shall be made together with accrued interest on the amount prepaid, subject to any Break Costs and Prepayment Fee, if applicable, payable under this Clause 6 (Prepayment and Cancellation), without premium or penalty.
       3. Any prepayment under this Agreement or any Senior Loan Agreement shall be made together with payment of the costs of termination of such Hedging Arrangements (or part thereof) as is necessary to ensure that the Borrower is in compliance with the Hedging Policy immediately following such prepayment.
       4. Any prepayment to OPIC under this Agreement shall be made to the OPIC Prepayment Account, in trust for, or otherwise for the exclusive benefit of OPIC, and be held in such escrow account for a period of thirty (30) Business Days, and thereafter be paid to OPIC.
       5. The Borrower may not reborrow any part of a Senior Loan which is prepaid.
       6. The Borrower shall not repay or prepay all or any part of the Senior Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement or any Senior Loan Agreement.
       7. No amount of the Total Commitments cancelled under this Agreement or any Senior Loan Agreement may be subsequently reinstated.
       8. If the Intercreditor Agent receives a notice under this Clause 6 (Prepayment and Cancellation) it shall promptly forward a copy of that notice to either the Borrower or the affected Senior Lender, as appropriate.
       9. If all or part of any Senior Lender’s participation in a Senior Loan is repaid or prepaid and is not available for redrawing, an amount of that Senior Lender’s Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

1. Interest
   1. Payment of interest

The Borrower shall pay accrued interest on each Senior Loan in accordance with the terms of the relevant Senior Loan Agreement pursuant to which that Senior Loan was made.

* 1. Notification of rates of interest
     + 1. Each Senior Lender shall promptly notify the Borrower of each determination of EURIBOR and Three-Month LIBOR (as applicable) and the rate of interest under the relevant Senior Loan Agreement.
       2. The Borrower shall, promptly upon its receipt of the notifications under paragraph (a) above, notify the Intercreditor Agent and each other Senior Lender of the determination of the rates of interest under the Senior Loan Agreements.
  2. Default interest
     + 1. Interest on overdue amounts under each Senior Loan Agreement is payable at the default interest rate specified in that Senior Loan Agreement.
       2. Subject to paragraph (a) above, if the Borrower fails to pay any other amount payable by it under a Finance Document on its due date, interest shall accrue on that Unpaid Sum from the due date up to the date of actual payment (both before and after judgment) at a rate which is two per cent. (2%) higher than the rate applicable to that Unpaid Sum.
  3. Interest Periods
     + 1. Each Senior Loan has successive Interest Periods.
       2. Subject to paragraph (c) below, each Interest Period for a Senior Loan will start on the date of the relevant Utilisation and end on the next Interest Payment Date and each successive period of three (3) Months thereafter starting on an Interest Payment Date and ending on the next Interest Payment Date.
       3. If a Utilisation is made less than fifteen (15) days before the next Interest Payment Date, the first Interest Period for the relevant Senior Loan will start on the date of the Utilisation and end on the Interest Payment Date following the next Interest Payment Date.
  4. Consolidation of Senior Loans

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

1. Changes to the Calculation of Interest
   1. Absence of quotations

Subject to Clause 8.4 (FI Lender exception) below and subject to Clause 8.2 (Market disruption), if EURIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

* 1. Market disruption
     + 1. In this Agreement, ***Market Disruption Event*** means:
          1. at or about noon on the Quotation Day for the relevant Interest Period EURIBOR is to be determined by reference to the Reference Banks and none of the Reference Banks supplies a rate to the Intercreditor Agent to determine EURIBOR for the relevant currency and Interest Period; or
          2. before 17:00 on the Quotation Day for the relevant Interest Period, the Intercreditor Agent receives notifications from a Senior Lender or Senior Lenders (whose participations in a Senior Loan exceed fifty-one per cent. (51%) of that Senior Loan) that the cost to it of funding its participation in that Senior Loan from whatever source it may reasonably select would be in excess of EURIBOR.
       2. If a Market Disruption Event occurs in relation to a Senior Loan for any Interest Period, then the rate of interest on each Senior Lender’s share of that Senior Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
          1. the Applicable Margin;
          2. the rate notified to the Intercreditor Agent by that Senior Lender as soon as practicable and in any event by close of business on the date falling three (3) Business Days’ after the Quotation Day (or, if earlier, on the date falling two (2) Business Days’ prior to the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to that Senior Lender of funding its participation in that Senior Loan from whatever source it may reasonably select; and
       3. If:
          1. the percentage rate per annum notified by a Senior Lender pursuant to paragraph (b)(ii) above is less than EURIBOR; or
          2. a Senior Lender has not notified the Intercreditor Agent of a percentage rate per annum pursuant to paragraph (b)(ii) above,

the cost to that Senior Lender of funding its participation in that Senior Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) above, to be EURIBOR.

* 1. Alternative basis of interest or funding
     + 1. If a Market Disruption Event occurs in relation to a Senior Loan Facility, and the Intercreditor Agent or the Borrower so requires, the Intercreditor Agent and the Borrower shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest.
       2. Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all Senior Lenders to that relevant Senior Loan Facility and the Borrower, be binding on all parties to the relevant Senior Loan Agreement.
  2. FI Lender exception

This Clause 8 (Changes to the Calculation of Interest) shall not apply in respect of the FI Lenders or their respective Senior Loan Facilities and the provisions of the relevant Senior Loan Agreement shall apply instead.

1. Fees
   1. Senior Loan Facility fees

The Borrower shall pay to each Senior Lender fees, charges and commissions as indicated in the relevant Senior Loan Agreement or in the relevant Fee Letter(s).

* 1. Agency fees

The Borrower shall pay to each Agent a fee for acting as such in accordance with the relevant Fee Letter.

1. Tax Gross Up and Indemnities

The terms of this Clause 10 shall only apply to the extent not otherwise provided in an individual Senior Loan Agreement.

* 1. Definitions
     + 1. In this Agreement:

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

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

***Tax Deduction*** means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

***Tax Payment*** means either the increase in a payment made by the Borrower to a Finance Party under Clause 10.2 or a payment under Clause 10.3.

* + - 1. Unless a contrary indication appears, in this Clause 10 (Tax Gross Up and Indemnities) a reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.
  1. Tax gross-up
     + 1. The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
       2. The Borrower shall promptly upon becoming aware that the Borrower must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Intercreditor Agent accordingly. Similarly, a Senior Lender shall notify the Intercreditor Agent on becoming so aware in respect of a payment payable to that Senior Lender. If the Intercreditor Agent receives such notification from a Senior Lender it shall notify the Borrower.
       3. If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
       4. If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
       5. Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Intercreditor Agent for the Finance Party entitled to the payment, evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
  2. Tax indemnity
     + 1. The Borrower shall (within five (5) Business Days of demand by the Intercreditor Agent) pay to a Protected Party (or to EBRD in the case of a Participant) an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
       2. Paragraph (a) above shall not apply:
          1. with respect to any Tax assessed on a Finance Party:

under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or

under the law of the jurisdiction in which that Finance Party’s Facility Office is located in respect of amounts received or receivable in that jurisdiction,

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

* + - * 1. to the extent a loss, liability or cost is compensated for by an increased payment under Clause 10.2 (*Tax gross-up*) or relates to a FATCA Deduction required to be made by a Party; or
        2. with respect to a Senior Loan made under the EBRD Loan Agreement only and in respect of which a Participation has been granted, to the extent that any such Tax directly resulted from a Participant being a Turkey Resident Lender.
      1. A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Intercreditor Agent of the event which will give, or has given, rise to the claim, following which the Intercreditor Agent shall notify the Borrower.
      2. A Protected Party shall, on receiving a payment from the Borrower under this Clause 10.3 (Tax indemnity), notify the Intercreditor Agent.
  1. Tax Credit
     + 1. If the Borrower makes a Tax Payment and the relevant Finance Party determines that:
          1. a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
          2. that Finance Party has obtained and utilised that Tax Credit,

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

* + - 1. This Clause 10.4 (Tax Credit) shall not apply in respect of any FI Lenders or their respective Senior Loan Facilities.
  1. Stamp taxes

The Borrower shall pay and, within five (5) Business Days’ of demand, indemnify each Finance Party against any cost, loss or liability that any Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document other than in the case of such Taxes arising due to an assignment by a Senior Lender.

* 1. VAT
     + 1. All consideration or other amounts payable or expressed to be payable under a Finance Document by the Borrower to a Finance Party shall be deemed to be exclusive of any VAT. If VAT is chargeable the Borrower shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT within fifteen (15) Business Days of demand by the Intercreditor Agent, provided such Finance Party provides the Borrower with a valid VAT invoice.
       2. Where a Finance Document requires the Borrower to reimburse a Finance Party for any costs or expenses, the Borrower shall also at the same time pay and indemnify that Finance Party against all VAT incurred by that Finance Party in respect of the costs or expenses to the extent that that Finance Party reasonably determines that it is entitled to credit or repayment from the relevant tax authority in respect of the VAT.
  2. BITT and RUSF withholding

The Borrower shall pay and, within fifteen (15) Business Days of demand by the Intercreditor Agent, indemnify each Finance Party against any costs, loss or liability that such Finance Party incurs in relation to BITT or RUSF and other similar Taxes and any other money payable in respect of any Finance Document together with any interest, default interest or penalty accruing thereon (if applicable).

* 1. FATCA Information
     + 1. Subject to paragraph (c) below, each Party (except for EBRD) shall, within ten (10) Business Days’ of a reasonable request by another Party:
          1. confirm to that other Party whether it is:

a FATCA Exempt Party; or

not a FATCA Exempt Party;

* + - * 1. supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party’s compliance with FATCA;
        2. supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party’s compliance with any other law, regulation, or exchange of information regime.
      1. If a Party confirms to another Party pursuant to paragraph (a)(iii) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
      2. Paragraph (a)(iii) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
         1. any law or regulation;
         2. any fiduciary duty; or
         3. any duty of confidentiality.
      3. If a Party (except for EBRD) fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
  1. FATCA Deduction
     + 1. Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
       2. Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Intercreditor Agent and the Intercreditor Agent shall notify the other Finance Parties.

1. Increased Costs

The terms of this Clause 11 shall only apply to the extent not otherwise provided in an individual Senior Loan Agreement.

* 1. Increased costs
     + 1. Subject to Clause 11.3 (Exceptions) the Borrower shall, within five (5) Business Days of a demand by the Intercreditor Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of: 
          1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
          2. compliance with any law or regulation made after the Signing Date.
       2. In this Agreement, ***Increased Costs*** means:
          1. a reduction in the rate of return from a Senior Loan Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
          2. an additional or increased cost; or
          3. a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

* 1. Increased cost claims
     + 1. A Finance Party intending to make a claim pursuant to Clause 11.1 (Increased costs) shall notify the Intercreditor Agent of the event giving rise to the claim, following which the Intercreditor Agent shall promptly notify the Borrower.
       2. Each Finance Party shall, as soon as practicable after a demand by the Intercreditor Agent, provide a certificate confirming the amount of its Increased Costs.
  2. Exceptions

Clause 11.1 (Increased costs) does not apply to the extent any Increased Cost is:

* + - 1. attributable to a Tax Deduction required by law to be made by the Borrower;
      2. attributable to a FATCA Deduction required to be made by a Party;
      3. compensated for by Clause 10.3 (Tax indemnity) (or would have been compensated for under Clause 10.3 (Tax indemnity) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 10.3 (Tax indemnity) applied); or
      4. attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
  1. FI Lender exception

This Clause 11 (Increased Costs) shall not apply in respect of the FI Lenders or their respective Senior Loan Facilities and the provisions of the relevant Senior Loan Agreement shall apply instead.

1. Other Indemnities
   1. Currency indemnity
      * 1. If any sum due from the Borrower under the Finance Documents (a ***Sum***) is not paid in the currency in which such Sum has to be paid under the relevant Finance Document, or any order, judgment or award given or made in relation to a Sum has to be converted from the currency (the ***First Currency***) in which that Sum is payable into another currency (the ***Second Currency***) for the purpose of:
           1. making or filing a claim or proof against the Borrower; or
           2. obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within five (5) Business Days of demand, indemnify the Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of such Sum not having been paid in the currency in which it as required to be paid or the conversion including any discrepancy between:

* + - 1. the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
      2. the rate or rates of exchange available to that person at the time of its receipt of that Sum.
      3. The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.
  1. Other indemnities
     + 1. The Borrower shall, within five (5) Business Days of demand, indemnify any Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:
          1. the occurrence of any Event of Default;
          2. a failure by the Borrower to pay any amount due under a Finance Document on its due date;
          3. funding, or making arrangements to fund, its participation in a Senior Loan requested by the Borrower in a Request but not made by reason of the operation of any one or more of the provisions of this Agreement or the relevant Senior Loan Agreement (other than by reason of default or negligence by that Finance Party alone);
          4. a Senior Loan (or part of a Senior Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower;
          5. any Environmental Claim or any actual or alleged breach of any Environmental and Social Laws, Equator Principles, or Environmental and Social Requirements; or
          6. any inability to recover under any of the Insurances as a result of the non-disclosure of any material information by the Borrower or the non-compliance by the Borrower with any other provision of such Insurances.
       2. The Borrower shall within five (5) Business Days of demand indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any duly documented cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or employee of that Finance Party or Affiliate) arising out of or in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Project, unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 12.2 (Other indemnities) subject to Clause 1.9 (Third party rights) and the provisions of the Third Parties Act.
  2. Indemnity to the Intercreditor Agent
     + 1. The Borrower shall within five (5) Business Days of demand indemnify the Intercreditor Agent against any duly documented cost, loss or liability incurred by the Intercreditor Agent (acting reasonably) as a result of:
          1. investigating any event which it reasonably believes is a Default;
          2. acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
          3. instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.
       2. The Borrower shall indemnify the Intercreditor Agent within five (5) Business Days’ of demand, against any duly documented cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever)incurred by the Intercreditor Agent (otherwise than by reason of the Intercreditor Agent’s gross negligence or wilful misconduct) in acting as the Intercreditor Agent or exercising any authority conferred under, the Finance Documents.

1. Mitigation by the Finance Parties
   1. Mitigation
      * 1. Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 6.1 (Illegality), Clause 10 (Tax Gross Up and Indemnities) or Clause 11.1 (Increased costs) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office (if such Finance Party has another Affiliate or Facility Office).
        2. Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.
   2. Limitation of liability
      * 1. The Borrower shall within five (5) Business Days of demand indemnify each Finance Party for all duly documented costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 13.1 (Mitigation).
        2. A Finance Party is not obliged to take any steps under Clause 13.1 (Mitigation) if, in the opinion of that Finance Party (such Finance Party to act reasonably unless it is an FI Lender), to do so might be prejudicial to it.
2. Costs and Expenses
   1. Transaction expenses

The Borrower shall within five (5) Business Days of demand pay the Intercreditor Agent, the FI Arrangers and the Security Agent the amount of all duly documented costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any receiver or delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

* + - 1. the Project Security, this Agreement and any other documents referred to in this Agreement; and
      2. any other Finance Documents executed after the Signing Date.
  1. Amendment costs

If:

* + - 1. the Borrower requests an amendment, waiver or consent; or
      2. an amendment is required pursuant to Clause 25.9 (*Change of currency*),

the Borrower shall, within five (5) Business Days of demand, reimburse each of the Intercreditor Agent and the Security Agent for the amount of all duly documented costs and expenses (including legal fees) reasonably incurred by the Intercreditor Agent and the Security Agent (and, in the case of the Security Agent, by any receiver or delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

* 1. Enforcement costs

The Borrower shall, within five (5) Business Days of demand, pay to the Security Agent and each other Secured Creditor the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document and the Project Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Project Security or enforcing these rights, provided that, until an Enforcement Event has occurred, such costs and expenses shall be duly documented.

1. Representations

The Borrower makes the representations and warranties set out in this Clause 15 to each Finance Party on the Signing Date (except otherwise stated below in relation to representations and warranties made on Financial Close [or on the GE Share Subscription Date][[3]](#footnote-3)).

* 1. Status
     + 1. It is a joint stock corporation, duly incorporated and validly existing under the law of Turkey.
       2. It has the power to own its assets and carry on its business as it is now being conducted.
  2. Power and authority

It has power to:

* + - 1. enter into, deliver, and exercise its rights and perform and comply with its obligations under, each Transaction Document to which it is party and to carry out the transactions contemplated by that Transaction Document;
      2. create the Security Interests over its assets expressed to be created by the Security Documents; and
      3. implement the Project in accordance with the Project Documents,

and has taken all necessary action to authorise it so doing.

* 1. Binding obligations

Subject to the Legal Reservations:

* + - 1. the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
      2. without limiting the generality of paragraph (a) above, each Security Document to which it is a party creates the Security Interests which that Security Document purports to create and those Security Interests are valid and effective.
  1. Non-conflict with other obligations

Subject to the Legal Reservations, the entry into and performance by it and the transactions contemplated by, the Transaction Documents to which it is a party and the granting of the Project Security under the Security Documents to which it is a party do not conflict with:

* + - 1. any Applicable Law to which it is subject;
      2. its Constitutional Documents; or
      3. any agreement or instrument binding upon it or any material part of its assets or constitute a default or termination event (however described) under any such agreement or instrument.
  1. Insolvency

No:

* + - 1. corporate action, legal proceeding or other procedure or step described in Clause 20.7 (Insolvency proceedings); or
      2. creditors’ process described in Clause 20.8 (Creditors’ process),

has been taken or, to the best of its knowledge, threatened in relation to it and none of the circumstances described in Clause 20.6 (Insolvency) applies to it.

* 1. Legal and beneficial ownership
     + 1. All the share capital of the Borrower is owned, legally and beneficially by the Shareholders.
       2. As at the Signing Date, [the issued and voting share capital of the Borrower is as follows:
          1. Gama Holding is the legal and beneficial owner of 49% of the Shares;
          2. Gama Emlak is the legal and beneficial owner of 1% of the Shares;
          3. Türkerler is the legal and beneficial owner of 49% of the Shares; and
          4. Türyap is the legal and beneficial owner of 1% of the Shares.
       3. As at the GE Share Subscription Date,][[4]](#footnote-4) the issued and voting share capital of the Borrower is as follows:
          1. Gama Emlak is the legal and beneficial owner of 0.9899% of the Shares;
          2. Gama Holding is the legal and beneficial owner of 48.5076% of the Shares;
          3. Türkerler is the legal and beneficial owner of 48.5076% of the Shares;
          4. Türyap is the legal and beneficial owner of 0.9899% of the Shares; and
          5. GE Belgium is the legal and beneficial owner of 1.004% of the Shares.
       4. As at the Financial Close, the corporate structure of the Borrower is in the form specified in ‎Schedule 14 (Corporate Structure Chart), with percentages as further specified in the Financial Close Agreement.
       5. No person which is not a Shareholder holds any Project Interest or has any right, actual or contingent, to redeem or demand repayment or reimbursement or otherwise recover or receive any amount in respect of Subordinated Debt.
  2. Authorisations
     + 1. All Authorisations and any other acts, conditions or things required:
          1. to enable it to lawfully enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
          2. to make the Transaction Documents to which it is a party admissible in evidence in each Relevant Jurisdiction (other than, in respect of Turkey, a translation thereof into Turkish certified by a notary public or General Consulate of Turkey); and
          3. to enable it to create the Security Interests expressed to be created pursuant to each Security Document to which it is a party and to ensure that, subject to the Legal Reservations, each such Security Interest has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect or will be obtained or effected prior to the date on which they are required and will be in full force and effect.

* + - 1. It has not received any notice of variation, withdrawal, suspension, cancellation or revocation of any Authorisation which it has obtained or effected and which continues to be required at the date this representation is given.
      2. It has not received any written notice that any Authorisation not yet required but that will be required for the Project will not be obtained or effected at the time it is required.
      3. As at the Signing Date, the only Authorisations required in connection with the entry into, performance, validity and enforceability of the Transaction Documents to which the Borrower is a party are those set out in Schedule 7 (Project Permits).
  1. Governing law and enforcement

Subject to the Legal Reservations:

* + - 1. subject to the conditions imposed by the Turkish International Private and Procedural Law (number 5718), the Borrower’s:
         1. recognition of the choice of the law stated to be the governing law in each Transaction Document to which it is a party (where such governing law has been chosen); and
         2. agreement not to claim any immunity to which it or its assets may be entitled,

are legal, valid and binding under the laws of Turkey; and

* + - 1. any judgment obtained in relation to a Finance Document in the jurisdiction of the stated governing law of that Finance Document will be recognised and enforced in Turkey.
      2. any arbitral award obtained in relation to a Finance Document in the seat of that arbitral tribunal as specified in that Finance Document will be recognised and enforced in Turkey, subject to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).
  1. Centre of Main Interests
     + 1. Its “centre of main interests” (as that term is used in Article 3(1) of The Council of the European Union No 1346/2000) on Insolvency Proceedings (the ***Regulation***)) is in Turkey.
       2. It has no “establishment” (as that term is used in Article 2(h) of the Regulation) in any jurisdiction other than in Turkey.
  2. Deduction of Tax
     + 1. Subject to paragraphs (b) and (c) below, it is not required to make any Tax Deduction from any payment it may make under any Finance Document to any Senior Lender.
       2. Income or franchise Taxes of general application may be imposed on a Senior Lender if that Senior Lender makes a Senior Loan available from, or carries its portion of the Senior Loan on the books of, or receives any amount payable thereunder at, any Facility Office located in Turkey or which is incorporated or organised or has its principal office in Turkey (any such Senior Lender, a ***Turkey Resident Lender***). Interest, commissions and fees to be paid by the Borrower to any Turkey Resident Lender and any income realised by such Turkey Resident Lender is subject to BITT.
       3. In the event that the average repayment term of the Senior Loan Facilities is:
          1. up to one (1) year due to any prepayments, such Senior Loan Facility shall be subject to three per cent. (3%) RUSF;
          2. between one (1) year (including one (1) year) and two (2) years due to any prepayments, such Senior Loan Facility shall be subject to one per cent. (1%) RUSF; and
          3. between two (2) (including two (2) years) and three (3) years due to any prepayments, such Senior Loan Facility shall be subject to zero point five per cent. (0.5%) RUSF; and
          4. three (3) years (including three (3) years) and more than three (3) years due to any prepayments, such Senior Loan Facility shall be subject to zero per cent. (0%) RUSF.
  3. No filing or stamp taxes

Under the Applicable Laws of each Relevant Jurisdiction it is not necessary that the Transaction Documents to which it is a party be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Transaction Documents or the transactions contemplated by the Transaction Documents except for:

* + - 1. the execution of the Mortgage of Servitude Rights, if any, before the relevant title deed registry in *ex officio* form;
      2. the registration of Servitude Right Agreement in the relevant title deed registry;
      3. the notification of the terms of each Senior Loan Agreement with respect to the utilization and repayment of the loan by the relevant intermediary bank to the Central Bank of the Republic of Turkey;
      4. the execution and service (as applicable) of notices and acknowledgments of the relevant Finance Documents, the fees and charges to be determined and paid (where applicable) in accordance with: 
         1. General Communiqué on the Law on Charges published by the Ministry of Finance of the Republic in the Official Gazette dated 30 December 2014 and numbered 29221 (as amended from time to time) as per Law on Charges (as amended from time to time);
         2. Notary Fees Tariffs published by the Ministry of Justice of the Republic in the Official Gazette dated 26 February 2014 and numbered 28925 (as amended from time to time) as per Notary Law (Law No. 1512) (published in the Official Gazette dated 05.02.1972, No: 14090) (as amended from time to time); and
         3. General Communiqué published by the Ministry of Finance of the Republic in the Official Gazette dated 31 December 2014 and numbered 29222 (as amended from time to time) under the Valued Paper Law (Law No. 210);
      5. notarization and trade registry registration requirements applicable to the Equity Documents; and
      6. filings with the Administration under schedule 3 (*Project Documents Regime*) of the Project Agreement,

which registrations, filings, taxes and fees will be made and paid promptly after the date of the relevant Transaction Document.

* 1. No default
     + 1. No Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document to which the Borrower is a party.
       2. No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it which has or might reasonably be expected to have a Material Adverse Effect.
  2. Financial statements
     + 1. Its financial statements most recently delivered under Clause 16.1 (*Financial statements*) (which are, at the Signing Date, its audited financial statements for the financial year ended 31 December 2015, and at the Financial Close, the Original Financial Statements):
          1. have been prepared in accordance with the requirements of Clause 16.2 (*Requirements as to financial statements*);
          2. disclose all of its liabilities (contingent or otherwise) and all of its unrealised or anticipated losses as at the time they are prepared; and
          3. give a true and fair view of (if audited) or fairly present (if unaudited) its financial condition as at the end of, and results of operations for, the period to which they relate.
       2. Except as disclosed in writing to the Intercreditor Agent prior to the date on which this representation is made or repeated, there has been no material adverse change in its business, assets, operations or financial condition since the date of its financial statements most recently delivered under Clause 16.1 (*Financial statements*).
  3. Tax
     + 1. Subject to paragraph (b) below, no claims or, to the best of its knowledge, investigations are being, or are reasonably likely to be, asserted against it with respect to unpaid Taxes other than as disclosed to the Intercreditor Agent in writing.
       2. All Taxes required to be paid by it under any Applicable Law to which it is subject have been paid in each case within any applicable time limit save for any Tax demand which is being contested by it in good faith and for which it has established adequate reserves.
       3. It is resident for Tax purposes only in Turkey.
  4. Accuracy of information
     + 1. All information provided by it to any of the Finance Parties in connection with the Project, including any such information set out in the Information Package and the Project Reports was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
       2. All opinions, financial projections and forecasts provided by it to any of the Finance Parties in connection with the Project, including all estimates set out in the Information Memorandum, the Original Financial Model, the Financial Model, each Financial Report, each Construction Budget and each Operating Budget have been prepared on the basis of available information as at the date they were provided and on the basis of reasonable assumptions (including the Assumptions) and are consistent with the Project Documents.
       3. All other written information provided by the Borrower (including its respective advisers) to a Finance Party or any Adviser was true, complete and accurate in all material respects and was not misleading in any material respect, in each case, as at the date it was provided.
       4. No information has been provided or withheld and no event or circumstance has occurred that (in any case) results in any such information, opinions, financial projections or forecasts being untrue or misleading in any material respect.
       5. All factual information provided by it to the Insurers (or otherwise made available to the Insurers) in connection with the Project was, to the best of its knowledge and belief, true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated and it is not aware of any information or any event or circumstance that has not been disclosed to the Insurers which might reasonably be expected, if so disclosed, to materially and adversely affect the nature or extent of the cover to be provided under the relevant Insurances.
       6. As at the Financial Close, the Lawsuit Certificate delivered to the Intercreditor Agent by or on behalf of the Borrower under Clause 3.1 (*Financial Close documents*) is true, complete and accurate as to the most recent factual information regarding lawsuits against İzmir Bayraklı and Kocaeli Health PPP Projects.
  5. Documents
     + 1. The Transaction Documents as delivered to the Intercreditor Agent under this Agreement contain all the material terms of the Project.
       2. As at the Financial Close, each document delivered to the Intercreditor Agent by or on behalf of the Borrower under Clause 3.1 (Financial Close documents) is a true, complete and accurate copy of an original document which has not been amended (without the prior written consent of the Intercreditor Agent) and is in full force and effect.
  6. Related party transactions

No contractual arrangement exists between the Borrower and any Shareholder (or any Affiliate of any Shareholder) or the Administration other than:

* + - 1. the Transaction Documents (and any contractual arrangements contemplated or referred to under the Transaction Documents); and
      2. when entered into, the Commercial Area Agreement, the Commerical Area Indemnity Letter.
  1. No merger, reorganization or Subsidiaries
     + 1. It has not entered into any merger, demerger, amalgamation or reconstruction with any person.
       2. It:
          1. has no Subsidiaries and has not agreed to create or acquire any Subsidiary;
          2. does not beneficially own the whole or any part of the issued share capital of any other company or corporation; and
          3. does not hold any Security which is convertible into the shares of any other company or corporation*.*
  2. No other business

It has not engaged in any business other than the Project or incurred any obligations or liabilities, other than in relation thereto.

* 1. Security and Financial Indebtedness
     + 1. No Security Interest or Quasi-Security exists over all or any of its present or future assets other than any Permitted Security Interest.
       2. It has no Financial Indebtedness outstanding other than Permitted Indebtedness.
  2. Pari passu ranking

Except with respect to the Commercial Area Agreement, its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

* 1. No proceedings pending or threatened
     + 1. No litigation, mediation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency, including notices from any Governmental Authority, in connection with the Project which, if adversely determined, are reasonably likely to have a Material Adverse Effect have been started against it and, to the best of its knowledge and belief and having made due and careful enquiry, been started against a Major Project Party (other than the Borrower) or threatened in writing against it or another Major Project Party (other than the Borrower).
       2. No strikes or labour disputes with the Borrower’s employees are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against it.
       3. Based on the information shared by the Administration with the Borrower in writing, no developments in relation to the TMA Lawsuit have occurred that have not been disclosed to the Senior Lenders.
  2. No breach of laws

It has not breached any Applicable Law which breach has or is reasonably likely to have a Material Adverse Effect.

* 1. Environmental matters
     + 1. The Borrower is in compliance with all Environmental and Social Requirements.
       2. Except where identified in the ESA or the ESAP prepared by the Borrower in accordance with the Environmental and Social Requirements and provided that the ESAP are being complied with, there are no material social or environmental risks or issues in relation to the Project.
       3. The Borrower has not received nor is aware of either: 
          1. any existing or, to the best of its knowledge and belief, after due inquiry, threatened complaint, order, directive, claim, citation or notice from any Governmental Authority; or
          2. any material written communication from any person concerning, in each case, the Project’s failure to comply with any matter covered by the Environmental and Social Requirements.
  2. Implementation of the Project
     + 1. Neither the Borrower nor, as far as the Borrower is aware, any other Major Project Party has breached or is in breach of any of its obligations, and no other Major Project Party is in default, under any Transaction Document to which it is a party.
       2. No right has arisen under any Project Document for the Borrower or the relevant counterparty to rescind, cancel or terminate that Project Document.
       3. To the best of the Borrower’s knowledge and belief (having made due and careful enquiry), no circumstances have arisen (whether as a result of a force majeure event or for any other reason) which have led or may lead to any material obligation of any party under the Project Documents being suspended or incapable of fulfilment.
  3. Land rights
     + 1. The Borrower has available all land rights, or will have available all land rights prior to the date on which they are required, in order for the Project to be implemented in accordance with the Transaction Documents, including access to all land and all relevant rights of possession or occupation, wayleaves and other related rights.
       2. The land rights referred to in paragraph (a) above are not subject to any leases, restrictions, wayleaves or other rights which may prevent, hinder or delay the implementation of the Project in accordance with the Transaction Documents in any material respect.
  4. Force Majeure

No Force Majeure Event (however defined) has occurred and is continuing under any Project Document.

* 1. Insurance

All Insurances required under this Agreement at the time this representation is made or repeated have been taken out by the Borrower in accordance with Schedule 6 (Insurance) and all premiums payable in respect of the Insurances have been paid in full.

* 1. Intellectual Property

It:

* + - 1. owns, or is licensed to use, all Intellectual Property material to its business or necessary for the Project, and the use thereof by the Borrower does not infringe upon the rights of any other person; and
      2. has taken all formal and procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.
  1. Public procurement

All public procurement rules in Turkey which are applicable to its entry into and the exercise of its rights and performance of its obligations under the Transaction Documents to which it is a party have been complied with by it.

* 1. No adverse consequences
     + 1. It is not necessary under the laws of its Relevant Jurisdictions:
          1. in order to enable any Finance Party to enforce its rights under any Finance Document; or
          2. by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.

* + - 1. No Finance Party is or will be deemed to be resident, domiciled or carrying on business in Turkey by reason only of the execution, performance and/or enforcement of any Finance Document.
  1. No immunity

In any proceedings taken in Turkey in relation to the Finance Documents to which it is a party, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

* 1. Private and commercial acts

Its execution of the Finance Documents to which it is a party constitutes, and its exercise of its rights and performance of its obligations thereunder will constitute, private and commercial acts done and performed for private and commercial purposes.

* 1. Sanctionable practices, corrupt practices and anti-money laundering
     + 1. The Borrower is in compliance with all:
          1. Anti-Money Laundering Laws;
          2. OFAC Regulations; and
          3. all other applicable export control, anti-boycott and Economic Sanctions Laws,

in each case applicable to the Borrower or the Project.

* + - 1. Neither the Borrower, nor any of its Shareholders, Principals, authorised employees, Affiliates, agents or representatives are a Turkish Sanctioned Person or have committed or engaged in, with respect to the Project, or any transactions contemplated by the Finance Documents, any Sanctionable Practice.
      2. Each of the Borrower, its Principals, employees and agents:
         1. have complied with all Corrupt Practices Laws in obtaining the Authorisations referred to in Clause 15.7 (*Authorisations*); and
         2. is conducting the Project and its business in relation to the Project, in each case, in compliance with applicable Corrupt Practices Laws applicable to the Borrower and/or the Project.
      3. The Borrower has internal management and accounting practices and controls sufficient to provide reasonable assurances of compliance with this Clause 15.34 (*Sanctionable practices, corrupt practices and anti-money laundering*) and Corrupt Practices Laws applicable to the Borrower and/or the Project.
      4. The Borrower has complied with all applicable regulations issued or administered by the U.S. Treasury Department's Office of Foreign Assets Controls applicable to the Borrower and/or the Project.
  1. No Prohibited Payments
     + 1. No Prohibited Payment has been made or provided, directly or indirectly, by (or on behalf of) or to the Borrower, any of its Affiliates, any of their respective officers or directors or any other person acting on behalf of the Borrower.
       2. The Borrower has internal management and accounting practices and controls sufficient to assure the prevention of Prohibited Payments.
       3. None of its, or any of its Affiliates’ officers, directors or any other person acting on their behalf has been held by the judgment of a court, in a criminal or a civil matter, to have made or received a Prohibited Payment:
          1. in connection with the Project; or
          2. otherwise, in the last five (5) years where the relevant judgment has become final.
  2. Sanctions and OFAC Lists
     + 1. Neither the Borrower nor its Affiliates, nor any persons exercising management or control over its affairs is located in, resided in, is a citizen of, has activities in, trades with, or has links to countries appearing on any sanctions lists of any Sanctions Authority.
       2. None of the Borrower, its directors, members of senior management, the Shareholders or any Person having a direct or indirect beneficial ownership interest in the Borrower, together with each of their Principals, or any other Major Project Party (other the Administration), is a Person included in the OFAC List or otherwise subject to sanctions under OFAC Regulations.
  3. Suspension and debarment

Save to the extent waived by OPIC in accordance with the Intercreditor Deed, no event has occurred and no condition exists that is likely to result in the debarment or suspension of the Borrower from contracting with the U.S. Government or any agency or instrumentality thereof, and the Borrower is not now and has not been subject to any such debarment or suspension.

* 1. No Material Adverse Effect

No circumstance has occurred and is continuing which has, or is reasonably likely to have, a Material Adverse Effect.

* 1. Repetition
     + 1. The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Request, each Utilisation Date and each Interest Payment Date.
       2. The representation set out in Clause 15.13 (*Financial statements*) are deemed to be repeated by the Borrower in respect of any financial statements delivered by it pursuant to Clause 16.1 (*Financial statements*) on the date supplied in accordance with the requirements of this Agreement.
  2. Reliance

The Borrower makes the representations in this Clause 15 with the intention of inducing each Finance Party to enter into each Finance Document to which it is a party and each such Finance Party enters into such Finance Document on the basis of, and in full reliance on, each of such representations.

1. Information Covenants

The undertakings in this Clause 16 remain in force from the Signing Date until the Discharge Date.

* 1. Financial statements

The Borrower shall supply to the Intercreditor Agent:

* + - 1. as soon as they are available, but in any event within one hundred and twenty (120) days after the end of each of its financial years, its audited financial statements for that financial year;
      2. as soon as the same become available, but in any event within ninety (90) days after the end of each half of each of its financial years, its financial statements for that financial half year; and
      3. as soon as they are available, but in any event within forty five (45) days after the end of each of its fiscal quarters, its financial statements for that quarter.
  1. Requirements as to financial statements
     + 1. Each set of Annual Financial Statements, Semi-Annual Financial Statements or quarterly financial statements delivered under paragraph (c) of Clause 16.1 (*Financial statements*) shall:
          1. include a balance sheet, profit and loss account and cash flow statement;
          2. be certified by two Authorised Signatories as fairly representing the financial condition of the Borrower as at the date as at which those financial statements were drawn up and as having been prepared in accordance with the Accounting Principles;
          3. be prepared using the relevant Accounting Principles; and
          4. be accompanied by any letter addressed to the management of the Borrower by the Auditors and accompanying those financial statements.
       2. Each Annual Financial Statement shall be audited by the Auditors.
       3. Each Semi-Annual Financial Statement shall be:
          1. audited by the Auditors if it is the most recent financial statement prior to a Distribution Calculation Date; or
          2. in all other cases, reviewed by the Auditors.
       4. The quarterly financial statements shall be the Borrower’s management accounts.
  2. Year-end
     + 1. The Borrower shall procure that its financial year-end falls on 31 December unless otherwise required by the laws of Turkey.
       2. The Borrower shall procure that each semi-annual accounting period ends on the last day of the applicable fiscal semi-year.
  3. Auditors

The Borrower shall not change its Auditors except with the consent of the Intercreditor Agent (acting on the instructions of the Instructing Creditors), such consent not to be unreasonably withheld or delayed.

* 1. Communications with the Auditors

If the Intercreditor Agent (acting reasonably) wishes to discuss the financial position of the Borrower with the Auditors, the Intercreditor Agent shall notify the Borrower, stating in the notice the questions or issues which the Intercreditor Agent wishes to discuss with the Auditors. In this event, the Borrower shall ensure that the Auditors are authorised (at the expense of the Borrower) to discuss the financial position of the Borrower with the Intercreditor Agent and to convey or confirm any information related to such financial position in writing to the Intercreditor Agent.

* 1. Information: miscellaneous

The Borrower shall comply with the provisions of Part A (Information) of Schedule 5 (Information, Budgets and Reporting).

* 1. Project Budgets

The Borrower shall comply with the provisions of Part B (Project Budgets) of Schedule 5 (Information, Budgets and Reporting).

* 1. Project Reports

The Borrower shall comply with the provisions of Part C (Project Reports) of Schedule 5 (*Information, Budgets and Reporting*).

* 1. Environmental Reports

The Borrower shall comply with the provisions of Part D (Environmental and Social Reports) of Schedule 5 (*Information, Budgets and Reporting*).

* 1. Financial Reports and Financial Model

The Borrower shall comply with the provisions of Part E (Financial Reports and Financial Model) of Schedule 5 (*Information, Budgets and Reporting*).

* 1. Notification of default
     + 1. The Borrower shall notify the Intercreditor Agent of any Default (and the steps, if any, being taken to remedy it) promptly and in any event within five (5) Business Days upon becoming aware of its occurrence.
       2. Promptly, and in any event within five (5) Business Days of a request by the Intercreditor Agent, the Borrower shall supply to the Intercreditor Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

1. General Covenants

The undertakings in this Clause 17 remain in force from the Signing Date until the Discharge Date.

* 1. Use of proceeds

The Borrower shall use the proceeds of the Senior Loans exclusively for the purposes as provided in Clause 2.5 (*Purpose*).

* 1. Authorisations

The Borrower shall promptly obtain, renew and comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any Applicable Law to:

* + - 1. enable it to perform its obligations under the Transaction Documents at or within the time required for such purposes;
      2. ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document to which the Borrower is a party; and
      3. carry on its business.
  1. Compliance with Applicable Laws

The Borrower shall:

* + - 1. comply in all material respects with all Applicable Laws to which it is subject; and
      2. comply with requirements of: 
         1. Anti-Money Laundering Laws;
         2. OFAC Regulations;
         3. Corrupt Practices Laws; and
         4. all other export control, anti-boycott and Economic Sanctions Laws,

in each case, applicable to the Borrower and/or the Project.

* 1. Negative pledge

The Borrower shall not create or permit to subsist any Security Interest on any of its assets or any Quasi-Security other than Permitted Security Interests.

* 1. Disposals
     + 1. The Borrower shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary, to sell, lease, transfer or otherwise dispose of any asset.
       2. Paragraph (a) above does not apply to any Permitted Disposal.
  2. Arm’s length basis

The Borrower shall not enter into any transaction with any person except on arm’s length terms and for full market value.

* 1. Loans or credit

The Borrower shall not be a creditor in respect of any Financial Indebtedness.

* 1. No guarantees or indemnities
     + 1. The Borrower shall not incur any guarantee or indemnity obligation in respect of any obligation of any person or allow any such guarantee or indemnity to remain outstanding.
       2. Paragraph (a) above does not apply to a guarantee in respect of Permitted Indebtedness.
  2. Financial Indebtedness

The Borrower shall not incur or maintain any Financial Indebtedness except Permitted Indebtedness.

* 1. Change of business
     + 1. The Borrower shall not carry on any business other than the Project or activities incidental thereto (including the activities contemplated by the Commercial Area Agreement).
       2. The Borrower shall not have any Subsidiaries or own (or agree to acquire) any interest in any joint venture, partnership or other person.
       3. The Borrower shall not hold any Security which is convertible into the shares of any other company or corporation.
  2. Mergers

The Borrower shall not enter into any amalgamation, de-merger, merger or corporate reconstruction, except for the purposes of a solvent reorganisation approved by the Intercreditor Agent (acting on the instructions of the Instructing Creditors).

* 1. Investments

The Borrower shall not make any acquisition of or investment in securities or equivalent financial instruments other than Permitted Investments.

* 1. Sanctionable Practices
     + 1. The Borrower shall not engage in (and shall not authorise or permit any Affiliate or any other person acting on its behalf to engage in) with respect to the Project or any transaction contemplated by this Agreement, any Sanctionable Practices.
       2. Should any Finance Party notify the Borrower of its concerns that there has been a violation of the provisions of this Clause 17.13 or of Clause 15.34 (Sanctionable practices, corrupt practices and anti-money laundering) of this Agreement, the Borrower shall cooperate in good faith with that Finance Party and its representatives in determining whether such violation has occurred, and shall respond promptly and in any event within three (3) Business Days and in reasonable detail to any notice from that Finance Party, and shall furnish documentary support for such response upon that Finance Party’s request.
  2. Prohibited Activities and Corrupt Practices Laws

The Borrower shall not engage (and shall not authorise or permit any Affiliate or any other person acting on its behalf to engage in) with respect to the Project or any transaction contemplated by the Transaction Documents, in any Prohibited Activity or any activity in violation of the Corrupt Practices Laws applicable to the Borrower and/or the Project.

* 1. Sanctions and OFAC compliance
     + 1. The Borrower shall not enter into or continue business relationships with any Turkish Sanctioned Persons or with specially designated nationals and blocked persons or entities maintained on the relevant lists by any Sanctions Authority in relation to embargoes or the fight against terrorism.
       2. The Borrower shall ensure that none of the Borrower, nor any of its Principals shall be a Turkish Sanctioned Person or a person included in any OFAC List or otherwise subject to sanctions under OFAC Regulations.
       3. The Borrower shall not, and shall ensure that none of its directors, officers, employees, Affiliates, agents, or persons acting on its behalf will, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of proceeds of any Senior Loan to fund any trade, business, or other activities: 
          1. benefiting a Person that is listed on, or owned or controlled by, or acting on behalf of a Person listed on, any list administered by a Sanctions Authority;
          2. involving or for the benefit of any person included in any OFAC List or otherwise subject to sanctions under OFAC Regulations; or
          3. that could result in any person (including OPIC) being in breach of OFAC Regulations, becoming included in any OFAC List, or otherwise becoming subject to sanctions under OFAC Regulations.
  2. Environmental compliance

The Borrower shall:

* + - 1. comply with and implement (as the case may be) all Environmental and Social Requirements;
      2. obtain, maintain and comply with any Environmental Permit required in connection with the Project and take all steps in anticipation of known future changes to or obligations under the same; and
      3. if, as a result of the detailed design requirement or any other reason, the Side Plant capacity exceeds the limits set in accordance with the Regulation on Environmental Impact Assessment (published in the Official Gazette dated 25 November 2014 and numbered 29186), and particularly items 18 or 44 of Annex II of the said Regulation, undertake national environmental regulatory process (PDF ‘Project Description File’).
  1. Environmental and Social Matters
     + 1. Except as otherwise specified in the ESAP, the Borrower shall carry out and cause any contractor to carry out the Project and the Borrower’s business and operations in accordance with the Environmental and Social Requirements.
       2. The Borrower shall diligently implement and adhere to the ESAP and monitor the implementation thereof in accordance with the monitoring provisions contained therein.
       3. The Borrower shall, upon the occurrence of the Actual Completion Date and every third anniversary thereafter, procure that: 
          1. an environmental, social, health and safety, labour audit of the Project and the Borrower’s business and operations be carried out by an independent expert appointed by the Borrower under terms of reference satisfactory to the FI Lenders (and the Borrower); and
          2. the results of such audit (which may entail specific remedial actions to be reflected in a revised ESAP) be submitted to the Intercreditor Agent.
       4. From time to time at the Intercreditor Agent’s request, the Borrower shall amend the ESAP in response to changes in the circumstances of the Project, the Borrower or the Borrower’s business and operations, unforeseen events and the results of monitoring to achieve compliance with the Environmental and Social Requirements in a manner satisfactory to the FI Lenders including, without limitation:
          1. if there is any adverse environmental or social impact or issue that was not foreseen by or contemplated in the ESAP either entirely or as to its severity;
          2. if any impact mitigation measure set out in the ESAP is not reasonably sufficient to eliminate or reduce any environmental or social impact to the level contemplated by the relevant Environmental and Social Requirements within the time frame set out in the ESAP; or
          3. if any material non‑compliance with the ESAP or with any applicable Environmental and Social Law has been identified by an inspection from any regulatory or enforcement authority or by any audit conducted.
       5. Except as otherwise specified in the ESAP, the Borrower shall ensure that the design, construction, operation, maintenance, management and monitoring of the Project sites, plants, equipment and facilities are undertaken in compliance with Environmental and Social Requirements.
       6. The Borrower shall implement an Environmental and Social Management System and all other items referred to in the ESAP, if any.
       7. The Borrower shall ensure the continuing implementation and operation of the Environmental and Social Management System to access and manage the environmental and social performance of the Project at all stages in a manner which is consistent with the Environmental and Social Requirements.
       8. The Borrower shall, at the start of each year of the Operation Term, review the form of the Environmental and Social Annual Monitoring Report and advise the Intercreditor Agent as to whether revision of the form is necessary or appropriate in light of changes to the Borrower’s business or operations, or in light of environmental or social risks identified by the Borrower’s Environmental and Social Management System; and revise the form as agreed with the Intercreditor Agent (acting on the instructions of all of the Instructing Creditors).
       9. The Borrower shall, by the earlier of:
          1. the date falling three (3) years from the first Utilisation Date; and
          2. 31 December 2019, submit the ESHS Audit Report to OPIC.
       10. If the Borrower fails to submit the ESHS Performance Report in accordance with this Agreement or if the OPIC’s monitoring of the Project or the Project Site or any other information indicates that there is a need (in the reasonable opinion of OPIC), the Borrower shall, at OPIC’s request, conduct a certified independent audit to confirm its compliance with the environmental and social matters set out in paragraph 1(c) of Part D (Environmental and Social Reports) of Schedule 5 (Information, Budgets and Reporting).
       11. Notwithstanding any report, document or other information already provided by the Borrower in accordance with the provisions of this Agreement, the Borrower shall:
           1. immediately, and in any event, no later than forty-eight (48) hours after the Borrower has become or should have become aware (through the exercise of reasonable due diligence and care) of any accident related to the Project or Project Site that results in a loss of life or that has, or that could reasonably be foreseen to have a material adverse impact on the environment notify the Senior Lenders of such event; and
           2. within thirty (30) days after the occurrence of such event, submit to Senior Lenders a summary report of the event.
  2. Amendment of ESAP

The Borrower shall not amend the ESAP in any material respect other than in accordance with the terms of this Agreement or with the prior approval of the Intercreditor Agent.

* 1. Workers’ rights
     + 1. The Borrower shall:
          1. not take any actions to prevent Workers from lawfully exercising their rights of association and their right to organize and bargain collectively, or take any actions, or otherwise interfere with, coerce, or penalise, on the basis of the right of association or on the basis of organization and collective bargaining activities or membership, that may result in any form of retaliation, including, but not limited to, the termination, suspension, demotion, blacklisting, or transfer of any Worker by the Borrower, or by an officer, agent, or representative of the Borrower;
          2. observe Applicable Laws relating to a minimum age for employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety;
          3. not use forced or compulsory labour, including, but not limited to any form of slavery or bonded labour;
          4. explain, document, and make available in writing and orally to each Worker, information regarding all of their working conditions and terms of employment, including their entitlement to wages and any benefits and the Worker Rights Requirements, prior to the later of:

30 days after the Signing Date; or

each Worker commencing work;

* + - * 1. not employ Persons, formally or informally, under the age of 15 for general work and under the age of 18 for work involving hazardous activity, which is work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of those persons;
        2. not make employment decisions or discriminate with respect to aspects of the employment relationship on the basis of personal characteristics unrelated to inherent job requirements, including gender, race, religion, nationality, political opinion, or social or ethnic origin;
        3. shall operate in a manner consistent with the requirements of the applicable Lenders’ Performance Standards;
        4. not withhold, without Workers’ voluntary and written consent, Workers’ government-issued personal identification documents (including, but not limited to, passports);
        5. pay all wages, including all legally-mandated bonus pay and premium pay for overtime work, in full, in legal tender, and in a timely fashion, to Workers except when Workers have agreed otherwise;
        6. not require hourly or quota-based wage Workers to work more than 48 standard hours of work per week and that all Workers shall be guaranteed a weekly 24-hour rest period;
        7. ensure that Workers have the right to remove themselves from hazardous situations without jeopardising their continued employment; and
        8. require each Project Contractor, with respect to itself and any of its Project Subcontractors, to comply with the requirements in paragraphs (i) through (vi) above with respect to all Workers; provided that if any Applicable Law, or collective bargaining agreement, imposes a requirement that is more protective of Worker rights than any of the foregoing requirements, the Borrower shall, and shall cause the Project Contractors and Project Subcontractors to, observe such Applicable Law or collective bargaining agreement,

(the requirements set forth in this paragraph (a), collectively, the ***Worker Rights Requirements***).

* + - 1. As from the Commencement Date, up to and including during the Operation Term, on 31 December of every year, the Borrower shall provide the Senior Lenders with a report summarising the Project’s working conditions and shall, at a minimum, include the following information:
         1. evidence of compliance with the Worker Rights Requirements; and
         2. a summary of labour-related compliance issues identified by the local regulatory authorities, complaints received from Workers, as well as actions taken in response to such complaints, and actions taken to improve working conditions and to establish, maintain, and improve the Worker-management relationship.
      2. On the first anniversary of the Actual Completion Date and thereafter, upon the Senior Lenders’ request, the Borrower shall provide the Senior Lenders with the report stipulated in paragraph (b) above.
      3. During the Construction Term, OPIC will require semi-annual independent construction labor audits to be conducted by an independent labour auditor (whose appointment is approved by OPIC and costs are borne by the Borrower) to provide a detailed review of and report on the Borrower's compliance with the Workers’ Rights Requirements and IFC’s Performance Standard 2 based on a visit to the Project Site (including an action plan to address any identified non-compliance).
      4. At any time during the Operation Term, OPIC will require at least one (1) annual independent construction labor audit to be conducted by an independent labour auditor (whose appointment is approved by OPIC and costs are borne by the Borrower) to provide a detailed review of and report on the Borrower's compliance with the Workers’ Rights Requirements and IFC’s Performance Standard 2 based on a visit to the Project site (including an action plan to address any identified non-compliance) and, if such audit identifies any significant non- compliance issues, OPIC may request an additional independent construction labor audit to be conducted at the cost of Borrower.
      5. In the event that information concerning non-compliance or potential non-compliance with the Worker Rights Requirements (a ***Worker Rights Non-Compliance***) comes to the attention of a responsible officer of the Borrower, the Borrower shall promptly notify the Senior Lender.
      6. The Borrower shall use all reasonable efforts, including remediation, to cure or to cause the relevant Project Contractor or Project Subcontractor to cure, or prevent the recurrence of, any Worker Rights Non-Compliance.
      7. Notwithstanding the foregoing, the Borrower shall not be responsible for any Worker Rights Non-Compliance resulting from the actions of a government.
  1. Taxation
     + 1. The Borrower shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
          1. such payment is being contested in good faith;
          2. adequate reserves are being maintained for those Taxes; and
          3. such payment can lawfully be withheld and it does not exceed five hundred thousand Euros (EUR 500,000) (or its equivalent in any other currency).
       2. The Borrower shall not change its residence for Tax purposes.
  2. *Pari passu* ranking

The Borrower shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

* 1. Further assurance
     + 1. The Borrower shall take all action as is available to it to preserve and maintain (or to procure the preservation and maintenance of) the Project Security and the validity, enforceability and priority thereof.
       2. The Borrower shall take all action as is available to it to execute or to procure the execution of all such documents as the Intercreditor Agent or the Security Agent may reasonably require:
          1. to give effect to the Transaction Documents; and
          2. for the exercise by the Secured Creditors (and to enable or facilitate the exercise of) of all the rights, powers and remedies intended to be effected by the Finance Documents.
       3. The Borrower shall not do, or consent to the doing of, anything which is reasonably likely to prejudice the validity, enforceability or priority of any of the Project Security.
  2. Intellectual Property

The Borrower shall:

* + - 1. observe and comply in all material respects with all obligations, laws and regulations applicable to it in its capacity as registered proprietor, beneficial owner, user, licensor or licensee of the Intellectual Property which it requires to implement the Project or any part of it; and
      2. do what is necessary to maintain, register, protect and safeguard the Intellectual Property required to implement the Project or any part of it where failure to do so would have or could reasonably be expected to have a Material Adverse Effect and not discontinue the use of any of that Intellectual Property nor allow it to be put at risk by becoming generic or by being identified as disreputable if in each case to do so would have or could reasonably be expected to have a Material Adverse Effect.
  1. Defend against litigation

The Borrower shall:

* + - 1. defend any litigation, action, arbitration, administrative or other proceeding commenced or levied against it unless the aggregate amount thereof in any year is less than three-hundred and fifty thousand Euros (EUR 350,000) (or its equivalent in any other currency); and
      2. not settle any litigation, action, arbitration, administrative or other proceeding or any insurance claim without the approval of the Intercreditor Agent unless the aggregate amount thereof in any year is less than three-hundred and fifty thousand Euros (EUR 350,000) (or its equivalent in any other currency).
  1. Management

The Borrower shall not enter into any management contract or similar arrangement whereby its business or operations are managed by any other person other than:

* + - 1. the O&M Contract; and
      2. the Commercial Area Agreement.
  1. Records
     + 1. The Borrower shall maintain a proper accounting, cost control and management information system satisfactory to the Intercreditor Agent (acting reasonably) and books of account in accordance with the Accounting Principles.
       2. The Borrower shall maintain management and accounting policies and controls that are sufficient to provide reasonable assurances of compliance with Clause 15.34 (*Sanctionable practices, corrupt practices and anti-money laundering*) and Corrupt Practices Laws applicable to the Borrower and/or the Project and the prevention of Prohibited Payments.
  2. Auditors

The Borrower shall maintain independent auditors acceptable to the Intercreditor Agent (acting on the instructions of the Instructing Creditors) and authorise them, by sending them an Auditor Letter, to communicate directly with the Senior Lenders and the Agents.

* 1. Banking business
     + 1. The Borrower shall open, maintain and operate the Project Accounts as required by and in accordance with the Project Accounts Agreement.
       2. The Borrower shall not have any bank accounts other than the Project Accounts and the Distributions Account.
  2. Hedging
     + 1. The Borrower shall comply with the Hedging Policy.
       2. The Borrower shall not enter into any agreement or other arrangement for the hedging of any interest rate or foreign exchange exposure other than in accordance with the Hedging Policy.

1. Project Covenants

The undertakings in this Clause 18 remain in force from the Signing Date until the Discharge Date.

* 1. Implementation of the Project

The Borrower shall implement the Project in accordance with the Project Documents.

* 1. Project Permits

The Borrower shall:

* + - 1. obtain, or ensure the obtaining of, all Project Permits so as to ensure the Project Permits are in place as and when required for the purposes of the Project and ensure that each Project Permit is preserved and remains effective for so long as such Project Permit is required without material amendment; and
      2. comply, or ensure compliance in all material respects with, all conditions attaching to any Project Permit.
  1. Capital Expenditure

The Borrower shall not incur any Capital Expenditure other than Permitted Capital Expenditure.

* 1. Construction
     + 1. The Borrower shall ensure that the Facilities are constructed in accordance with:
          1. Good Industry Practice;
          2. the Project Agreement and the EPC Contract;
          3. the Construction Budget; and
          4. the Programme.
       2. The Borrower shall not, without the prior written consent of the Intercreditor Agent, request or agree to any variation of the Works which would:
          1. result in a Funding Shortfall; or
          2. result in a likely delay to the occurrence of the Actual Completion Date beyond the Scheduled Completion Date.
       3. The Borrower will not incur any liability other than as contemplated in (and permitted under) the Transaction Documents and as are within the then applicable Construction Budget or consented to by the Intercreditor Agent (acting on the instructions of the Instructing Creditors).
  2. Tests on completion
     + 1. The Borrower shall not approve any Commissioning Programme, Final Commissioning Programme or Completion Tests in each case without the prior written consent of the Intercreditor Agent (in consultation with the Lenders’ Technical & Environmental Adviser and acting on the instructions of the Instructing Creditors).
       2. The Intercreditor Agent shall (acting on the instructions of Instructing Creditors) respond to any request for consent from the Borrower in accordance with paragraph (a) above within ten (10) Business Days from the date of such request either (i) approving or rejecting the request, or (ii) requesting additional information or any clarification. If the Intercreditor Agent rejects the Borrower’s request, it shall (acting on the instructions of Instructing Creditors) provide to the Borrower reasonable details of the reasons for such rejection and the Borrower may issue a further request for consent.
       3. The Intercreditor Agent shall (acting on the instructions of Instructing Creditors) respond to any additional request for consent from the Borrower or clarification from the Borrower in response to any request for additional information or any clarification, in each case, in accordance with paragraph (b) above within ten (10) Business Days from the date of such request or receipt of additional information or clarification either (i) approving or rejecting the request or (ii) requesting additional information or any clarification. If the Intercreditor Agent rejects the Borrower’s additional request for consent, it shall (acting on the instructions of Instructing Creditors) provide to the Borrower reasonable details of the reasons for such rejection and the Borrower may issue a further request for consent.
  3. Operation and maintenance
     + 1. The Borrower will ensure that the Facilities are operated and maintained in accordance with:
          1. Good Industry Practice;
          2. the Project Agreement and the O&M Contract; and
          3. the then-current Operating Budget.
       2. The Borrower will comply with each Operating Budget and will not incur any Operating Costs or any other expenditure other than in accordance with the then-current Operating Budget, except with the approval of the Intercreditor Agent on the instructions of the Instructing Creditors, save that the Borrower may incur in any financial year additional expenditure:
          1. to the extent the Borrower has received a corresponding amount of Project Revenues to compensate the Borrower fully for such expenditure; and
          2. except in the case of additional expenditure incurred under paragraph (i) above, in respect of the aggregate of all line items of Operating Costs (other than O&M Service Payments) of up to ten per cent. (10%) more than the aggregate amount included in that Operating Budget (for Operating Costs other than O&M Service Payments).
       3. The Borrower will not suspend the operation of the Facilities other than in an emergency or as required or, subject to the provisions of Schedule 8 (Reserved Discretions), as permitted under the Project Agreement, except with the approval of the Intercreditor Agent (acting on the instructions of the Instructing Creditors).
       4. The Borrower shall maintain the Joint Commission International accreditation as soon as possible, and in any event, within eighteen (18) months following the Actual Completion Date.
  4. Project Documents
     + 1. The Borrower shall not amend, supplement, waive or modify or propose or agree to the amendment, supplement, waiver or modification of, any of the Project Documents except:
          1. with the prior written approval of the Intercreditor Agent (acting on the instructions of the Instructing Creditors);
          2. in the case of any administrative or immaterial amendments to any Project Document (other than the Servitude Right Agreement the Project Agreement or any other Project Document to which the Administration is a party), to the extent the Borrower has notified the Intercreditor Agent in writing at least ten (10) Business Days prior to such amendment; or
          3. in respect of Equity Documents as required by Applicable Law.
       2. The Borrower shall not terminate, suspend or surrender any of the Project Documents (nor issue a conditional or unconditional notice therefor) nor abandon the Project without the prior written approval of the Intercreditor Agent (acting on the instructions of the Instructing Creditors).
       3. The Borrower:
          1. shall exercise its rights and discretions set out in Schedule 8 (Reserved Discretions) in the manner provided for therein; and
          2. shall exercise all of its other material rights under or in respect of the Project Documents not set out in Schedule 8 (Reserved Discretions) in such manner as to ensure performance of its obligations under the Finance Documents.
       4. The Borrower shall promptly notify the Intercreditor Agent if any of its rights referred to in paragraphs (b) or (c) above become exercisable, provided that, in the case of each right set out in Schedule 8 (Reserved Discretions), the Borrower will promptly notify the Intercreditor Agent upon the Borrower becoming aware that such right has become exercisable under the relevant Project Document and include in such notification the time period within which the right is exercisable and any other deadline affecting the ability of the Borrower to exercise such right in accordance with the terms of the relevant Project Document.
       5. The Borrower shall:
          1. perform its obligations under the Project Documents in accordance with their terms;
          2. exercise its rights under each Project Document with a view to ensuring that other parties exercise their rights and comply with their obligations under each Project Document and, in relation to the Administration, the Funders’ Direct Agreement in a proper and timely manner; and
          3. notwithstanding paragraph (e)(i) above, promptly remedy any material breach of its obligations under the Project Documents.
  5. Other agreements
     + 1. The Borrower shall not enter into any agreement or arrangement other than the Transaction Documents to which it is a party.
       2. Paragraph (a) above does not apply to the entering into by the Borrower of:
          1. any Insurances required by Schedule 6 (Insurance);
          2. any Hedging Arrangement in accordance with the Hedging Policy;
          3. to the extent permitted under Clause 18.9 (Commercial Areas), the Commercial Area Agreement;
          4. any other agreement required or permitted by any Finance Document; or
          5. any other contract entered into by the Borrower to the extent that any expenditure under it does not exceed the amount budgeted for it in the then-current Operating Budget,

in each case on arm’s length commercial terms and in accordance with all Applicable Laws and Authorisations, in each case, to which the Borrower is subject.

* + - 1. Notwithstanding any other provision of the Transaction Documents, the Borrower shall not enter into any agreement or arrangement with any Shareholder (or any Affiliate thereof) or the Administration other than a Transaction Document, except with the prior approval of the Intercreditor Agent acting on the instructions of the Instructing Creditors or as permitted under paragraph (b)(iii) above.
  1. Commercial Areas
     + 1. The Borrower shall, on or before the date that falls six (6) months prior to the Completion Date, deliver to the Intercreditor Agent:
          1. a copy of the constitutional documents, certified by the relevant trade registry in Turkey, and an original certificate of activity (*faaliyet belgesi*), in respect of the Commercial Area Real Estate Company; and
          2. a duly executed original of the Commercial Area Agreement, in form and substance acceptable to the Intercreditor Agent (acting reasonably), provided that it shall be reasonable for the Intercreditor Agent to withhold its consent if paragraph (b) below is not being complied with.
       2. The Borrower shall procure that, at all times, the Commercial Area Agreement complies with the requirements set out in Schedule 9 (Requirements for Commercial Area Agreements).
  2. Procurement

The Borrower shall use procurement methods which are fair, ethical and conducted in a transparent manner and:

* + - 1. ensure a sound selection of goods and services at fair market value and ensure that the Borrower is making its capital investments in a cost effective manner; and
      2. meet the requirements of the Project Agreement and standards equivalent to those in the OECD Guidelines for Multinational Enterprises, as applicable.
  1. Insurance

The Borrower shall perform and comply with all of its undertakings and obligations in Schedule 6 (Insurance).

* 1. Advisers and Expert

The Borrower shall give the Lenders’ Technical & Environmental Adviser, the Lenders’ Insurance Adviser and any Experts such assistance as may be reasonably required by any of the Lenders’ Technical & Environmental Adviser, the Lenders’ Insurance Adviser or any Expert to enable the Lenders’ Technical & Environmental Adviser, the Lenders’ Insurance Adviser or any Expert (as the case may be) to carry out its respective role under the Finance Documents.

* 1. Access
     + 1. The Borrower shall ensure that representatives of the Lenders’ Technical & Environmental Adviser may attend any Commissioning Test and is given reasonable prior notice thereof, provided that the Administration consents to such attendance.
       2. Upon the request of the Lenders’ Technical & Environmental Adviser or any Finance Party, the Borrower shall permit the Lenders’ Technical & Environmental Adviser, the Finance Parties and/or the designated representatives of the Finance Parties, (including any FI Lender’s environmental and social monitoring consultants) during the Borrower's usual business hours, subject to at least ten (10) Business Days' prior notice being given to:
          1. visit any of the sites and premises where the business of the Borrower is conducted to the extent not prohibited under the Project Agreement;
          2. inspect any of the Borrower’s sites, facilities, plants and equipment to the extent not prohibited under the Project Agreement;
          3. have access to and make extracts from the Borrower’s books of account and all records; and
          4. have access to those employees, agents, contractors and subcontractors of the Borrower who have or may have knowledge of matters with respect to which any Finance Party seeks information,

provided, that no prior notice shall be necessary:

if an Event of Default has occurred and is continuing; or

if special circumstances, such as an emergency, so require.

* + - 1. The Borrower shall pay for all of out‑of‑pocket costs and expenses:
         1. reasonably incurred and duly documented by the Lenders’ Technical & Environmental Adviser and/or the Intercreditor Agent in respect of the Commissioning Tests referred to in paragraph (a) above; and
         2. reasonably incurred and duly documented by the Lenders’ Technical & Environmental Adviser and/or any of the Finance Parties (or their representatives) in connection with the visits, inspections and access referred to in paragraph (b) above.

1. Equity Covenants

The undertakings in this Clause 19 remain in force from the Signing Date until the Discharge Date.

* 1. Share issuance and transfer
     + 1. The Borrower will ensure that at all times it has sufficient authorised but unissued share capital to issue Shares to the Shareholders in accordance with the Equity Support and Subordination Deed.
       2. The Borrower will not, without the consent of the Intercreditor Agent (acting on the instructions of the Instructing Creditors), issue or permit to be issued any Shares, options, warrants, interests, profit certificates, partnership or participation interests, participation or other equivalent rights of ownership (regardless of how designated and of any group, groups, class or classes and whether resulting from any subdivision, consolidation or reclassification) of or in the Borrower (including, but not limited to, common stock, preferred stock or any other equity security), other than in accordance with the Equity Support and Subordination Deed and subject to the requirements of the Share Pledge Agreement.
       3. The Borrower will not register, record or acknowledge any transfer of any Shares other than an assignment or transfer permitted in accordance with the Equity Support and Subordination Deed.
       4. The Borrower will not:
          1. redeem, repurchase, cancel, reduce or otherwise acquire or permit the redemption of any of its share capital; or
          2. repay or distribute any share premium.
  2. Distributions
     + 1. The Borrower may not transfer any money to the Distributions Account unless:
          1. the Project Completion Date has occurred;
          2. the First Repayment Date has occurred;
          3. the first four Availability Payments have been paid in full to the Borrower;
          4. at least 12 months have elapsed since the Actual Completion Date;
          5. no Default has occurred and is continuing (or would result from the payment or transfer);
          6. as at the most recent Distribution Calculation Date:

the HADSCR is equal to or greater than 1.15x; and

the FADSCR is equal to or greater than 1.15x,

in each case as shown by the most recent Compliance Certificate delivered to the Intercreditor Agent;

* + - * 1. a Financial Report and Operating Report have been provided in respect of the most recent Calculation Date in accordance with the provisions of Schedule 5 (Information, Budgets and Reporting);
        2. the balance on the Debt Service Reserve Account is no less than the Debt Service Reserve Required Balance;
        3. the balance on the EMRS Reserve Account is no less than the EMRS Required Balance;
        4. the amount to be transferred does not exceed the amount that was capable of being transferred in accordance with the Cash Waterfall as at the most recent Distribution Calculation Date; and
        5. such transfer is otherwise in accordance with the Cash Waterfall.
      1. Subject to paragraph (a) above, the Borrower may not declare or make any Distribution, unless:
         1. the amount of the Distribution is equal to, or lower than, the amount then standing to the credit of the Distributions Account;
         2. the payment of the Distribution is made from amounts standing to the credit of the Distributions Account; and
         3. the Distribution is made in accordance with Applicable Law in its jurisdiction of incorporation and the Constitutional Documents.
      2. The Borrower shall not declare or make any Distribution more than twice in a financial year.

1. Events of Default

Each of the events or circumstances set out in this Clause 20 is an Event of Default (save for Clause 20.32 (*Remedies*)).

* 1. Non-payment by the Borrower
     + 1. The Borrower does not pay on the due date any amount of interest or principal (including, for the avoidance of doubt, any amount payable in respect of interest or principal pursuant to Clause 6 (*Prepayment and Cancellation*)) payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable.
       2. The Borrower does not pay on the due date any amount payable pursuant to a Finance Document (other than those referred to in paragraph (a) above) at the place and in the currency in which it is expressed to be payable unless payment is made within five (5) Business Days after the due date in accordance with the relevant Finance Document.
  2. Non-payment by Key Shareholder
     + 1. Any Key Shareholder does not pay on the due date any amount payable by it under the Equity Support and Subordination Deed at the place and in the currency it is expressed to be payable by it unless, in case of non-payment of any amounts other than those referred to under clause 5.2 (*Required Equity Contributions*) or clause 7 (*Acceleration of Equity Contributions*) of the Equity Support and Subordination Deed, such payment is made within five (5) Business Days after the due date in accordance with the Equity Support and Subordination Deed.
       2. No Event of Default under paragraph (a) above will occur if:

* + - * 1. the Instructing Creditors have instructed the Security Agent not to make any demand, or the Security Agent fails to make a demand after being so instructed by the Instructing Creditors, in each case under the relevant Equity Support Document; or

payment is made:

by an Equity Support Provider in accordance with the terms of the relevant Equity Support Document; or

by another Shareholder:

in case of non-payment of any amounts under clause 5.2 *(Required Equity Contributions*) or clause 7 (*Acceleration of Equity Contributions*) of the Equity Support and Subordination Deed, on the due date of such payment; or

in case of non-payment of any other amounts, within five (5) Business Days after the due date in accordance with the Equity Support and Subordination Deed.

* 1. Other obligations of the Borrower
     + 1. The Borrower does not comply with any provisions contained in Clauses 17.1 (*Use of proceeds*), 17.5 (Disposals), 17.6 (Arm’s length basis), 17.8 (No guarantees or indemnities), 17.9 (Financial Indebtedness), 17.10 (Change of business), 17.11 (Mergers), 17.12 (Investments), 18.3 (Capital Expenditure), 18.8 (Other agreements), 17.28(b) (Banking business), 19.1 (Share issuance and transfer) or 19.2 (Distributions).
       2. The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 20.1 (Non-payment by the Borrower), Clause 20.25 (Environmental matters), Clause 20.26 (Workers’ rights) and paragraph (a) above).
       3. No Event of Default under paragraph (b) above will occur if the failure to comply is capable of remedy and is remedied within thirty (30) Business Days of the earlier of (i) the Intercreditor Agent giving notice to the Borrower and (ii) the Borrower becoming aware of the failure to comply.
  2. Other obligations of the Shareholders
     + 1. Any Shareholder does not comply with any provision of the Finance Documents (other than those referred to in Clause 20.2 (Non-payment by Key Shareholder) and Clause 20.12 (Ownership)).
       2. No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within thirty (30) Business Days of the earlier of: 
          1. the Intercreditor Agent giving notice to the Borrower; and
          2. the Shareholder becoming aware of the failure to comply.
  3. Misrepresentation
     + 1. Any representation, warranty or statement made or deemed to be made by the Borrower or a Shareholder in any Finance Document or any other document delivered by or on behalf of such person under or in connection with any Finance Document proves to be incorrect in any material respect when made or deemed to be made unless the circumstances giving rise to that incorrectness are capable of remedy and are remedied within thirty (30) Business Days of the earlier of: 
          1. the Intercreditor Agent giving notice to the Borrower and such party of such incorrectness; and
          2. the Borrower and such party becoming aware thereof.
       2. Any representation, warranty or statement made or deemed to be made by a Major Project Party (other than the Borrower or a Shareholder) in any Finance Document or any other document delivered by or on behalf of such person under or in connection with any Finance Document proves to be incorrect in any material respect when made or deemed to be made and such incorrectness has or is reasonably likely to have a Material Adverse Effect, unless the circumstances giving rise to that incorrectness are capable of remedy and are remedied within thirty (30) Business Days of the earlier of:
          1. the Intercreditor Agent giving notice to the Borrower and such party of such incorrectness; and
          2. the Borrower and such party becoming aware thereof.
  4. Insolvency

Any of the following occurs in respect of a Major Project Party (other than the Administration):

* + - 1. it is, or is deemed for the purposes of any Applicable Law to which it is subject to be, unable to pay its debts as they fall due;
      2. it admits its inability to pay its debts as they fall due;
      3. it suspends making payments on any of its debts or announces an intention to do so;
      4. by reason of actual or anticipated financial difficulties, it commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness; or
      5. a moratorium is declared in respect of any of its indebtedness (it being understood that if a moratorium occurs, the ending of the moratorium will not remedy the Event of Default caused by that moratorium).
  1. Insolvency proceedings
     + 1. Any corporate action, legal proceedings or other procedure or step is taken in relation to:
          1. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Major Project Party (other than the Administration);
          2. a composition, compromise, assignment or arrangement with any creditor of any Major Project Party (other than the Administration);
          3. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of:

any Major Project Party (other than the Administration);

any of the Borrower’s assets; or

all or a substantial part of the assets of any Major Project Party (other than the Borrower and the Administration); or

* + - * 1. enforcement of any Security Interest over:

any assets of the Borrower; or

all or a substantial part of the assets of any Major Project Party (other than the Borrower and the Administration),

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

* + - 1. This Clause 20.7 shall not apply to:
         1. any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ninety (90) days of commencement; or
         2. a transaction approved by the Instructing Creditors.
  1. Creditors’ process
     + 1. Any attachment, sequestration, distress or execution affects any asset or assets of any Major Project Party (other than the Administration, or the EPC Contractor) and is not discharged or stayed within ninety (90) days.
       2. No Event of Default will occur under this Clause 20.8 if the aggregate value of the asset or assets affected by such attachment, sequestration, distress or execution is less than:
          1. in relation to the Borrower, EUR 350,000;
          2. in relation to GE Belgium, EUR 25,000,000;
          3. in relation to Gama Holding, EUR 20,000,000;
          4. in relation to Gama Endüstri, EUR 20,000,000;
          5. in relation to the Operator, EUR 350,000; and
          6. in relation to Türkerler, EUR 20,000,000,

or, in each case, its equivalent in any other currency or currencies.

* 1. Cross default
     + 1. Any Financial Indebtedness of any Major Project Party (other than the Administration or the EPC Contractor) is not paid when due nor within any originally applicable grace period.
       2. Any Financial Indebtedness of any Major Project Party (other than the Administration or the EPC Contractor) is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
       3. Any commitment for any Financial Indebtedness of any Major Project Party (other than the Administration or the EPC Contractor) is cancelled or suspended by a creditor of such Major Project Party as a result of an event of default (however described).
       4. Any creditor of any Major Project Party (other than the Administration or the EPC Contractor) becomes entitled to declare any Financial Indebtedness of such Major Project Party due and payable prior to its specified maturity as a result of an event of default (however described).
       5. No Event of Default will occur under this Clause 20.9 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than:
          1. in relation to the Borrower, EUR 350,000;
          2. in relation to GE Belgium, EUR 25,000,000;
          3. in relation to Gama Holding, EUR 20,000,000;
          4. in relation to Gama Endüstri, EUR 20,000,000;
          5. in relation to the Operator, EUR 350,000; and
          6. in relation to Türkerler, EUR 20,000,000,

or, in each case, its equivalent in any other currency or currencies.

* + - 1. For the purposes of this Clause 20.9 only:
         1. the term ***Financial Indebtedness*** shall not include any counter-indemnity obligations in respect of any Equity Support Document; and
         2. references to Financial Indebtedness of a person shall be references to Financial Indebtedness of that person together with Financial Indebtedness of all of its Subsidiaries (other than the Borrower).
  1. Cessation of business

The Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

* 1. Financial Ratios

Either:

* + - 1. the HADSCR as shown by the most recent Compliance Certificate is lower than 1.05x;
      2. the FADSCR as shown by the most recent Compliance Certificate is lower than 1.05x; or
      3. the LLCR as shown by the most recent Compliance Certificate is lower than 1.10x.
  1. Ownership
     + 1. **Borrower**:
          1. Any Shareholder does not perform or is otherwise in breach of any of the retention and transfer restrictions set out in clause 3 (*Share Retention and Transfer of Project Interest*) of the Equity Support and Subordination Deed.
          2. Any person acquires or disposes of any Project Interest other than in accordance with clause 3 (*Share Retention and Transfer of Project Interest*) of the Equity Support and Subordination Deed.
       2. **EPC Contractor**:
          1. Any EPC Contractor Member or any EPC Guarantor does not perform or is otherwise in breach of any of the retention and transfer restrictions set out in clause 3 (*Partnership Share Retention and Transfer of EPC Interest*) of the EPC Direct Agreement.
          2. Any person acquires or disposes of any participating share (*katilim payi*) in the EPC Contractor other than in accordance with clause 3 (*Partnership Share Retention and Transfer of EPC Interest*) of the EPC Direct Agreement.
       3. **Operator**:
          1. Any O&M Guarantor does not perform or is otherwise in breach of any of the retention and transfer restrictions set out in clause 3 (*Share Retention and Transfer of O&M Interest*) of the O&M Direct Agreement.
          2. Any person acquires or disposes of any shares in the Operator other than in accordance with clause 3 (*Share Retention and Transfer of O&M Interest*) of the O&M Direct Agreement.
  2. Completion
     + 1. The Actual Completion Date does not occur on or before the Creditors’ Long Stop Date.
       2. The Borrower is entitled to terminate the EPC Contract pursuant to clause 47.1 (b) (i) to (iii) of the EPC Contract.
  3. Effectiveness of Transaction Documents
     + 1. Subject to Clause 20.15 (*Credit and parent company support*), it is or becomes unlawful for any person (other than a Finance Party) to perform any of its obligations under the Finance Documents or any of its material obligations under the Transaction Documents, provided that, in the case of a Project Document (other than the Project Agreement), this has or is reasonably likely to have a Material Adverse Effect.
       2. Subject to Clause 20.15 (*Credit and parent company support*), any Transaction Document or any provision of a Transaction Document (subject to the Legal Reservations) is not valid and enforceable in accordance with its written terms or is alleged by any party to that Transaction Document not to be valid and enforceable in accordance with its written terms for any reason, which allegation is not withdrawn within five (5) days, provided that in the case of a Project Document (other than the Project Agreement), this has or is reasonably likely to have a Material Adverse Effect.
       3. A Security Document (subject to the Legal Reservations) is not or is no longer valid and enforceable and/or does not or no longer creates the Security Interest it purports to create with the agreed priority in accordance with its terms, provided that, if:
          1. in the reasonable opinion of the Intercreditor Agent (acting under the instructions of the Instructing Creditors) such event has not arisen directly or indirectly from an act or omission of the Borrower; and
          2. such Security Document (as amended, restated or replaced) is, subject to the Legal Reservations, valid and enforceable and creates the Security Interest it purports to create with the agreed priority in accordance with its terms, within fifteen (15) Business Days of the occurrence of such event,

then this shall not constitute an Event of Default under this Clause 20.14).

* + - 1. Any subordination created under the Equity Support and Subordination Deed is or becomes unlawful, provided that, if based solely on Applicable Law in force in the Borrower’s jurisdiction of incorporation as at the Signing Date, the subordination of claims against the Borrower is not enforceable in an insolvency, bankruptcy, liquidation or similar proceeding under bankruptcy legislation applicable to the Borrower, then this shall not constitute an Event of Default under this Clause 20.14).
      2. Subject to Clauses 20.15 (Credit and parent company support) and 20.17 (Project Agreement Events), any party (other than a Finance Party) to a Transaction Document repudiates such Transaction Document or evidences in writing an intention to repudiate such Transaction Document, which repudiation is not withdrawn within five (5) days, provided that in the case of a Project Document (other than the Project Agreement), this has or is reasonably likely to have a Material Adverse Effect.
  1. Credit and parent company support
     + 1. Any issuer of a Project Agreement Bond, the EPC Guarantor or O&M Guarantor does not perform or is otherwise in breach of any of its obligations under any Project Agreement Bond, the EPC Guarantee or the O&M Guarantee to which it is a party on the due date for performance, unless:
          1. in the case of a failure to pay, the failure to pay is caused by:

administrative or technical error; or

a Disruption Event,

and such failure to pay is in any event rectified by payment in full of the requisite amount payable:

within the grace period provided under clause 3.1 of the EPC Guarantee in respect of an EPC Guarantee;

within the grace period provided under clause 3.1 of the O&M Guarantee in respect of an O&M Guarantee; or

in all other cases, within three (3) Business Days of its due date;

* + - * 1. in the case of a failure to perform any other obligation under an EPC Guarantee, either (A) such failure is remedied to the satisfaction of the Instructing Creditors or (B) an EPC Contractor Member performs such obligation, in each case, within thirty (30) Business Days; or
        2. in the case of a failure to perform any other obligation under an O&M Guarantee, either (A) such failure is remedied to the satisfaction of the Instructing Creditors or (B) another O&M Guarantor performs such obligation, in each case, within thirty (30) Business Days.
      1. Any Project Agreement Bond or Equity Support Document, the EPC Guarantee or the O&M Guarantee given or to be given under or pursuant to any Transaction Document:
         1. is not provided or renewed when required under or pursuant to any Transaction Document;
         2. terminates or ceases to be in full force and effect;
         3. in the case of a Project Agreement Bond or Equity Letter of Credit, ceases to be provided by an Acceptable Bank; or
         4. in the case of a Project Agreement Bond:

is not replenished by the date that falls ten (10) days before the applicable deadline for replenishment under the Project Agreement; or

is not renewed by the date that falls forty (40) Business Days before its expiration date;

and is not provided or replaced within twenty-five (25) Business Days with an alternative Project Agreement Bond, Equity Support Document, EPC Guarantee or O&M Guarantee (as applicable).

* + - 1. No Event of Default will occur under paragraph (b)(i) or (b)(ii) above in relation to an Equity Support Document if such Equity Support Document has been drawn in full in accordance with the Equity Support and Subordination Deed.
  1. Authorisations

Any Authorisation:

* + - 1. is not obtained or effected by the time it is required;
      2. is revoked or cancelled or otherwise ceases to be in full force and effect other than in accordance with its terms;
      3. is not renewed or is renewed on revised terms; or
      4. is varied,

and in each case, this has or is reasonably likely to have a Material Adverse Effect.

* 1. Project Agreement Events
     + 1. Occurrence of an Administration Event of Default.
       2. Occurrence of a Project Company Event of Default. No Event of Default will occur under this paragraph (b) if:
          1. the Borrower has remedied the Project Company Event of Default in accordance with clause 47.3(b)(i) of the Project Agreement; or
          2. the Administration has approved a programme submitted by the Borrower under clause 47.3(b)(ii) of the Project Agreement and the Borrower has remedied the Project Company Event of Default in accordance with such programme.
       3. The Administration does not comply with any provision of the Funders’ Direct Agreement. No Event of Default under this paragraph (c) will occur:
          1. for a non-compliance or default in respect of clauses 3.2.2 or 7.2 of the Funders’ Direct Agreement;
          2. for a non-compliance or default in respect of clause 8.14 of the Funders’ Direct Agreement, if such non-compliance or default:

is capable of remedy and is remedied within thirty (30) Business Days of the Intercreditor Agent giving notice to the Administration or, if earlier, the Administration becoming aware of the failure to comply; or

is otherwise immaterial (or its consequences are immaterial).

* + - 1. The Administration does not comply with any material provision of the Transaction Documents to which it is a party (other than those referred to in paragraph (c) above or is otherwise in default in any material respect (including, without limitation, any payment obligation) and, if capable of being remedied, the non-compliance or default is not remedied within thirty (30) Business Days of the earlier of: 
         1. the Intercreditor Agent giving notice to the Borrower; and
         2. the Borrower becoming aware of such breach or default.
      2. At any time, except pursuant to the Security Documents, the Borrower ceases to have the right to possess and use the Site or any material portion thereof for the purpose of owning, constructing, maintaining and operating the Project in the manner contemplated by the Project Agreement.
      3. Subject to Clause 20.31 (*Replacement*), the Borrower:
         1. has incurred Availability Failure Points in an uninterrupted six month rolling period (other than the Learning Curve Period(s)) totalling sixty-six point seven per cent. (66.7%) of the GFA Failure Limit Point; or
         2. has incurred Service Failure Points in an uninterrupted six month rolling period (other than the Learning Curve Period(s)) totalling sixty-six point seven per cent. (66.7%) of the GFA Failure Limit Point.
  1. Project Documents
     + 1. Except as provided in Clause 20.17 (Project Agreement Events) or in Clause 20.25 (Environmental matters), any party to a Project Document does not perform or is otherwise in breach of any of its payment or other material obligations under any Project Document and this has or is reasonably likely to have a Material Adverse Effect, unless such non-performance or breach:
          1. is capable of remedy; and
          2. is remedied within thirty (30) Business Days of the earlier of (A) the Intercreditor Agent giving notice to the Borrower or the relevant party and (B) the Borrower or the relevant party becoming aware of such non-performance or breach.
       2. Any Project Document is terminated otherwise than by performance or passage of time or is rescinded by a Major Project Party or a Major Project Party issues or is entitled to issue a notice to terminate a Project Document and (other than in relation to the Project Agreement) this has or is reasonably likely to have a Material Adverse Effect.
  2. Abandonment

The Borrower abandons the Project or ceases, or threatens in writing to cease, to implement the Project.

* 1. Destruction
     + 1. All or a substantial part of the Facilities is lost, damaged or destroyed.
       2. The Facilities are declared by an Insurer under any Insurance to be an actual or a constructive total loss.
       3. No Event of Default under paragraph (a) or (b) above will occur if:
          1. the requirements of clause 8.13 of the Funders’ Direct Agreement have been complied with and the Borrower is required under clause 8.13 of the Funders’ Direct Agreement to apply any resulting Insurance Proceeds in repair or reinstatement of the Facilities; or
          2. Insurance Proceeds have been received in respect of such loss which have been applied in mandatory prepayment in accordance with Clause 6.3 (*Mandatory prepayment – Insurance Proceeds*).
  2. Expropriation

By or under the authority of any Governmental Authority:

* + - 1. all or a material part of the Project, the Servitude Right Agreement, the Facilities or the share capital of the Borrower is seized, nationalised, expropriated or compulsorily acquired; or
      2. the ability or authority of the Borrower to conduct its business is wholly or substantially curtailed,

or, in each case, a Governmental Authority formally announces any intention to so act.

* 1. Force Majeure
     + 1. Any force majeure (howsoever defined) occurs under any Project Document and it continues, or its effects continue for an uninterrupted period in excess of six (6) months.
       2. No Event of Default will occur under paragraph (a) above if the effects of such force majeure on the Project are covered to the satisfaction of the Intercreditor Agent:
          1. under any Insurances or from other sources; and
          2. in respect of the Project Agreement, so as to satisfy the requirements of clause 46 (*Force Majeure*) of same.
  2. Insurances
     + 1. Any Insurance which is required to be effected at the relevant time is not, or ceases to be, in full force and effect or is avoided or any Insurer avoids, suspends or reduces, or claims that it is entitled to avoid, suspend or reduce, its liability under any such Insurance, or any claim made under it.
       2. An Insurer cancels an Insurance which is required to be effected at the relevant time, or gives notice that such an Insurance will be cancelled and that Insurance is not replaced prior to the date of cancellation in accordance with Schedule 6 (Insurance).
       3. No Event of Default under paragraph (a) or (b) will occur to the extent that (and for so long as):
          1. the risk insured by the relevant Insurance is an Uninsurable Risk; or
          2. the affected Insurance is replaced by insurance coverage for the risk covered by the affected Insurance, within thirty (30) Business Days of the affected Insurance ceasing to be in full force and effect or being cancelled and not replaced.
  3. Litigation
     + 1. Subject to Clause 20.31 (Replacement), any litigation, arbitration, or administrative, governmental, regulatory or other investigations, proceedings or disputes, including notices from any Governmental Authority, are commenced or threatened in writing in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any Major Project Party (other than the Administration) or its assets or revenues, which has or is reasonably likely to have a Material Adverse Effect;
       2. Any final judgment is rendered against the Borrower and the Borrower fails to pay any amount due from it thereunder in excess of three-hundred and fifty thousand Euros (EUR 350,000) (or its equivalent in any other currency); or
       3. Subject to paragraph (d) below, there is an adverse ruling or judgement given by a court of competent jurisdiction in Turkey in relation to the award of the tender (or the cancellation thereof) for the Project, or in relation to the ineffectiveness or termination of the Project Agreement or the Funders’ Direct Agreement which has or is reasonably likely to have a Material Adverse Effect.
       4. No Event of Default under paragraph (c) above will occur if, within sixty (60) days of the issuance of the relevant ruling or judgment, the Intercreditor Agent (acting on the instructions of the Instructing Creditors, acting in their absolute discretion and in consultation with such Advisers as they may deem appropriate) is satisfied that: 
          1. the Administration has instructed the Borrower in writing to continue the implementation of the Project notwithstanding the relevant ruling or judgment;
          2. the Administration’s obligations under schedule 23 (*Compensation on Termination*) of the Project Agreement and the Funders’ Direct Agreement remain valid and enforceable notwithstanding the relevant ruling or judgment; and
          3. the continued implementation of the Project by the Borrower is in compliance in all material respects with Applicable Law in the Borrower’s jurisdiction of incorporation.
  4. Environmental matters
     + 1. Subject to paragraphs (b) and (c) below:
          1. any Environmental Claim shall have been instituted against the Borrower, or any order, judgment or decree of a Governmental Authority is issued against the Borrower in relation to: (A) an Environmental Claim, (B) an Environmental and Social Law, (C) any Environmental and Social Licence, (D) the Environmental and Social Requirements;
          2. the Borrower fails to perform or comply with its obligations under Clause 17.3 (*Compliance with Applicable Laws*) as it relates to Environmental and Social Laws, Clause 17.16 (*Environmental Compliance*), or Clause 17.17 (*Environmental and Social Matters*);
          3. the EPC Contractor fails to perform or comply with its obligations under clause 5.7 (*Environmental and social matters*) of the EPC Direct Agreement; or
          4. the Operator fails to perform or comply with its obligations under clause 5.7 (*Environmental and social matters*) of the O&M Direct Agreement.
       2. An Event of Default under this Clause 20.25 will not occur where:
          1. the circumstance or event which gave rise to an Environmental Claim, order, judgment or decree referred in paragraph (a)(i) above is immaterial (or its consequences are immaterial);
          2. the failure to perform or comply referred in paragraph (a)(ii), (a)(iii) or (a)(iv) above is immaterial (or its consequences are immaterial),

in each case, in the reasonable determination of the Intercreditor Agent (in consultation with the Lenders’ Technical & Environmental Adviser and acting on the instructions of the Instructing Creditors).

* + - 1. An Event of Default under this Clause 20.25 will only occur, subject to paragraph (b) above, if:
         1. the circumstance giving rise to the Default set out in paragraph (a) above is not capable of being remedied;
         2. the Borrower, after becoming aware of any circumstance or Default set out in paragraph (a) above, fails to notify the Intercreditor Agent:

in accordance with its notification obligations under paragraph 5 (*Environmental*) of Part A (Information) of Schedule 5 (*Information, Budgets and Reporting*); or

in accordance with Clause 16.9 (*Environmental Reports*); or

* + - * 1. within fourteen (14) days of the Borrower making any of the notifications to the Intercreditor Agent in accordance with paragraph (c)(ii) above, the Borrower does not deliver to the Intercreditor Agent an Environmental Remediation Plan;
        2. an Environmental Remediation Plan is delivered within the fourteen (14) days period referred to in (c)(iii) above, but is not approved by the Intercreditor Agent acting on the instructions of the Instructing Creditors (and in consultation with the Lenders’ Technical & Environmental Adviser) within thirty (30) days of such delivery, provided that a failure of the Intercreditor Agent to respond within such thirty (30) day period shall not constitute an Event of Default under this Clause 20.25, nor a Default for the purposes of Clauses 3.2 (*Further conditions precedent*) and 19.2 (*Distributions*); or
        3. an Environmental Remediation Plan is delivered in accordance with paragraph (c)(iii) above and is approved in accordance with paragraph (c)(iv) above but the Borrower fails to:

implement, institute or pursue and/or complete the remedial steps set out in such Environmental Remediation Plan; or

remedy (if capable of remedy) the matter of which the Borrower notified the Intercreditor Agent under (c)(ii) above, in each case:

within the period set out in the approved Environmental Remediation Plan; and

to the Intercreditor Agent's satisfaction (acting on the instructions of the Instructing Creditors and in consultation with the Lenders’ Technical & Environmental Adviser).

* 1. Workers’ rights
     + 1. Save to the extent waived by OPIC in accordance with the Intercreditor Deed, the occurrence of a Worker Rights Non-Compliance.
       2. No Event of Default under paragraph (a) above will occur if such Worker Rights Non-Compliance is caused by the actions of the Administration.
  2. Payment capacity of the Administration

In the reasonable opinion of the Intercreditor Agent (acting on the instructions of the Instructing Creditors), the Administration is not or ceases to be entitled to budget allocations of Turkey or ceases to be entitled to the benefit of revolving funds allocated to the Project and, in both cases the Intercreditor Agent is, in its reasonable opinion, not otherwise satisfied that Turkey will pay the Availability Payments and Service Payments when due.

* 1. Ineligibility for financing
     + 1. Save to the extent waived by EBRD in accordance with the Intercreditor Deed, if, in accordance with EBRD’s Enforcement Policy and Procedures, EBRD has determined that the Borrower or an Affiliate of the Borrower has engaged in a Sanctionable Practice in relation to any activity or project which EBRD has financed or committed to finance and the Borrower shall be included on EBRD’s list of persons or entities ineligible to be awarded an EBRD-financed contract or for EBRD funding, as such list may be found on EBRD’s website.
       2. Save to the extent waived by OPIC in accordance with the Intercreditor Deed, if, prior to the end of the GE Share Retention Period:
          1. GE Belgium is not Controlled by, or at least fifty-one per cent. (51%) of its Shares is not (directly or indirectly) retained by GE Guarantor or an Affiliate of the GE Guarantor which is incorporated in the United States; or
          2. the GE Service Supply Contract is terminated or shares in GEMS Turkey have been transferred to a third party, as a result of which less than fifty-one per cent. (51%) of the share capital of GEMS Turkey is held (directly or indirectly) by a US entity and within thirty (30) days of the termination or of the transfer of shares, a replacement equipment maintenance agreement with a majority-owned (directly or indirectly) US service provider satisfactory to the Senior Lenders has not been entered into.
  2. Sanctionable Practices
     + 1. The Borrower has been found by a judicial process or other official inquiry to have committed or engaged in any Sanctionable Practice.
       2. Any Major Project Party (or for so long as such Person is a Major Project Party, any of their respective Affiliates or their respective Principals) is a Turkish Sanctioned Person.
  3. Material adverse change

Any event or circumstance occurs which has or is reasonably likely to have a Material Adverse Effect.

* 1. Replacement

No Event of Default will occur in relation to the Operator under Clauses 20.6 (Insolvency), 20.7 (Insolvency proceedings), 20.17(f) (Project Agreement Events) and 20.24 (Litigation) if each Project Document to which the Operator is a party is replaced by either (a) agreements in better or substantially similar terms with a new person (who has been approved by the Intercreditor Agent acting on the instructions of the Instructing Creditors), or (b) alternative arrangements acceptable to the Intercreditor Agent acting on the instructions of the Instructing Creditors, in each case within ninety (90) days of the earlier of (A) the Intercreditor Agent giving notice to the Borrower and (B) the Borrower becoming aware of the occurrence of the relevant event which would, but for the operation of this provision and the expiry of any other applicable grace period, constitute an Event of Default.

* 1. Remedies

On and at any time after the occurrence of an Event of Default which is continuing, the Intercreditor Agent may, and shall if so directed in accordance with the Intercreditor Deed, by notice to the Borrower:

* + - 1. cancel the Total Commitments whereupon they shall immediately be cancelled;
      2. declare that all or part of the Senior Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
      3. declare that all or part of the Senior Loans be payable on demand, whereupon they shall immediately become payable on demand of the Intercreditor Agent (acting on the instructions of the Instructing Creditors);
      4. exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under clause 7 (*Acceleration of Equity Contributions*) of the Equity Support and Subordination Deed;
      5. exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Project Accounts Agreement;
      6. except as provided in paragraph (d) and (e) above, exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents;
      7. exercise any other rights under the Finance Documents and/or any other remedies available at law; and/or
      8. require the Borrower to terminate any Hedging Arrangement and/or any Hedging Transaction.

1. Changes to the Senior Lenders
   1. Assignments by the Senior Lenders

Subject to this Clause 21 and the terms of the relevant Senior Loan Agreement, a Senior Lender (the ***Existing Senior Lender***) may assign any of its rights under the Finance Documents to any person (a ***New Senior Lender***).

* 1. Sub-participation

Any Senior Lender may, without the consent of the Borrower, at any time sub-participate or sub-contract any of its rights or obligations under the Finance Documents (including by way of a Participation).

* 1. Conditions of assignment
     + 1. Unless the Borrower and the Intercreditor Agent agree in writing otherwise, an assignment by a Senior Lender other than an FI Lender must:
          1. not be to a Speculative Lender or Excluded Person; and
          2. be to an Acceptable Bank.
       2. The prior written consent of the Borrower is required for any assignment by a Senior Lender other than an FI Lender, unless:
          1. the Project Completion Date has occurred; or
          2. the assignment is made to:

an export credit agency, a federal reserve or a central bank; or

a Senior Lender or an Affiliate of a Senior Lender; or

* + - * 1. an Event of Default has occurred and is continuing.
      1. The consent of the Borrower under paragraph (b) above may not be unreasonably withheld or delayed and will be deemed to have been given after ten (10) Business Days of the date of notice by the relevant Senior Lender that it intends to assign a part of its rights or obligations, unless the Borrower has within that period delivered written objection to such assignment specifying reasonable grounds for such objection.
      2. An Existing Senior Lender must provide the Borrower and the Intercreditor Agent with ten (10) Business Days prior notice of any assignment under this Clause 21, unless a Fundamental Event of Default has occurred and is continuing.
      3. An assignment will only be effective on:
         1. receipt by the Intercreditor Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Senior Lender (in form and substance satisfactory to the Intercreditor Agent) that the New Senior Lender will assume the same obligations to the other Finance Parties and the other Secured Creditors as it would have been under if it was an Original Senior Lender; and
         2. performance by the Intercreditor Agent of all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Senior Lender, the completion of which the Intercreditor Agent shall promptly notify to the Existing Senior Lender and the New Senior Lender.
      4. If:
         1. a Senior Lender assigns any of its rights or obligations under the Finance Documents or changes its Facility Office; and
         2. as a result of circumstances existing at the date the assignment or change occurs, the Borrower would be obliged to make a payment to the New Senior Lender or Lender acting through its new Facility Office under Clause 10 (Tax Gross-Up and Indemnities) or Clause 11 (Increased Costs),

then the New Senior Lender or Senior Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Senior Lender or Senior Lender acting through its previous Facility Office would have been if the assignment or change had not occurred. This paragraph (f) shall not apply to the entry into of any Participation Agreement entered into prior to Financial Close.

* + - 1. Each New Senior Lender, by executing the relevant Assignment Agreement, confirms, for the avoidance of doubt, that the Intercreditor Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Senior Lender or Senior Lenders in accordance with this Agreement on or prior to the date on which the assignment becomes effective in accordance with this Agreement, and that it is bound by that decision to the same extent as the Existing Senior Lender would have been had it remained a Senior Lender.
  1. Assignment fee

The New Senior Lender shall, on the date upon which an assignment takes effect, pay to the Intercreditor Agent (for its own account) a fee of EUR 5,000 (five thousand Euros).

* 1. Limitation of responsibility of Existing Senior Lenders
     + 1. Unless expressly agreed to the contrary, an Existing Senior Lender makes no representation or warranty and assumes no responsibility to a New Senior Lender for:
          1. the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Project Security or any other documents;
          2. the financial condition of the Borrower;
          3. the performance and observance by any party to any Transaction Documents of its obligations thereunder or under any other documents; or
          4. the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,

and any representations or warranties implied by law are excluded.

* + - 1. Each New Senior Lender confirms to the Existing Senior Lender, the other Finance Parties and the Secured Creditors that it:
         1. has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Senior Lender in connection with any Transaction Document or the Project Security; and
         2. will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
      2. Nothing in any Finance Document obliges an Existing Senior Lender to:
         1. accept a re-assignment from a New Senior Lender of any of the rights and obligations assigned under this Clause 21; or
         2. support any losses directly or indirectly incurred by the New Senior Lender by reason of the non-performance by the Borrower of its obligations under the Transaction Documents or otherwise.
  1. Procedure for assignment
     + 1. Subject to the conditions set out in Clause 21.3 (Conditions of assignment) an assignment may be effected in accordance with paragraph (c) below when the Intercreditor Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Senior Lender and the New Senior Lender. The Intercreditor Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
       2. The Intercreditor Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Senior Lender and the New Senior Lender once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Senior Lender.
       3. On the Transfer Date:
          1. the Existing Senior Lender will assign absolutely to the New Senior Lender its rights under the Finance Documents and in respect of the Project Security expressed to be the subject of the assignment in the Assignment Agreement;
          2. the Existing Senior Lender will be released from the obligations (the ***Relevant Obligations***) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Project Security); and
          3. the New Senior Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.
       4. Senior Lenders may utilise procedures other than those set out in this Clause 21.6 (Procedure for assignment) to assign their rights under the Finance Documents (but not, without the consent of the Borrower, to obtain a release by the Borrower from the obligations owed to the Borrower by the Senior Lenders nor the assumption of equivalent obligations by a New Senior Lender) provided that they comply with the conditions set out in Clause 21.3 (Conditions of assignment).
  2. Copy of Assignment Agreement to Borrower

The Intercreditor Agent shall, as soon as reasonably practicable after it has executed an Assignment Agreement, send to the Borrower a copy of that Assignment Agreement.

* 1. Security over Lenders’ rights

In addition to the other rights provided to Senior Lenders under this Clause 21 (Changes to the Senior Lenders), each Senior Lender may without consulting with or obtaining consent from the Borrower, at any time charge, assign or otherwise create Security Interests in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Senior Lender including, without limitation:

* + - 1. any charge, assignment or other Security Interests to secure obligations to a federal reserve or central bank; and
      2. in the case of any Senior Lender which is a fund, any charge, assignment or other Security Interests granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Senior Lender as security for those obligations or securities,

except that no such charge, assignment or Security Interests shall:

* + - * 1. release a Senior Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security Interests for the Senior Lender as a party to any of the Finance Documents; or
        2. require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Senior Lender under the Finance Documents.
  1. Accession of Replacement Senior Lenders
     + 1. A Replacement Senior Lender will become a Senior Lender in accordance with Clause 2.3 (Replacement Senior Loans) when the Intercreditor Agent executes an otherwise duly completed Accession Agreement delivered to it by the Replacement Senior Lender and the Borrower. The Intercreditor Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Accession Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Accession Agreement.
       2. The Intercreditor Agent shall only be obliged to execute an Accession Agreement delivered to it by a Replacement Senior Lender and the Borrower once it is satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations in relation to the accession of such Replacement Senior Lender.

1. No assignment or transfer by Borrower

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

1. The Intercreditor Agent
   1. Appointment of the Intercreditor Agent
      * 1. Each of the FI Arrangers and the Senior Lenders appoints the Intercreditor Agent to act as its agent under and in connection with the Finance Documents.
        2. Each of the FI Arrangers and the Senior Lenders authorises the Intercreditor Agent to perform the duties, obligations and responsibilities and exercise the rights, powers, authorities and discretions specifically given to the Intercreditor Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
        3. Without prejudice to any contractual obligations of the Intercreditor Agent under the Finance Documents and any legal obligations of the Intercreditor Agent under any Applicable Law, each of the FI Arrangers and the Senior Lenders releases the Intercreditor Agent from any restrictions on representing several persons and self-dealing under any applicable law (including Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*)), to the extent legally possible to such FI Arranger or Senior Lender. An FI Arranger or Senior Lender which is barred by its constitutional documents or by-laws from granting such exemption shall notify the Intercreditor Agent accordingly.
   2. Instructions
      * 1. The Intercreditor Agent shall:
           1. unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as the Intercreditor Agent in accordance with any instructions given to it by the Instructing Creditors; and
           2. not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
        2. The Intercreditor Agent shall be entitled to request instructions, or clarification of any instruction, from the Instructing Creditors (or, if the relevant Finance Document stipulates the matter is a decision for any other Senior Lender or group of Senior Lenders, from that Senior Lender or group of Senior Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Intercreditor Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
        3. Save in the case of decisions stipulated to be a matter for any other Senior Lender or group of Senior Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Intercreditor Agent by the Instructing Creditors shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
        4. The Intercreditor Agent may refrain from acting in accordance with any instructions of any Senior Lender or group of Senior Lenders until it has received any indemnification and/or security that it may require (acting reasonably) (which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
        5. In the absence of instructions, the Intercreditor Agent may act (or refrain from acting) as it considers to be in the best interest of the Senior Lenders.
        6. The Intercreditor Agent is not authorised to act on behalf of a Senior Lender (without first obtaining that Senior Lender’s consent) in any legal or arbitration proceedings relating to any Finance Document.
   3. Duties of the Intercreditor Agent
      * 1. The Intercreditor Agent’s duties under the Finance Documents are solely mechanical and administrative in nature.
        2. Subject to paragraph (c) below, the Intercreditor Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Intercreditor Agent for that Party by any other Party.
        3. Without prejudice to Clause 21.7 (Copy of Assignment Agreement to Borrower), paragraph (b) above shall not apply to any Assignment Agreement.
        4. Except where a Finance Document specifically provides otherwise, the Intercreditor Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
        5. If the Intercreditor Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
        6. If the Intercreditor Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Intercreditor Agent, the FI Arrangers or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
        7. The Intercreditor Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).
   4. No fiduciary duties
      * 1. Nothing in any Finance Document constitutes the Intercreditor Agent as a trustee or fiduciary of any other person.
        2. The Intercreditor Agent shall not be bound to account to any Senior Lender for any sum or the profit element of any sum received by it for its own account.
   5. Business with the Borrower and Shareholders

The Intercreditor Agent and each FI Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower, any of the Shareholders or any of their respective Affiliates.

* 1. Rights and discretions
     + 1. The Intercreditor Agent may:
          1. rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
          2. assume that:

any instructions received by it from the Instructing Creditors, any Senior Lenders or any group of Senior Lenders are duly given in accordance with the terms of the Finance Documents; and

unless it has received notice of revocation, that those instructions have not been revoked; and

* + - * 1. rely on a certificate from any person:

as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

* + - 1. The Intercreditor Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Senior Lenders) that:
         1. no Default has occurred (unless it has actual knowledge of a Default arising under Clause 20.1 (Non-payment by the Borrower)); and
         2. any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised.
      2. Subject to Clause 24 (Advisers) the Intercreditor Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
      3. Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Intercreditor Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Intercreditor Agent (and so separate from any lawyers instructed by the Senior Lenders) if the Intercreditor Agent in its reasonable opinion deems this to be necessary, which includes, for the avoidance of doubt, any lawyers referred to under paragraph (c) of Clause 31 (*Amendments and Waivers*). To the extent such costs are subject to a claim for reimbursement against the Borrower, such costs need to be reasonably incurred and duly documented by the Intercreditor Agent.
      4. The Intercreditor Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Intercreditor Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
      5. The Intercreditor Agent may act in relation to the Finance Documents through its officers, employees and agents and the Intercreditor Agent shall not:
         1. be liable for any error of judgment made by any such person; or
         2. be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Intercreditor Agent's gross negligence or wilful misconduct.

* + - 1. Unless a Finance Document expressly provides otherwise the Intercreditor Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
      2. Notwithstanding any other provision of any Finance Document to the contrary, neither the Intercreditor Agent nor any FI Arranger is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
      3. Notwithstanding any provision of any Finance Document to the contrary, the Intercreditor Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
  1. Responsibility for documentation

Neither the Intercreditor Agent nor any FI Arranger is responsible or liable for:

* + - 1. the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Intercreditor Agent, any FI Arranger, the Borrower or any other person in or in connection with any Transaction Document or the Information Memorandum or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
      2. the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; or
      3. any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by any Applicable Law relating to insider dealing or otherwise.
  1. No duty to monitor

The Intercreditor Agent shall not be bound to enquire:

* + - 1. whether or not any Default has occurred;
      2. as to the performance, default or any breach by any Party of its obligations under any Transaction Document; or
      3. whether any other event specified in any Transaction Document has occurred.
  1. Exclusion of liability
     + 1. Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Intercreditor Agent), the Intercreditor Agent will not be liable for:
          1. any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Project Security, unless directly caused by its gross negligence or wilful misconduct;
          2. exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or the Project Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Project Security, other than by reason of its gross negligence or wilful misconduct; or
          3. without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Intercreditor Agent) arising as a result of:

any act, event or circumstance not reasonably within its control; or

the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

* + - 1. No Party (other than the Intercreditor Agent) may take any proceedings against any officer, employee or agent of the Intercreditor Agent in respect of any claim it might have against the Intercreditor Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Intercreditor Agent may rely on this Clause 23.9 subject to Clause 1.9 (Third party rights) and the provisions of the Third Parties Act.
      2. The Intercreditor Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Intercreditor Agent if the Intercreditor Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Intercreditor Agent for that purpose.
      3. Nothing in this Agreement shall oblige the Intercreditor Agent or any FI Arranger to carry out:
         1. any “know your customer” or other checks in relation to any person; or
         2. any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Senior Lender,

on behalf of any Senior Lender and each Senior Lender confirms to the Intercreditor Agent and each FI Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Intercreditor Agent or any FI Arranger.

* + - 1. Without prejudice to any provision of any Finance Document excluding or limiting the Intercreditor Agent’s liability, any liability of the Intercreditor Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Intercreditor Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Intercreditor Agent at any time which increase the amount of that loss. In no event shall the Intercreditor Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Intercreditor Agent has been advised of the possibility of such loss or damages.
  1. Senior Lenders’ indemnity to the Intercreditor Agent

To the extent that the Borrower does not do so when required under the Finance Documents (or is not obliged to do so), each Senior Lender (other than OPIC) shall (severally in the proportion which the amounts then due to it in respect of the Senior Loans bear to the then aggregate amount of the Senior Loans indemnify the Intercreditor Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Intercreditor Agent (otherwise than by reason of the Intercreditor Agent’s gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 25.10 (*Disruption to Payment Systems etc.*) notwithstanding the Intercreditor Agent’s negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Intercreditor Agent) in acting as Agent under the Finance Documents (unless the Intercreditor Agent has been reimbursed by the Borrower pursuant to a Finance Document).

* 1. Resignation of the Intercreditor Agent
     + 1. The Intercreditor Agent may resign by giving sixty (60) days’ notice to the Senior Lenders and the Borrower, in which case the Instructing Creditors (after consultation with the Borrower) may appoint a successor Intercreditor Agent.
       2. If the Instructing Creditors have not appointed a successor Intercreditor Agent in accordance with paragraph (a) above within twenty (20) days after notice of resignation was given, the retiring Intercreditor Agent (after consultation with the Borrower) may appoint a successor Intercreditor Agent (acting through an office in London, England).
       3. The retiring Intercreditor Agent shall, at its own cost (save where the resignation is pursuant to paragraph (f) or (g) below), make available to the successor Intercreditor Agent such documents and records and provide such assistance as the successor Intercreditor Agent may reasonably request for the purposes of performing its functions as the Intercreditor Agent under the Finance Documents. The Borrower shall, where such resignation is pursuant to paragraph (f) or (g) below, within three (3) Business Days of demand, reimburse the retiring Intercreditor Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
       4. The Intercreditor Agent’s resignation notice shall only take effect upon the appointment of a successor.
       5. Upon the appointment of a successor, the retiring Intercreditor Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (c) above) but shall remain entitled to the benefit of Clause 12.3 (Indemnity to the Intercreditor Agent) and this Clause 23.11 (and any agency fees for the account of the retiring Intercreditor Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
       6. After consultation with the Borrower, the Instructing Creditors may, by notice to the Intercreditor Agent, require it to resign in accordance with paragraph (a) above. In this event, the Intercreditor Agent shall resign in accordance with paragraph (a) above but the cost referred to in paragraph (c)above, shall be for the account of the Borrower.
       7. The Intercreditor Agent shall resign in accordance with paragraph (a) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Intercreditor Agent pursuant to paragraph (b) above) if on or after the date which is three (3) months before the earliest FATCA Application Date relating to any payment to the Intercreditor Agent under the Finance Documents, either:
          1. the Intercreditor Agent fails to respond to a request under Clause 10.8 (*FATCA Information*) and the Borrower or a Senior Lender reasonably believes that the Intercreditor Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
          2. the information supplied by the Intercreditor Agent pursuant to Clause 10.8 (*FATCA Information*) indicates that the Intercreditor Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
          3. the Intercreditor Agent notifies the Borrower and the Senior Lenders that the Intercreditor Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) the Borrower or a Senior Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Intercreditor Agent were a FATCA Exempt Party, and the Borrower or that Senior Lender, by notice to the Intercreditor Agent, requires it to resign.

* 1. Confidentiality
     + 1. In acting as agent for the Finance Parties, the Intercreditor Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
       2. If information is received by another division or department of the Intercreditor Agent, it may be treated as confidential to that division or department and the Intercreditor Agent shall not be deemed to have notice of it.
  2. Relationship with the Senior Lenders
     + 1. The Intercreditor Agent may treat the person shown in its records as Senior Lender at the opening of business (in the place of the Intercreditor Agent’s principal office as notified to the Finance Parties from time to time) as the Senior Lender acting through its Facility Office:
          1. entitled to or liable for any payment due under any Finance Document on that day; and
          2. entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received prior notice from that Senior Lender to the contrary in accordance with the terms of this Agreement.

* + - 1. Any Senior Lender may by notice to the Intercreditor Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Senior Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 27.5 (Electronic communication)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Senior Lender for the purposes of Clause 27.2 (Addresses) and paragraph (a)(ii) of Clause 27.5 (Electronic communication) and the Intercreditor Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Senior Lender.
  1. Credit appraisal by the Senior Lenders

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Transaction Document, each Senior Lender confirms to the Intercreditor Agent and each FI Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Transaction Document including but not limited to:

* + - 1. the financial condition, status and nature of each Major Project Party;
      2. the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Project Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Project Security;
      3. whether that Senior Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Transaction Document, the Project Security, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Project Security;
      4. the adequacy, accuracy or completeness of the Information Memorandum and any other information provided by the Intercreditor Agent, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
      5. the right or title of any person in or to, or the value or sufficiency of any part of the assets subject to the Project Security, the priority of any of the Project Security or the existence of any Security Interest affecting any part of the assets subject to the Project Security.
  1. Deduction from amounts payable by the Intercreditor Agent

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

* 1. Intercreditor Agent’s management time

Following the occurrence of an Event of Default, any amount payable to the Intercreditor Agent under Clause 12.3 (*Indemnity to the Intercreditor Agent*) and Clause ‎14 (*Costs and expenses*) shall include duly documented costs (reasonably incurred) of utilising the Intercreditor Agent’s management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Intercreditor Agent may notify to the Borrower, and is in addition to any fee paid or payable to the Intercreditor Agent under Clause 9 (*Fees*).

1. Advisers
   * + 1. The Intercreditor Agent (acting on the instructions of the Instructing Creditors) may, following consultation with the Borrower as to the identity of the relevant adviser (provided that no consultation shall be required at any time when an Event of Default has occurred and is continuing):
          1. if in its reasonable opinion this is necessary, appoint additional advisers to act on behalf of the Finance Parties in relation to the Project; and
          2. if any Adviser resigns or its appointment otherwise ceases or is terminated, appoint a replacement Adviser.
       2. The Borrower must pay to the Intercreditor Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it and agreed in advance with the Borrower in connection with any appointment under this Clause 24, such agreement not to be unreasonably withheld or delayed (provided that such prior agreement shall not be required at any time when an Event of Default has occurred and is continuing).
       3. If the Instructing Creditors are unable to agree on the appointment of a replacement Adviser within twenty (20) Business Days of notification to them by the Intercreditor Agent of alternative advisers, the Intercreditor Agent may appoint any replacement Adviser as it thinks fit.
       4. The Borrower must co-operate in good faith with each Adviser.
2. Payment Mechanics
   1. Payments generally
      * 1. Unless provided otherwise in any Senior Loan Agreement, on each date on which the Borrower or a Senior Lender is required to make a payment under a Finance Document, the Borrower or Senior Lender shall make the same available to the Intercreditor Agent or (as the case may be) any Senior Lender (subject to Clause 25.11 (Payments to the Security Agent) and unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Intercreditor Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
        2. Save as the Intercreditor Agent may otherwise direct at any time, all payments:
           1. from a Senior Lender to the Borrower under a Senior Loan Agreement shall be made in accordance with the terms of that Senior Loan Agreement;
           2. from the Borrower to a Senior Lender under a Senior Loan Agreement shall be made by the Borrower to that Senior Lender under and in accordance with the terms of that Senior Loan Agreement;
           3. from the Borrower to an Agent which is for its own account shall be made by the Borrower directly to that Agent; and
           4. from the Borrower to a Finance Party in respect of any indemnity (including any Tax Payment payable (and as defined in) Clause 10 (Tax Gross Up and Indemnities)) shall be paid directly to the Finance Party entitled to such payment.
   2. Distributions by the Intercreditor Agent

Each payment received by the Intercreditor Agent under the Finance Documents for another Party shall, subject to Clause 25.3 (Distributions to the Borrower) and Clause 25.4 (Clawback) and any applicable provisions of the Intercreditor Deed regarding sharing of payments between Finance Parties be made available by the Intercreditor Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement:

* + - 1. in the case of a Senior Lender, to its Facility Office, to such account as that Party may notify to the Intercreditor Agent by not less than five (5) Business Days’ notice with a bank specified by that Senior Lender in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or London, as specified by that Senior Lender);
      2. in the case of any other Finance Party, to such account as that Party may notify to the Intercreditor Agent by not less than five (5) Business Days’ notice with a bank specified by that Finance Party in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or London, as specified by that Finance Party); and
      3. in the case of the Borrower, in accordance with the Project Accounts Agreement.
  1. Distributions to the Borrower

Subject to the terms of the Finance Documents, each Finance Party may (with the consent of the Borrower or in accordance with Clause 26 (Set-Off)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

* 1. Clawback
     + 1. Where a sum is to be paid to any Agent or Senior Lender under the Finance Documents for another Party, that Agent or Senior Lender is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
       2. If an Agent or Senior Lender pays an amount to another Party and it proves to be the case that that Agent or Senior Lender had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by that Agent or Senior Lender shall on demand refund the same to that Agent together with interest on that amount from the date of payment to the date of receipt by the relevant Agent or Senior Lender, calculated by such Agent or Senior Lender to reflect its cost of funds.
  2. Partial payments
     + 1. If an Agent or Senior Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, that Agent or Senior Lender shall apply that payment towards the obligations of the Borrower under the Finance Documents in the order set out in the Cash Waterfall.
       2. Paragraph (a) above will override any appropriation made by the Borrower.
  3. No set-off by Borrower

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

* 1. Business Days

Unless provided otherwise in any Senior Loan Agreement, any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

* 1. Currency of account
     + 1. Subject to paragraphs (b), (c) and (d) below, Euro is the currency of account and payment for any sum due from the Borrower under any Finance Document.
       2. Dollars are the currency of account and payment for any sum due from the Borrower under the OPIC Finance Agreement and any OPIC Funding Document.
       3. Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
       4. Any amount expressed to be payable in a currency other than Euro or Dollar shall be paid in that other currency.
  2. Change of currency
     + 1. Unless otherwise prohibited by Applicable Law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
          1. any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Intercreditor Agent (after consultation with the Borrower); and
          2. any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Intercreditor Agent (acting reasonably).
       2. If a change in any currency of a country occurs, this Agreement will, to the extent the Intercreditor Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.
  3. Disruption to Payment Systems etc.

If either the Intercreditor Agent determines (in its discretion) that a Disruption Event has occurred or the Intercreditor Agent is notified by the Borrower that a Disruption Event has occurred:

* + - 1. the Intercreditor Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Senior Loan Facilities as the Intercreditor Agent may deem necessary in the circumstances;
      2. the Intercreditor Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
      3. the Intercreditor Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
      4. any such changes agreed upon by the Intercreditor Agent (acting on the instructions of the Instructing Creditors) and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents;
      5. the Intercreditor Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Intercreditor Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 25.10; and
      6. the Intercreditor Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.
  1. Payment to the Security Agent

Notwithstanding any other provision of any Finance Document, at any time after any Security Interest created by or pursuant to any Security Document (other than the Intercreditor Deed) becomes enforceable, the Security Agent may (if so instructed pursuant to the Intercreditor Deed) require:

* + - 1. the Borrower to pay all sums due under any Finance Document; and
      2. the Intercreditor Agent to pay all sums received or recovered from the Borrower or any other Major Project Party under any Finance Document,

in each case as the Security Agent may direct for application in accordance with the terms of the Intercreditor Deed. Any payment made by the Security Agent or directed by the Security Agent shall discharge the obligations of the Security Agent to make payment of the same.

* 1. Parallel debt
     + 1. Notwithstanding any other provision of the Finance Documents, the Borrower hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Creditors, sums equal to and in the currency of each amount payable by the Borrower to each of the Secured Creditors under each of the Finance Documents as and when that amount falls due for payment under the relevant Finance Document or would have fallen due but for any discharge resulting from failure of another Secured Creditor to take appropriate steps, in insolvency proceedings affecting the Borrower, to preserve its entitlement to be paid that amount.
       2. The Borrower and the Security Agent acknowledge that the obligations of the Borrower under this Clause 25.12 are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of the Borrower to any Secured Creditor under any Finance Document, nor shall the amounts for which the Borrower is liable under this Clause 25.12 (such amounts being the ***Parallel Debt***) be limited or affected in any way by its obligations to any Secured Creditor under any Finance Document, provided that:
          1. the Parallel Debt shall be decreased to the extent that the other Secured Creditors have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Finance Documents;
          2. any amount due and payable by the Borrower to the other Secured Creditors under the other provisions of the Finance Documents shall be decreased to the extent that the Security Agent has received (and is able to retain) payment in full of the corresponding amount of Parallel Debt; and
          3. the Parallel Debt shall at all times be equal to the amount due and payable by the Borrower to the other Secured Creditors under the other provisions of the Finance Documents.
       3. For the purpose of this Clause 25.12, the Security Agent acts in its own name and not as a trustee, and its claims in respect of the Parallel Debt shall not be held on trust. The Security Interest granted under the Finance Documents to the Security Agent to secure the Parallel Debt is granted to the Security Agent in its capacity as creditor of the Parallel Debt and shall not be held on trust.
       4. The Security Agent shall have its own independent right to demand payment of the amounts payable by the Borrower under this Clause 25.12 irrespective of any discharge of the Borrower’s obligation to pay those amounts to the other Secured Creditors resulting from failure by them to take appropriate steps, in insolvency proceedings affecting the Borrower, to preserve their entitlement to be paid those amounts.
       5. All monies received or recovered by the Security Agent pursuant to this Clause 25.12, and all amounts received or recovered by the Security Agent from or by the enforcement of any Project Security granted to secure the Parallel Debt, shall be paid to or to the order of the Intercreditor Agent for application in accordance with Clause 25.11 (*Payment to the Security Agent*).

1. Set-Off

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

1. Notices
   1. Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

* 1. Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

* + - 1. in the case of the Borrower, that identified with its name below:

KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ

Address: Çukurambar Mah. 1480. Sok, No:2, Besa Plaza, A Blok Kat:18 Daire:68-70, 06530, Çankaya/Ankara

Fax: +90 312 287 35 33

Email: [Yalcin.Eliguzeloglu@gama.com.tr](mailto:Yalcin.Eliguzeloglu@gama.com.tr) / [nkaraca@turkerler.com](mailto:nkaraca@turkerler.com) / Gizem.Karabulut@gamaturkerler.com.tr

Attention: Yalçın Eligüzeloğlu / Nurhan Uyduranoglu Karaca / Gizem Karabulut

* + - 1. in the case of each other Party:
         1. that identified in Part B (Notice Details) of Schedule 1 (The Original Senior Lenders); or
         2. that notified in writing to the Intercreditor Agent on or prior to the date on which it becomes a Party,

or any substitute address or fax number or department or officer as the Party may notify to the Intercreditor Agent (or the Intercreditor Agent may notify to the other Parties, if a change is made by the Intercreditor Agent) by not less than five (5) Business Days’ notice.

* 1. Delivery
     + 1. Without prejudice to Clause 27.5 (Electronic communication), any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
          1. if by way of fax, when received in legible form; or
          2. if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 27.2 (Addresses), if addressed to that department or officer.

* + - 1. Any communication or document to be made or delivered to an Agent will be effective only when actually received by that Agent and then only if it is expressly marked for the attention of the department or officer identified with that Agent’s signature below (or any substitute department or officer as that Agent shall specify for this purpose).
      2. All notices from the Borrower shall be sent through the Intercreditor Agent.
      3. Any communication or document which becomes effective, in accordance with paragraphs (a) or (b) above, after 17:00 in the place of receipt shall be deemed only to become effective on the following day.
  1. Notification of address and fax number

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

* 1. Electronic communication
     + 1. Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means, to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
          1. notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
          2. notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days’ notice.
       2. Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Intercreditor Agent or the Security Agent only if it is addressed in such a manner as the Intercreditor Agent or Security Agent shall specify for this purpose.
       3. Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 17:00 in the place of receipt shall be deemed only to become effective on the following day.
       4. The Parties agree that any communication made by electronic mail or other electronic means will not be subject to a separate encryption procedure. The Borrower is aware that in this case the information will be transmitted via the internet. The internet is a global open network which is freely accessible by anybody. Therefore, the transfer of emails cannot be fully controlled and, hence, the confidentiality of the communication cannot be ensured. In this respect, the Borrower hereby releases each Finance Party from any applicable banking secrecy obligations it may have. To the extent legally permitted and except for cases of wilful misconduct and gross negligence, no Finance Party shall be liable for any damages which the Borrower or any third party may incur as a result of the transmission of communications by electronic mail or other electronic means.
  2. Use of websites
     + 1. The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Senior Lenders (the ***Website Lenders***) who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Intercreditor Agent (the ***Designated Website***) if:
          1. the Intercreditor Agent expressly agrees (after consultation with each of the Senior Lenders) that it will accept communication of the information by this method;
          2. both the Borrower and the Intercreditor Agent are aware of the address of and any relevant password specifications for the Designated Website; and
          3. the information is in a format previously agreed between the Borrower and the Intercreditor Agent.
       2. If any Senior Lender (a ***Paper Form Lender***) does not agree to the delivery of information electronically then the Intercreditor Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Intercreditor Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall supply the Intercreditor Agent with at least one copy in paper form of any information required to be provided by it.
       3. The Intercreditor Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Intercreditor Agent.
       4. The Borrower shall promptly upon becoming aware of its occurrence notify the Intercreditor Agent if:
          1. the Designated Website cannot be accessed due to technical failure;
          2. the password specifications for the Designated Website change;
          3. any new information which is required to be provided under this Agreement is posted onto the Designated Website;
          4. any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
          5. the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.
       5. If the Borrower notifies the Intercreditor Agent under paragraph (d)(i) or paragraph (d)(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Intercreditor Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.
       6. Any Website Lender may request, through the Intercreditor Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.
  3. English language
     + 1. Any notice given under or in connection with any Finance Document must be in English.
       2. All other documents provided under or in connection with any Finance Document must be:
          1. in English; or
          2. if not in English, and if so required by an Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

1. Calculations and Certificates
   1. Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

* 1. Certificates and Determinations

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

* 1. Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three-hundred and sixty (360) days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

1. Partial Invalidity

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

1. Remedies and Waivers

No failure to exercise, nor any delay in exercising and no course of dealing, on the part of any Finance Party or Secured Creditor, with respect to any right, power, privilege or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party or Secured Creditor shall be effective unless it is in writing. No single or partial exercise of any right, power, privilege or remedy shall prevent any further or other exercise thereof or the exercise of any other right, power, privilege or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law. Any waiver by any Finance Party or Secured Creditor of the strict compliance with any term of this Agreement or any other Finance Documents will not be deemed to be a waiver of any subsequent Default.

1. Amendments and Waivers
   * + 1. A provision of this Agreement may only be amended or waived with the approval of the Instructing Creditors and the Borrower but, if so approved, the relevant amendment or waiver will be binding on all the Parties.
       2. The Intercreditor Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 31.
       3. Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 23.6 (*Rights and discretions*), and without double-counting with any amounts referred to under paragraph (d) of Clause 23.6 (*Rights and discretions*), the Intercreditor Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.
       4. The Intercreditor Agent shall provide the Borrower with a copy of any amendments to the Intercreditor Deed.
       5. An amendment or waiver which relates to the rights or obligations of the Intercreditor Agent, any FI Arranger or the Security Agent (each in their capacity as such) may not be effected without the consent of the Intercreditor Agent, that FI Arranger or the Security Agent, as the case may be.
2. Confidentiality

Without prejudice to any confidentiality obligation of the Intercreditor Agent or the Security Agent (as applicable) under any Applicable Law, each of the Intercreditor Agent and the Security Agent may disclose:

* + - 1. to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as the Intercreditor Agent or the Security Agent (as applicable) shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
      2. to any person:
         1. to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Intercreditor Agent or the Security Agent (as applicable) and, in each case, to any of that person’s Affiliates, Representatives and professional advisers;
         2. to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
         3. to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
         4. who is a Party; or
         5. with the consent of the Borrower,

in each case, such Confidential Information as the Intercreditor Agent or the Security Agent (as applicable) shall consider appropriate if:

in relation to paragraph (b)(i) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

in relation to paragraphs (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Intercreditor Agent or the Security Agent (as applicable), it is not practicable so to do in the circumstances; and

* + - 1. to any person appointed by the Intercreditor Agent or the Security Agent (as applicable) or by a person to whom paragraph (b)(i) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the Intercreditor Agent.

1. Counterparts

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

1. Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

1. Arbitration
   1. Submission to Arbitration

Save for any Excluded Claim, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach termination or invalidity thereof, (a ***Dispute***) shall be finally settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law in force at that time (the ***UNCITRAL Rules***). The London Court of International Arbitration (***LCIA***) shall act as appointing authority.

* 1. Commencement of proceedings and joinder
     + 1. Any Party may, either individually or together with any other Party, initiate arbitration proceedings pursuant to this Clause 35 against one or more other Parties by sending a notice of arbitration to all other Parties (whether or not such Parties are named as respondents in the notice of arbitration).
       2. Any Party named as respondent in a notice of arbitration or a notice of claim may join any other Party in any arbitration proceedings hereunder by submitting a written notice of claim against that Party, provided that such notice is also sent to all other Parties within thirty (30) days from the receipt by such respondent of the relevant notice of arbitration or notice of claim.
       3. Any Party may intervene in any arbitration proceedings hereunder by submitting a written notice of claim against any Party, provided that such notice is also sent to all other Parties within thirty (30) days from the receipt by such intervening party of the relevant notice of arbitration or notice of claim.
       4. Any Party so joined or intervening shall be bound by any award rendered by the arbitral tribunal even if such party chooses not to participate in the arbitration proceedings.
  2. Formation of Arbitral Tribunal
     + 1. There shall be three (3) arbitrators appointed as follows. If the request for arbitration names only one claimant and one respondent, and no Party has exercised its right to joinder or intervention in accordance with paragraph (b) below, the claimant and the respondent shall each nominate one arbitrator within fifteen (15) days after the expiry of the period during which the Parties can exercise their right to joinder or intervention under paragraph (b) below. The third arbitrator, who shall act as presiding arbitrator, shall be nominated by agreement of the parties within thirty (30) days of the appointment of the second arbitrator. If any arbitrator is not nominated within these time periods, the appointing authority shall make the appointment(s).
       2. If more than two Parties are named in the notice of arbitration, or at least one Party exercises its right to joinder or intervention in accordance with paragraph (a) above, the claimant(s) shall jointly nominate one arbitrator and the respondent(s) shall jointly nominate the other arbitrator, both within fifteen (15) days after the expiry of the period during which the Parties can exercise their right to joinder or intervention under paragraph (a) above. If the parties fail to nominate an arbitrator as provided above, the appointing authority shall, upon the request of any party, appoint all three arbitrators and designate one of them to act as chairperson. If the claimant(s) and respondent(s) nominate the arbitrators as provided above, the third arbitrator, who shall act as chairperson, shall be nominated by agreement of the parties within thirty (30) days of the appointment of the second arbitrator. If the parties fail to nominate the chairperson as provided above, the chairperson shall be appointed by the appointing authority.
       3. The legal seat of arbitration shall be England and the place of arbitration shall be London, United Kingdom.
       4. The language of arbitration shall be English.
  3. The arbitral award
     + 1. The award shall be rendered within three (3) months of the appointment of the arbitral tribunal, unless the parties agree that such limit be extended or the arbitral tribunal, considering the nature of the Dispute, determines that such limit must be extended in the interest of justice.
       2. The arbitral tribunal is not empowered to award punitive damages, and each Party hereby waives any right to seek or recover punitive damages with respect to any Dispute resolved by arbitration under this Clause 35.
  4. Consolidation of proceedings

The arbitral tribunal shall have authority to consider and include in any proceeding, decision or award any further dispute properly brought before it by any Finance Party insofar as such dispute arises out of any Finance Document but, subject to the foregoing, no other parties or other disputes shall be included in, or consolidated with, the arbitral proceedings.

* 1. Recourse to courts
     + 1. Notwithstanding any provisions of the UNCITRAL Rules and section 44 of the Arbitration Act 1996:
          1. the arbitral tribunal shall not be authorised to take or provide and the Borrower shall not be authorised to seek from the arbitral tribunal; and
          2. the Borrower shall not be authorised to seek from any judicial authority,

any interim measures of protection or pre award relief against any of the Finance Parties.

* + - 1. The Parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England.
      2. The Parties exclude the jurisdiction of the courts under sections 45 and 69 of the Arbitration Act 1996.
      3. Any enforcement action, suit, or other judicial, administrative or arbitral proceeding by any Party against OPIC (or the United States government) in respect of an Excluded Claim shall be brought exclusively in a United States federal court of competent jurisdiction in the District of Columbia.

1. Waiver of Immunity

To the extent that the Borrower may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the Applicable Laws of such jurisdiction.

1. Privileges and Immunities of EBRD

Nothing in this Agreement shall be construed as a waiver, renunciation or other modification of any immunities, privileges or exemptions of EBRD accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Notwithstanding the foregoing, EBRD has made an express submission to arbitration under Clause 35 (Arbitration) and accordingly, and without prejudice to its other privileges and immunities (including, without limitation, the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Clause 35 (Arbitration).

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

1. The Original Senior Lenders
   1. The Original Senior Lenders and Commitments

|  |  |  |  |
| --- | --- | --- | --- |
| **Senior Loan Facility** | **Name of Original Senior Lender** | **Term Facility Commitment** | **Contingent Facility Commitment** |
| **EBRD A Loan Facility** | European Bank for Reconstruction and Development | EUR 20,000,000 | - |
| **EBRD B Loan Facility** | European Bank for Reconstruction and Development | EUR 37,950,000 | EUR 4,750,000 |
| **EDC Loan Facility** | Export Development Canada | EUR 49,250,000 | EUR 5,750,000 |
| **OPIC Facility** | Overseas Private Investment Corporation | USD 220,000,000 | - |

* 1. Notice Details

|  |  |  |
| --- | --- | --- |
| **THE ORIGINAL SENIOR LENDERS** | | |
|  |  |  |
|  |  |  |
| **EBRD** | Address: | One Exchange Square  London  EC2A 2JN  United Kingdom |
|  | Fax number: | +442073386100 |
|  | Email Address: | GroupGCOADSLAteam@ebrd.com |
|  | Attention: | Operation Administration Department (RE: KOCAELI PPP, Opid no: 47406) |
|  |  |  |
| **EDC** | Address: | Export Development Canada  150 Slater Street, Ottawa, ON, K1A 1K3 |
|  | Fax number: | 001-613-598-2514 |
|  | Email Address: | [Loans.services@edc.ca](mailto:Loans.services@edc.ca) |
|  | Attention: | Loans Services (RE: KOCAELI PPP #60643) |
| **OPIC** | Address: | Overseas Private Investment Corporation  1100 New York Avenue, N.W.  Washington, D.C.  20527  United States of America |
|  | Fax number: | 1-202-842-0290  copy to: 1-202-336-8701 |
|  | Email Address: | notices@opic.gov |
|  | Attention: | Vice President, Structured Finance  copy to: Managing Director, Portfolio Management Division  (RE: KOCAELİ INTEGRATED HEALTH CAMPUS PPP PROJECT (TURKEY), Loan no: 9000031202) |
| **THE AGENTS** | | |
|  | | |
| **Intercreditor Agent** | | |
|  |  |  |
| **UNICREDIT BANK AG** | Address: | UniCredit Bank AG  Loans Agency – MFN2LA  Arabellastr. 14  D-81925 Munich  Germany |
|  | Fax number: | +49-89-378 41517 |
|  | Email Address: | dietmar.kahl@unicredit.de / philipp.sager@unicredit.de |
|  | Attention: | Dietmar Kahl / Philipp Sager |
| **Security Agent** | | |
| **UNICREDIT BANK AG** | Address: | UniCredit Bank AG  Loans Agency – MFN2LA  Arabellastr. 14  D-81925 Munich  Germany |
|  | Fax number: | +49-89-378 41517 |
|  | Email Address: | dietmar.kahl@unicredit.de / philipp.sager@unicredit.de |
|  | Attention: | Dietmar Kahl / Philipp Sager |
|  |  |  |
|  |  |  |
| **THE FI ARRANGERS** | |  |
|  |  |  |
| **EBRD** | Address: | One Exchange Square  London  EC2A 2JN  United Kingdom |
|  | Fax number: | +442073386100 |
|  | Email Address: | GroupGCOADSLAteam@ebrd.com |
|  | Attention: | Operation Administration Department (RE: KOCAELI PPP, Opid no: 47406) |
|  |  |  |
| **EDC** | Address: | Export Development Canada  150 Slater Street, Ottawa, ON, K1A 1K3 |
|  | Fax number: | 001-613-598-2514 |
|  | Email Address: | [Loans.services@edc.ca](mailto:Loans.services@edc.ca) |
|  | Attention: | Loans Services (RE: KOCAELI PPP #60643) |
| **OPIC** | Address: | Overseas Private Investment Corporation  1100 New York Avenue, N.W.  Washington, D.C.  20527  United States of America |
|  | Fax number: | 1-202-842-0290  copy to: 1-202-336-8701 |
|  | Email Address: | notices@opic.gov |
|  | Attention: | Vice President, Structured Finance  copy to: Managing Director, Portfolio Management Division  (RE: KOCAELI INTEGRATED HEALTH CAMPUS PPP PROJECT (TURKEY), Loan no: 9000031202) |

1. Conditions Precedent
   1. Common Financial Close Documents
      1. Borrower
         * 1. A copy certified by the Ankara Trade Registry of the Constitutional Documents as of a date falling no earlier than thirty (30) days prior to the Financial Close to be a true and up-to-date copy of the Constitutional Documents and any amendments thereto.
           2. A copy of the relevant pages of the shareholders ledger (*paydefteri*) of the Borrower, evidencing that the Original Shareholders are registered as the holders of one-hundred per cent. (100%) of the shares in the Borrower.
           3. An original certificate of activity (*faaliyet belgesi*) of the Borrower issued by the Ankara Trade Registry in the English and Turkish language as of a date falling no earlier than thirty (30) days prior to Financial Close evidencing the valid existence of the Borrower.
           4. A copy certified by a notary public in Turkey to be a true and up-to-date copy of the board resolution of the Borrower regarding the approval and execution of the Project Agreement, EPC Contract and O&M Contract.
           5. A copy certified by a notary public in Turkey to be a true and up-to-date copy of the board of directors resolution of the Borrower dated as of a date falling no earlier than thirty (30) days prior to the Financial Close (or, in respect of the date of the resolution, any earlier date approved by the Intercreditor Agent (acting on the instructions of the Instructing Creditors) in respect of Transaction Documents entered into on or before the date of this Agreement):

approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party (including the registration of the Project Security under the Share Pledge Agreement in the share ledger of the Borrower) and resolving that it executes, and performs its rights and obligations under the Transaction Documents to which it is a party;

authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf; and

authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including any Request) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.

* + - * 1. A copy certified by a notary public in Turkey to be a true and up-to-date copy of the most up to date signature circular and/or the internal directive (*iç yönerge*) of the Borrower, setting out the names, position and signatures of each person authorised by the resolution referred to in paragraph 1.5 above dated as of a date no earlier than thirty (30) days prior to Financial Close.
        2. A certificate of the Borrower (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Senior Loan Facilities would not cause any borrowing, guaranteeing or similar limit binding on the Borrower to be exceeded.
        3. A certificate of an Authorised Signatory of the Borrower no earlier than ten (10) days prior to Financial Close certifying:

that all Project Documents that are then in force have been fully disclosed to the Intercreditor Agent; and

that each copy document relating to it specified in this Part A of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the Signing Date.

* + - * 1. A copy of the letter filed to the Administration in accordance with Schedule 3 (*Project Documents Regime*) of the Project Agreement in the form and substance provided under Part H (*Form of the Letter Addressed to the Administration*) of Schedule 4 (*Forms*), together with a confirmation of receipt provided by the Administration. For avoidance of doubt, the Letter is subject to the amendments by the Borrower in line with the requirements of the Administration, if necessary.
    1. Türkerler, Gama Endüstri, Gama Holding
       - 1. A copy, certified by their respective trade registries as of a date falling no earlier than thirty (30) days prior to Financial Close to be a true and up-to-date copy of the constitutional documents of each of Türkerler, Gama Endüstri, Gama Holding.
         2. An original certificate of activity (*faaliyet belgesi*) in respect of each of Türkerler, Gama Endüstri, Gama Holding, issued by their respective trade registries as of a date falling no earlier than thirty (30) days prior to Financial Close evidencing the valid existence of each of Türkerler, Gama Endüstri, Gama Holding.
         3. A copy certified by a notary public in Turkey to be a true and up-to-date copy of the board of directors resolution of each of Türkerler, Gama Endüstri, Gama Holding dated as of a date falling no earlier than thirty (30) days prior to Financial Close):

approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute the Transaction Documents to which it is a party;

authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf; and

authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including any Request) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.

* + - * 1. A notarized copy, certified by a notary public in the Republic as of a date falling no earlier than thirty (30) days prior to Financial Close to be a true and up-to-date copy of the specimen of the signature and a copy of the most up to date signature circular and/or the internal directive (*iç yönerge*) of each of Türkerler, Gama Endüstri, Gama Holding, setting out the names, position and signatures of each person authorised by the resolution referred to in paragraph 2.3 above.
        2. A certificate of an Authorised Signatory of each of Türkerler, Gama Endüstri, Gama Holding no earlier than ten (10) days prior to Financial Close certifying that each copy document relating to it specified in this Part A of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the Signing Date.
    1. GE Belgium
       - 1. A copy of the constitutional documents of GE Belgium.
         2. A copy of a resolution of the board of directors of GE Belgium:

approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute the Transaction Documents to which it is a party

authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf; and

authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.

* + - * 1. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3.2 above.
        2. A certificate of an authorised signatory of GE Belgium certifying that each copy document relating to it specified in this Part A of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the Signing Date.
    1. EPC Contractor
       - 1. A certified copy of the ordinary partnership agreement of the EPC Contractor.
         2. A notarised copy of a partners' resolution of the EPC Contractor dated no earlier than thirty (30) days prior to the first Utilisation Date:

approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolved that it execute the Transaction Documents to which it is a party;

authorising at least one specified person from each EPC Contractor Member to jointly execute the Transaction Documents to which it is a party on its behalf; and

authorising at least one specified person from each EPC Contractor Member, on its behalf, to jointly sign and/or despatch all documents and notices (including any Request) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.

* + - * 1. A copy of the most up to date authorised signatory circular of the EPC Contractor (notarised as of a date falling no earlier than thirty (30) days prior to Financial Close) setting out the names, positions and specimen signatures of its Authorised Signatories.
    1. Operator
       - 1. A copy, certified by the Ankara Trade Registry as of a date falling no earlier than thirty (30) days prior to Financial Close to be a true and up-to-date copy of the constitutional documents of the Operator.
         2. An original certificate of activity (*faaliyet belgesi*) in respect of the Operator, issued by the Ankara Trade Registry as of a date falling no earlier than thirty (30) days prior to Financial Close evidencing the valid existence of the Operator.
         3. Evidence, including by way of a resolution of a board of directors, that:

the signatory who signed the O&M Contract, the Interface Agreement, the O&M Direct Agreement and any other Transaction Document to which the Operator is a party on behalf of the Operator was duly authorised to sign each such document;

a specified person or persons has or have been authorised to execute the Transaction Documents to which it is a party on its behalf; and

a specified person or persons has or have been authorised, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by the Operator under or in connection with the Transaction Documents to which it is a party.

* + - * 1. A copy certified by a notary public in Turkey to be a true and up-to-date copy of the most up to date signature circular of the Operator, setting out the names, position and signatures of each authorised person referred to in paragraph 5.3 above dated as of a date no earlier than thirty (30) days prior to Financial Close.
        2. A certificate of an Authorised Signatory of the Operator no earlier than ten (10) days prior to Financial Close certifying that each copy document relating to it specified in this Part A of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the Signing Date.
    1. Project Permits
       - 1. A certified copy of each Project Permit listed in Part A (Investment Term) of Schedule 7 (Project Permits).
         2. A letter from the Ministry of Environment and Urban Planning (issued on and dated later than 1 April 2016) confirming that the Project is not subject to the environmental impact assessment requirements under the Laws of Turkey, or the Environmental Impact Assessment Positive Decision (*ÇED Olumlu Kararı*), as applicable.
         3. If required as per Clause 17.16 (*Environmental compliance*), evidence that Borrower has undertaken national environmental regulatory process (PDF ‘Project Description File’)).
    2. Project Documents
       - 1. A certified copy of each of the following Project Documents, duly executed:

Project Agreement;

Servitude Right Agreement;

EPC Contract;

EPC Guarantee;

EPC Performance Bond;

O&M Contract;

an O&M Guarantee from each O&M Guarantor;

Investment Term Performance Bond;

Permitted Subordinated Loan Agreement, if any;

Interface Agreement;

Independent Technical Certifier Commissioning Agreement; and

Service Provider Collateral Agreement, if any.

* + - * 1. A copy of the official deed showing the registration of the Servitude Right Agreement.
        2. A copy of the Site Delivery minutes showing the Site Delivery Date in accordance with clause 23.11 of the Project Agreement.
    1. Finance Documents
       - 1. An original of each of the following Finance Documents, duly executed:

this Agreement;

the Financial Close Agreement;

each Senior Loan Agreement;

each OPIC Funding Document;

the Intercreditor Deed;

the Security Agent and Hedging Deed;

the Equity Support and Subordination Deed;

the Project Accounts Agreement;

each Direct Agreement;

each Fee Letter;

the Commercial Area Indemnity Letter;

the Independent Technical Certifier Side Letter;

each of the Security Documents listed in Schedule 3 (Project Security), other than, to the extent there is no Permitted Subordinated Loan in place at Financial Close, the Transfer of Subordinated Receivables Agreement;

each of the Hedging Arrangements required to be entered into prior to Financial Close in accordance with the Hedging Policy.

* + 1. Perfection of Security Interests

Evidence that all Security Interests expressed to be created by the Security Documents have been created and perfected and are in full force and effect and all documents required to be filed or delivered under those Security Documents prior to Financial Close have been duly filed or delivered.

* + 1. Documentary Taxes and registrations

Evidence that all such Transaction Documents referred to in paragraphs‎ 7 (Project Documents) or 8 (Finance Documents) above which are required to be notarised, stamped, filed or registered have been so, together with copies of any documents evidencing such notarisation, stamping, filing or registration.

* + 1. Legal opinions
       - 1. A legal opinion of Freshfields Bruckhaus Deringer LLP, legal advisers to the Original Senior Lenders in England.
         2. A legal opinion of Hergüner Bilgen Özeke Attorney Partnership, legal advisers to the Original Senior Lenders in Turkey.
         3. A legal opinion of Elmadag Law Firm, legal advisers to the Administration in Turkey, in form and substance satisfactory to the Intercreditor Agent.
         4. Legal opinions of Cakmak Avukatlik Burosu, legal advisers to the Borrower in Turkey, in form and substance satisfactory to the Intercreditor Agent.
         5. A legal opinion of Loyens Loeff, legal advisers to GE Belgium in Belgium covering the capacity of and due execution by GE Belgium of the Finance Documents to which it is a party, in form and substance satisfactory to the Intercreditor Agent.
         6. A legal opinion covering the capacity of and due execution by the GE Guarantor of the GE Guarantee, in form and substance satisfactory to the Intercreditor Agent.
         7. A legal opinion of Freshfields Bruckhaus Deringer US LLP, legal advisers to OPIC in New York.
    2. Reports
       - 1. The final report of the Insurance Adviser.
         2. The final audit report of the Model Auditor.
         3. The final report of the Lenders’ Technical & Environmental Adviser, including, among other matters, a report on the scope of work and capabilities of the ISMF Consultant.
         4. The final reports of the Lenders’ Legal Advisers.
    3. Financial Model
       - 1. An electronic copy of the Original Financial Model:

compliant with Turkish GAAP;

with Assumptions acceptable to the Senior Lenders; and

audited by the Model Auditor.

* + - * 1. The Base Case, demonstrating that, on each Calculation Date until the Final Maturity Date:

the FADSCR is equal to or greater than 1.225x;

the LLCR is equal to or greater than 1.225x; and

the Debt to Equity Ratio is not greater than 80:20.

* + 1. Project Budgets

Receipt of a Construction Budget (the ***Initial Construction Budget***):

in substantially the same form as the Construction Budget Template;

consistent with:

the audited Financial Model delivered under paragraph 13 (*Financial Model*) above; and

the final bill of quantities information provided to the Lenders’ Technical & Environmental Adviser prior to the Signing Date;

approved by the Lenders’ Technical & Environmental Adviser; and

containing all categories of information required under the Finance Documents.

* + 1. Works Programmes

Receipt of:

the Programme; and

the EPC Programme.

* + 1. Financial statements
       - 1. Original Financial Statements in respect of:

the Borrower;

each Key Shareholder;

the GE Guarantor; and

each EPC Guarantor and each O&M Guarantor (if different from the persons referred to in paragraph (b) above).

each certified by one Authorised Signatory, except that the requirement in respect of the GE Guarantor will be satisfied if its Original Financial Statements are available on its website.

* + - * 1. A letter from the Auditors to the Intercreditor Agent confirming that the Borrower has received invoices from Gama Holding and Türkerler in respect of an aggregate amount equal to the Development Costs.
    1. Equity arrangements
       - 1. The shareholding levels in the Borrower are amended in the Financial Close Agreement.
         2. Evidence that:

the Borrower has received from the Original Shareholders the amounts referred to in clause 5.1 (*Initial Equity*) (including from GE Belgium the amounts referred to in clause 5.1(b) and 5.1(c) (*Initial Equity*)) of the Equity Support and Subordination Deed; and

Equity Support Documents have been issued in accordance with the Equity Support and Subordination Deed.

* + 1. Project Accounts
       - 1. Evidence that each of the Project Accounts has been opened in accordance with the Project Accounts Agreement.
         2. A certified copy of each Account Bank Services Agreement.
    2. Insurance
       - 1. An original of the Insurance Broker’s Letter of Undertaking substantially in the agreed form.
         2. An original of the Reinsurance Broker’s Letter of Undertaking substantially in the agreed form.
         3. Cover notes or certificates of insurance and such other evidence as may be required for confirming:

that all Insurances required to be effected prior to the first Utilisation have been effected and are in full force and effect; and

that the requirements set out in Schedule 6 (*Insurance*) have otherwise been satisfied in respect of those Insurances.

* + 1. Environmental Documents
       - 1. A certified copy of each of the following documents:

the ESA;

the ESAP;

the Stakeholder Engagement Plan;

the form of Environmental and Social Annual Monitoring Report;

each document required under the ESAP;

the duly completed Environmental and Social Management System as acceptable to the Intercreditor Agent;

letter from local authorities confirming capacities of local/communal waste water treatment system to accept waste waters in volume and quality of waste waters planned for discharge during Operation Term;

evidence of authorities confirming capacity of existing municipal waste disposal sites to receive and process municipal waste expected at Operation Term; and

letter from local medical waste sterilisation facilities in the area  to confirm capacity to receive and process medical waste expected at Operation Term.

* + - * 1. A certificate issued by the Lenders’ Technical & Environmental Adviser confirming compliance of the Project with the Lenders’ Performance Standards.
    1. Know your customer

Such documentation and other evidence in respect of any of the Borrower or any Shareholder requested by any Secured Creditor to enable it to be satisfied with the results of all “know your customer” checks which it is required to carry out in relation to such person.

* + 1. Other documents and evidence
       - 1. A certified copy of the Auditor Letter.
         2. Evidence that all amounts outstanding in respect of principal, interest, fees and costs under the Bridge Financing have been paid in full or will be paid in full with the proceeds of the first Utilisation.
         3. A copy of any other Authorisation or other document, opinion or assurance which the Intercreditor Agent reasonably considers to be necessary or required (if it has provided no less than five (5) Business Days’ notice to the Borrower of such request) in connection with the entry into and performance of the transactions contemplated by any Transaction Document or for the validity and enforceability of any Transaction Document.
         4. Evidence that the fees, costs and expenses due from the Borrower prior to Financial Close pursuant to Clause 9 (Fees), Clause 10.5 (Stamp taxes) and Clause 14 (Costs and Expenses) have been paid.
         5. An instruction to the Intercreditor Agent that all fees due and payable in accordance with the Finance Documents and all other fees, costs and expenses (including legal fees and all costs of registration, property transfers, security or otherwise) details of which are known at the date of first Utilisation (to the extent not paid prior to the first Utilisation) may be deducted from the first Utilisation.
         6. Evidence that Senior Lenders have appointed or revised the appointment terms of the Lenders’ Technical & Environmental Adviser and the Lenders’ Insurance Adviser to cover post financial close scope of work, including issuance of certificates and reports to be delivered pursuant to this Agreement, in a form to be agreed between the Intercreditor Agent, the Borrower and, respectively, the Lenders’ Technical & Environmental Adviser and the Lenders’ Insurance Adviser.
         7. A certified copy of the duly executed GE Service Supply Contract.
         8. A Lawsuit Certificate.
         9. A certified copy of the ISMF Consultancy Agreement.
  1. EBRD Financial Close Documents
     1. Certificate of incumbency

A certificate of incumbency and authority of the Borrower substantially in the form of Part F (Form of EBRD Certificate of Incumbency) of Schedule 4 (Forms).

* + 1. Participation Agreements

EBRD has received from Participants, on terms satisfactory to it, formal commitments by such Participants, evidenced by the execution of one or more Participation Agreements, to acquire Participations in the EBRD A Loan Facility or the EBRD B Loan Facility in an aggregate amount equal to the full amount of the EBRD B Loan Facility.

* 1. OPIC Financial Close Documents

Evidence that the Borrower has:

obtained a D-U-N-S® number issued by Dun & Bradstreet, Inc. and provided such number to OPIC in writing;

provided to OPIC an explanation as to why it does not have or need a U.S. Taxpayer Identification Number.

* 1. Agent Financial Close Documents

A letter of indemnity or guarantee from Gama Holding and Turkerler in respect of Clause 23.10 (*Senior Lenders’ indemnity to the Intercreditor Agent*) that is satisfactory to the Intercreditor Agent and Security Agent.

* 1. Delivery of Documents
     + 1. Unless otherwise expressly provided, all documents delivered or evidence provided for the purposes of satisfying a condition precedent under Clause 3 (Conditions Precedent) of this Agreement shall be in form and content satisfactory to the Senior Lenders (except for the conditions precedent under Part D (*Agent Financial Close Document*) above).
       2. Each legal opinion must cover the matters set out in the legal opinions matrix in the agreed form and be in a form satisfactory to the Senior Lenders.
       3. Each document delivered for the purposes of satisfying a condition precedent shall, if it is not an original, be a copy certified by the Borrower, or if expressly required to be certified by any other person, certified by that person, in each case in accordance with paragraph 4 below.
       4. Each certification required to be given in respect of an original or a copy of a document shall:

be made by an Authorised Signatory of that person;

describe each document to which it relates and certify that it is correct, complete and in full force and effect in accordance with its terms;

if relating to an original or a copy document in a language other than English, be accompanied by a notarized certified English translation of such documents (except for the documents referred to in paragraph 6.1 of Part A (Common Financial Close Documents) of this Schedule 2); and

unless otherwise expressly provided, be given as at a date no earlier than fifteen (15) days prior to the date of Financial Close or the proposed Utilisation Date (as applicable).

* + - 1. After it has received any documents from the Borrower conforming to the above requirements, the Intercreditor Agent shall promptly deliver a copy of those documents to each Senior Lender.

1. Project Security
   1. English Law Security Documents
      * 1. Security agreement to be entered into in the agreed form between the Borrower and the Security Agent including a first fixed charge over the Offshore Accounts and an assignment of the Borrower's rights under the English law governed Project Documents (if any), the Equity Support and Subordination Deed and the Hedging Arrangements (the ***English Security Agreement***).
        2. Each reinsurance assignment deed to be entered into between the Insurer(s), the Borrower and the Security Agent in accordance with Schedule 6 (Insurance) (each a ***Reinsurance Assignment Deed***).
   2. Turkish Law Security Documents
      * 1. Mortgage agreement to be entered into in the agreed form between the Borrower (as mortgagor) and the Security Agent (as mortgagee) in respect of the servitude rights over the Site (excluding parcel no. 6,8 and 9) before the relevant title deed (the ***Mortgage of Servitude Rights***).
        2. Share pledge agreement to be entered into in the agreed form between the Shareholders, the Borrower and the Security Agent granting a first degree pledge in favour of the Security Agent for the benefit of the Secured Creditors over one hundred per cent (100%) of the Shares including the dividends and voting rights pertaining to the Shares (the ***Share Pledge Agreement***).
        3. Transfer of receivables agreement to be entered into in the agreed form between the Borrower and the Security Agent, assigning and transferring, as security, the Borrower’s receivables arising under and in connection with the Insurances, Shareholder Loans governed by Turkish law (if any) and the Turkish law governed Project Documents to the Security Agent for the benefit of the Secured Creditors (the ***Transfer of Receivables Agreement***).
        4. Transfer of subordinated receivables agreement to be entered into in the agreed form between the Borrower, the Shareholders and the Security Agent, assigning and transferring, as security, the Shareholders’ receivables arising under or in connection with each Permitted Subordinated Loan to the Security Agent for the benefit of the Secured Creditors (the ***Transfer of Subordinated Receivables Agreement***).
        5. Transfer of receivables agreement to be entered into in the agreed form between the Borrower, the Shareholders and the Security Agent, assigning and transferring, as security the amounts which may become payable directly to the Shareholders under clause 2.9 of the Funders’ Direct Agreement (the ***Transfer of Shareholders’ Receivables Agreement***).
        6. Account pledge agreement to be entered into in the agreed form and made between the Borrower and the Security Agent, granting a first degree pledge in favour of the Security Agent, for the benefit of the Secured Creditors, over all or any of the Onshore Project Accounts specified therein (the ***Onshore Accounts Pledge Agreement***).
        7. Account pledge agreement to be entered into in the agreed form between the Borrower, the Operator and the Security Agent, granting a first degree pledge in favour of the Security Agent, for the benefit of the Secured Creditors, over EMRS Reserve Account (the ***EMRS Pledge Agreement***).
   3. Other Security Documents

Unless covered under the English Security Agreement, security agreement to be entered into in the agreed form between the Borrower and OPIC including a first fixed charge over the OPIC Prepayment Account.

1. Forms
   1. Form of Assignment Agreement

**[Borrower] - [ ] Common Terms Agreement**

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

* + - 1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
      2. We refer to Clause 21.6 (Procedure for assignment):

The Existing Senior Lender assigns absolutely to the New Senior Lender all the rights of the Existing Senior Lender under the Agreement and the other Finance Documents and in respect of the Project Security which correspond to that portion of the Existing Senior Lender’s Commitment and participations in Loans under the Agreement as specified in the Schedule.

The Existing Senior Lender is released from all the obligations of the Existing Senior Lender which correspond to that portion of the Existing Senior Lender’s Commitment and participations in Loans under the Agreement specified in the Schedule.

The New Senior Lender becomes a Party as a Senior Lender and is bound by obligations equivalent to those from which the Existing Senior Lender is released under paragraph (b) above.

* + - 1. The proposed Transfer Date is [ ].
      2. On the Transfer Date the New Senior Lender becomes Party to the Finance Documents as a Senior Lender.
      3. The Facility Office and address, fax number and attention details for notices of the New Senior Lender for the purposes of Clause 27.2 (Addresses) are set out in the Schedule.
      4. The New Senior Lender expressly acknowledges the limitations on the Existing Senior Lender’s obligations set out in paragraph (c) of Clause 21.5 (Limitation of responsibility of Existing Senior Lenders).
      5. This Assignment Agreement acts as notice to the Intercreditor Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 21.7 (*Copy of Assignment Agreement to Borrower)*, to the Borrower (on behalf of the Borrower) of the assignment referred to in this Assignment Agreement.
      6. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
      7. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
      8. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

**THE SCHEDULE**

**Rights to be assigned and obligations to be released and undertaken**

[*insert relevant details*]

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

|  |  |
| --- | --- |
| [Existing Senior Lender] | [New Senior Lender] |
| By: | By: |

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

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

[Agent]

By:

* 1. Form of Accession Agreement

To: [●] as Intercreditor Agent

From: [Replacement Senior Lender] and [Borrower]

Dated: [●]

Dear Sirs

**[Borrower] - [ ] Common Terms Agreement dated [ ] (the *Agreement*)**

* + - 1. We refer to the Agreement. This is an Accession Agreement. Terms defined in the Agreement have the same meaning in this Accession Agreement unless given a different meaning in this Accession Agreement.
      2. [Replacement Senior Lender] has agreed to provide Replacement Senior Loans to the Borrower and agrees to become a Senior Lender and to be bound by the terms of the Agreement as a Senior Lender pursuant to Clause 21.9 (Accession of Replacement Senior Lenders) of the Agreement. [Replacement Senior Lender] is a company duly incorporated under the laws of [name of relevant jurisdiction].
      3. The Facility Office and address, fax number and attention details for notices of the Replacement Senior Lender for the purposes of Clause 27.2 (Addresses) are set out in the Schedule.
      4. A copy of the Senior Loan Agreement in respect of the Replacement Senior Loans to be provided by [*Replacement Senior Lender*] is attached in the appendix hereto.
      5. This Accession Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

By:

* 1. Form of Compliance Certificate

To: [●] as Intercreditor Agent

From: [●] as Borrower

Dated: [●]

Dear Sirs

**Common terms agreement dated** [●] **(the *Common Terms Agreement*)**

* + - 1. We refer to the Common Terms Agreement. This is a Compliance Certificate. Terms defined in the Common Terms Agreement have the same meaning in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
      2. We confirm that the ratios as at the Calculation Date occurring on [●] are as follows:

|  |  |
| --- | --- |
| **Ratio** | **Value** |
| **Default Ratios** | |
| HADSCR |  |
| FADSCR |  |
| LLCR |  |
| **Distribution Test Ratios** | |
| FADSCR |  |
| HADSRC |  |

* + - 1. We hereby represent that the factual information and all projections, forecasts, estimates and opinions made by us in this Compliance Certificate have been made in accordance with the provisions of the Common Terms Agreement.
      2. We also confirm that no Default is outstanding as at the date of this Compliance Certificate[[5]](#footnote-5).
      3. This certificate is governed by the laws of England and Wales.

Executed for and on behalf of

**KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ**

by:

................................……………...............  
[Chief Executive Officer/Chief financial Officer]

[Having reviewed the supporting documents and information provided by the Borrower in relation to the ratios stated under paragraph 2, we certify the above to be correct.

Executed for and on behalf of [*Auditor*]by:

................................……………...............

[*Title*]][[6]](#footnote-6)

* 1. Form of Request

To: [●]

From: KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ

Date: [●]

**KOCAELİ PPP – Request**

**[(EBRD Opid No: 47406, EDC Loan: 60643, OPIC Loan No: 9000031202)][[7]](#footnote-7)**

* + - 1. We refer to the Common Terms Agreement dated [•] (the ***Common Terms Agreement***), [the EBRD Loan Agreement dated [•], the EDC Loan Agreement dated [•]]/[the OPIC Finance Agreement dated [•]][[8]](#footnote-8). Terms defined in the Common Terms Agreement have their defined meanings whenever used in this Request.
      2. We wish to borrow Senior Loans under the following Senior Loan Facilities on the following terms:

Senior Loan Facility and amount:

|  |  |  |
| --- | --- | --- |
|  | [Term Loan Facility][[9]](#footnote-9) | [Contingent Loan Facility][[10]](#footnote-10) |
| [EBRD A Loan Facility | €[•] | - |
| EBRD B Loan Facility | €[•] | €[•] |
| EDC Loan Facility | €[•] | €[•]] |
| [OPIC Facility | $[•] | -][[11]](#footnote-11) |

Utilisation Date: [•];

[D-U-N-S® Number: [\_\_\_\_\_\_\_\_\_\_];

The Borrower does not have a U.S. Taxpayer Identification Number because it is organized under the laws of Turkey][[12]](#footnote-12).

Interest Period: ending on [•].

* + - 1. [For the purposes of clause 3.1 (Financial Close documents) of the Common Terms Agreement, we confirm that all conditions precedent stated therein will be satisfied prior to the date of submission of Request to EBRD and EDC.][[13]](#footnote-13)
      2. For the purposes of clause 3.2 (Further conditions precedent) of the Common Terms Agreement, we confirm that:

the proceeds of the Senior Loans are required by the Borrower to meet Project Costs, and will be applied in accordance Clause 17.1 (Use of Proceeds) of the Common Terms Agreement;

no Default is continuing or would result from the making of the proposed Senior Loans;

the Repeating Representations are true in all material respects as of the date of this Request;

the Borrower [has requested][[14]](#footnote-14)[will request][[15]](#footnote-15) the advance of an Required Equity Contribution pursuant to the Equity Support and Subordination Deed and such Required Equity Contribution [has been paid to the Borrower (as shown in the evidence attached in Annex 1)][will be paid to the Borrower prior to the date of submission of Request to EBRD and EDC] so that after taking into account the proposed Utilisations the Debt to Equity Ratio will not exceed 80:20;

the Borrower complies with the Environmental and Social Requirements and all deliverables required under the ESAP have been [or will be][[16]](#footnote-16) delivered to the Intercreditor Agent within the deadlines set out therein;

the Council of State has not issued a decision for the cancellation of the Tender under the TMA Lawsuit or no stay of execution decision has been issued under the TMA Lawsuit;

there is no Funding Shortfall;

since the date of the Common Terms Agreement no event or circumstance the consequences of which has a Material Adverse Effect has occurred and is continuing; and

in respect of a Utilisation of the Contingent Loan Facilities only:

a Variation Enquiry has been issued and approved by the Administration in respect of cost increases in the Works falling under paragraph (b) of clause 44.2 of the Project Agreement;

evidence has been delivered to the Intercreditor Agent confirming the amounts in which the Availability Payments will be adjusted in accordance with paragraph (b) of clause 44.2 of the Project Agreement and schedule 22 (*Variation Procedure*) of the Project Agreement;

an updated Financial Model has been delivered to the Intercreditor Agent, demonstrating FADSCR and LLCR as seen in the Base Case (using the base case macro-economic assumptions from the Original Financial Model) after taking into account the relevant Variation and delivered and accepted by the Administration;

an updated Maximum Drawdown Profile has been delivered to the Intercreditor Agent, based on the Financial Model referred to under sub paragraph (iii) above, in form and substance satisfactory to the Intercreditor Agent (acting on the instructions of the Instructing Creditors); and

the Lenders’ Environmental and Technical Adviser has issued a report and confirmation in respect of the relevant Variation.

* + - 1. The certifications in paragraph 3 above are effective as of the date of this Request and shall continue to be effective as of the date of the Utilisation. If any of these certifications is no longer valid as of or prior to the date of the requested Utilisation, the Borrower undertakes to immediately notify the Intercreditor Agent.
      2. This Request is irrevocable.

Executed for and on behalf of   
**KOCAELİ**

**HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ**

by:

................................……………...............  
[Authorised Signatory]

[Annex 1 - Evidence of equity contribution][[17]](#footnote-17)

**[****Annex** **1 to the Request]**

**Evidence of equity contribution[[18]](#footnote-18)**

* 1. Form of Auditors’ Letter

[*Borrower’s Letterhead*]

[*Date*]

[*Name of Auditors*]

[*Address*]

Ladies and Gentlemen:

* + - 1. We hereby authorise and request you to give to **[•]** of **[•]**,**[•]**, in its capacity as Intercreditor Agent (the ***Intercreditor Agent***) all such information as the Intercreditor Agent may reasonably request with regard to the financial statements (both audited and unaudited), accounts and operations of the undersigned company. We have agreed to supply that information and those statements under the terms of a Common Terms Agreement among the undersigned company as borrower (the ***Borrower***), EBRD, EDC, OPIC, the Intercreditor Agent and the other financial institutions parties thereto dated \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (the ***Common Terms Agreement***). For your information we enclose a copy of the Common Terms Agreement.
      2. We authorise and request you to send two copies of the audited accounts of the undersigned company to the Intercreditor Agent to enable us to satisfy our obligation to the Intercreditor Agent under Clause 16.1 (*Financial statements*) of the Common Terms Agreement. When submitting the same to the Intercreditor Agent, please also send, at the same time, a copy of your full report on such accounts in a form reasonably acceptable to the Senior Lenders.
      3. Please note that under Clauses 16.1 (*Financial statements*) and 16.2 (*Requirements as to financial statements*) of the Common Terms Agreement, we are obliged to provide the Intercreditor Agent with:

a copy of the annual and any other management letter or other communication from you to the undersigned company or its management commenting on, among other things, the adequacy of the undersigned company’s financial control procedures and accounting and management information systems; and

a semi-annual compliance certificate (in form pre-agreed by the Senior Lenders), signed by the Borrower’s chief financial officer and counter-signed by the Auditors if delivered in connection with the Borrower’s annual or semi-annual financial statements to the effect that, on the basis of its annual or semi-annual financial statements:

the Borrower was in compliance with the covenants in Clause 19.2 (*Distributions*) and Clause 20.11 (*Financial ratios*); [and]

[the Auditors are not aware of any non-compliance by the Borrower with such covenants.]

* + - 1. Please also submit each such communication and report to the Intercreditor Agent with the audited accounts.
      2. For our records, please ensure that you send to us a copy of every letter that you receive from the Intercreditor Agent immediately upon receipt and a copy of each reply made by you immediately upon the issue of that reply.

Yours truly,

**KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorised Representative

* 1. Form of EBRD Certificate of Incumbency

[*To Be Typed on Letterhead of the Borrower*]

[*Date*]

European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
United Kingdom

Attention: Operation Administration Department

Subject: EBRD Opid No: 47406  
Certificate of Incumbency and Authority

Dear Sir/Madam:

With reference to the common terms agreement dated [ ] (the ***CTA***) between KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ (the ***Borrower***), and [ ] (the ***Senior Lenders***) and the loan agreement dated [ ] (the ***EBRD Loan Agreement***) between the Borrower and European Bank for Reconstruction and Development (***EBRD***), I, the undersigned [President] [Chairman of the Board of Directors] [Director] of the Borrower, duly authorised by its Board of Directors, hereby certify that the following are the names, offices and true specimen signatures of the persons, any one of whom is and will continue to be (until EBRD has received actual written notice from the Borrower that they or any of them no longer continue to be) authorised, on behalf of the Borrower, individually:

* + - 1. to sign the CTA, the EBRD Loan Agreement, any Requests, certifications, letters or other documents to be provided under the EBRD Loan Agreement and any other agreements to which EBRD and the Borrower may be party in connection therewith; and
      2. to take any other action required or permitted to be taken by the Borrower under the Loan Agreement or any other agreement to which EBRD and the Borrower may be party in connection therewith:

NAME OFFICE SPECIMEN SIGNATURE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I further certify that disbursements under the EBRD Loan Agreement should be made to the following account (or such other account as the Borrower may from time to time designate by notice to EBRD):

**Payment Instructions (Borrower's Banking Details):**

Borrower's Account Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Borrower's Account Number (IBAN number)[[19]](#footnote-19): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Borrower's Bank Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Borrower's Bank SWIFT Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Borrower's Bank Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Borrower's TIN Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

**Borrower's Bank Correspondent Details:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Correspondent's Name:[[20]](#footnote-20) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Correspondent's SWIFT Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Correspondent's Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Borrower's Bank's Account Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Borrower's Bank's Account Number (IBAN number)[[21]](#footnote-21): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Reference: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN WITNESS WHEREOF**, I have signed my name on the date first above written.

Yours faithfully,

**KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title: [President]

[Chairman of the Board of Directors]

[Director]

* 1. Form of Increase Confirmation

To: [•] as Intercreditor Agent, [•] as Security Agent and [•] as Borrower

From: [the Increase Lender] (the ***Increase Lender***)

Dated:

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

* + - 1. We refer to the Common Terms Agreement and to the Intercreditor Deed (as defined in the Common Terms Agreement). This agreement (the ***Agreement***) shall take effect as an Increase Confirmation for the purpose of the Common Terms Agreement and as an Intercreditor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Common Terms Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.
      2. We refer to Clause 2.2 (*Increase*) of the Common Terms Agreement.
      3. The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the attached Schedule (the ***Relevant Commitment***) as if it was an Original Senior Lender under the Common Terms Agreement.
      4. The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the ***Increase Date***) is [•].
      5. On the Increase Date, the Increase Lender becomes party to the relevant Finance Documents as a Senior Lender.
      6. The address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 27 (*Notices*) are set out in the Schedule.
      7. The Increase Lender expressly acknowledges the limitations on the Senior Lenders’ obligations referred to in paragraph (g) of Clause 2.2 (*Increase*).
      8. We refer to clause 7 (*Changes to Parties*) of the Intercreditor Deed. In consideration of the Increase Lender being accepted as a Senior Lender for the purposes of the Intercreditor Deed (and as defined in the Intercreditor Deed), the Increase Lender confirms that, as from the Increase Date, it intends to be party to the Intercreditor Deed as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Deed, as if it had been an original party to the Intercreditor Agreement.
      9. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
      10. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
      11. This Agreement has been entered into on the date stated at the beginning of this Agreement.

##### THE SCHEDULE

**Relevant Commitment/rights and obligations to be assumed by the Increase Lender**

*[insert relevant details]*

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

|  |  |
| --- | --- |
| [Increase Lender] |  |
| By: |  |

This Agreement is accepted as an Increase Confirmation for the purposes of the Common Terms Agreement by the Agent [and the Issuing Bank]\*, and as a Intercreditor Accession Deed for the purposes of the Intercreditor Deed by the Security Agent and the Increase Date is confirmed as [•].

|  |  |
| --- | --- |
| Intercreditor Agent |  |
| By: |  |

|  |  |
| --- | --- |
| Security Agent |  |
| By: |  |

* 1. Form of the Letter Addressed to the Administration

[*Letterhead to be inserted*]

**Ministry of Health of the Republic of Turkey**

**[General Directorate of Health Investments, Department of Public-Private Partneship]**

[*Date to be inserted*]

Re.: Kocaeli Integrated Health Campus Project

Our Company, Kocaeli Hastane Yatırım ve Sağlık Hizmetleri Anonim Şirketi, has executed with the Ministry of Health the Agreement for the Construction Works and the Provision of Products and Services for Kocaeli Integrated Health Campus through Public Private Partnership Model (together with all its Schedules, the ***Project Agreement***). According to the provisions of the Project Agreement, our Company has undertaken the construction works and the provision of products and services for Kocaeli Integrated Health Campus through public private partnership model (the ***Project***).

It is set forth under clause 3 of Schedule 3 (*Project Documents Regime*) of the Project Agreement that in case our Company at any time executes a new Project Document that will affect its obligations to the Administration or makes any amendment to any Project Document that will affect its obligations to the Administration, the Company shall send the copies of such documents having the “True Copy” annotation on its face to the Administration.

Enclosed, we submit the new Project Documents (***Documents***) in order to inform the Administration in accordance with clause 3 of Schedule 3 (*Project Documents Regime*) of the Project Agreement.

Attached are the following Documents:

* + - 1. The Common Terms Agreement executed on [●] by and between, among others, our Company and the Senior Lenders (as defined therein) (the ***Common Terms Agreement***), whereby the Senior Lenders agreed, on the terms and conditions set out therein and in the Finance Documents, to provide the Senior Loan Facilities (*as defined therein*) to our Company to enable it to fund part of the cost of the Project.
      2. EBRD Loan Agreement executed on [●] between EBRD and our Company,
      3. EDC Loan Agreement executed on [●] between EDC and our Company,
      4. OPIC Finance Agreement executed on [●] between OPIC and our Company,
      5. OPIC Funding Agreement executed on [●] between, among others, OPIC and our Company,
      6. Equity Support and Subordination Deed executed on [●] between our Company, the Shareholders, the Security Agent and the Intercreditor Agent (as defined under the Common Terms Agreement),
      7. Project Accounts Agreement executed on [●] between our Company, the Operator, the Offshore Account Bank, the Onshore Account Bank, the Security Agent and the Intercreditor Agent (as defined under the Common Terms Agreement),
      8. Security Agent and Hedging Deed executed on [●] between, amongst others, certain banks and financial institutions, the Intercreditor Agent, the Company and the Security Agent (as defined under the Common Terms Agreement),
      9. Fee Letters (as defined under the Common Terms Agreement),
      10. Commercial Area Indemnity Letter issued on [●] by Gama Holding and Türkerler to our Company, the Intercreditor Agent and the Security Agent,
      11. Financial Close Agreement executed on [●] between our Company, the Original Shareholders, the Senior Lenders, the Intercreditor Agent and the Security Agent (as defined under the Common Terms Agreement),
      12. The Intercreditor Deed executed on [●] between, among others, the Senior Lenders, the Original Hedging Counterparties, the Intercreditor Agent and the Security Agent (as defined under the Common Terms Agreement),
      13. Independent Technical Certifier Side Letter executed on [●] between our Company, BTY Group as the Lenders’ Technical & Environmental Adviser and the Intercreditor Agent (as defined under the Common Terms Agreement),
      14. EPC Direct Agreement executed on [●] between our Company, the EPC Contractor, the EPC Guarantor, each EPC Contractor Member, the Intercreditor Agent, and the Security Agent (as defined under the Common Terms Agreement),
      15. O&M Direct Agreement executed on [●] between our Company, the O&M Contractor, Gama Holding and Türkerler İnşaat as the O&M Guarantors, the Agent as both the Intercreditor Agent and Security Agent (as defined under the Common Terms Agreement),
      16. The below listed security documents (the ***Security Documents***) executed by and between our Company and the Security Agent:

Share Pledge Agreement dated [*date to be inserted*];

Notarized copy of the Transfer of Receivables Agreement dated [*date to be inserted*];

Mortgage Agreement over the Servitude Right dated [*date to be inserted*];

Onshore Accounts Pledge Agreement dated [*date to be inserted*];

EMRS Account Pledge Agreement dated [date to be inserted];

Transfer of Subordinated Receivables Agreement dated [*date to be inserted*];

Notarized copy of the Transfer of Shareholders’ Receivables Agreement dated [*date to be inserted*]; and

In addition to the above Turkish law governed Security Documents, our Company also executed English law governed Security Documents, namely:

English Security Agreement on [date to be inserted]; and

Reinsurance Assignment Deed on [date to be inserted];

[*any other Document to be inserted, accordingly*].

In addition to the above, pursuant to Clause 2.1 of the Funders’ Direct Agreement the Administration acknowledges that it has received the notice of, and consents to, the security interest granted over the rights that our Company shall enjoy within the scope of all the Project Documents in favour of the Funders in accordance with the Security Documents, which are listed above. We would like to state that the Documents that we hereby submit to the Administration are the Finance Documents and the Security Documents defined under the Funders’ Direct Agreement.

We hereby duly submit the attached Documents in particular to the knowledge and consideration of your Administration and request the necessary actions to be taken.

Sincerely,

On behalf of **Kocaeli Hastane Yatırım ve Sağlık Hizmetleri Anonim Şirketi**,

Name/Title:

Signature:

**Annexes:**

1. Common Terms Agreement;

2. EBRD Loan Agreement dated [date to be inserted],

3. EDC Loan Agreement dated [date to be inserted],

4. OPIC Finance Agreement dated [date to be inserted],

5. OPIC Funding Agreement dated [date to be inserted],

6. Equity Support and Subordination Deed dated [date to be inserted],

7. Project Accounts Agreement dated [date to be inserted],

8. Security Agent and Hedging Deed dated [date to be inserted],

9. Fee Letter(s) dated [date to be inserted],

10. Commercial Area Indemnity Letter dated [date to be inserted],

11. Financial Close Agreement dated [date to be inserted],

12. The Intercreditor Deed dated [date to be inserted],

13. Independent Technical Certifier Side Letter dated [date to be inserted],

14. EPC Direct Agreement dated [date to be inserted],

15. O&M Direct Agreement dated [date to be inserted],

16. Share Pledge Agreement dated [date to be inserted],

17. Notarized copy of the Transfer of Receivables Agreement dated [date to be inserted],

18. Mortgage Agreement over the Servitude Right dated [date to be inserted],

19. Onshore Accounts Pledge Agreement dated [date to be inserted],

20. EMRS Account Pledge Agreement dated [date to be inserted],

21. Transfer of Subordinated Receivables Agreement dated [date to be inserted],

22. Notarized copy of the Transfer of Shareholders’ Receivables Agreement dated [date to be inserted],

23. English Security Agreement on [date to be inserted],

24. Reinsurance Assignment Deed on [date to be inserted], and

25. [any other Document to be inserted].

1. Information, Budgets and Reporting

The undertakings in this Schedule 5 (*Information, Budgets and Reporting*) remain in force from the date of this Agreement until the Discharge Date.

* 1. Information
     1. Project Agreement
        + 1. The Borrower will promptly deliver to the Intercreditor Agent (with a copy to the Lenders’ Technical & Environmental Adviser) a copy of any request for extension of time, Variation, notice of Delay Event, Compensation Event, Force Majeure Event, Excusing Cause, or any notice of default or notice of termination, under the Project Agreement.
          2. The Borrower will promptly (and in any event within five (5) Business Days) notify the Intercreditor Agent of:

any demand or claim made by, or against, the Borrower in respect of damages or indemnity payments under the Project Agreement including details of the events or circumstances giving rise to such demand or claim, and will, from time to time, provide the Intercreditor Agent with an update on the status of any such demand or claim;

damages or indemnity payments becoming receivable or payable by, the Borrower under the Project Agreement including details of the events or circumstances giving rise to the payment;

any failure by the Administration to pay:

any Service Payment or Availability Payment; or

any other amount in excess of five-hundred thousand Euros (EUR 500,000) (or its equivalent in Turkish Lira) due and payable under the Project Agreement or, as the case may be, the Funders’ Direct Agreement;

any Deductions being awarded against the Borrower or applied to any Availability Payment or Service Payment; and

* + - * 1. The Borrower shall, on or before the date that falls eighteen (18) months prior to the Completion Date, deliver to the Intercreditor Agent evidence that the Borrower and the Administration have agreed the Service Payments, together with details thereof.
    1. EPC Contract
       - 1. The Borrower will promptly (and in any event within five (5) Business Days of receipt) deliver to the Intercreditor Agent (with a copy to the Lenders’ Technical & Environmental Adviser) a copy of any request for extension of time and/or claim for additional money, or any notice of default or notice of termination, under the EPC Contract.
         2. The Borrower will promptly notify the Intercreditor Agent of:

any total or partial suspension of the Works under the EPC Contract of more than ten (10) days;

substantial changes to the EPC Programme and/or the Programme (unless such information has already been made available to the Lenders’ Technical and Environmental Adviser);

any demand or claim made by, or against, the Borrower in respect of Delay Liquidated Damages or indemnity payments under the EPC Contract including details of the events or circumstances giving rise to such demand or claim, and will, from time to time, provide the Intercreditor Agent with an update on the status of any such demand or claim; and

any damages, liquidated damages or indemnity payments becoming receivable or payable by the Borrower under the EPC Contract including details of the events or circumstances giving rise to the payment,

in each case, within five (5) Business Days of becoming aware, or its receipt, of the same and will provide details of the same as soon as they become available, including details of any action taken or proposed to be taken in each case.

* + 1. Other Project Documents

The Borrower shall promptly:

deliver to the Intercreditor Agent (with a copy to the Lenders’ Technical & Environmental Adviser) a copy of all material information and reports prepared by the EPC Contractor and required to be delivered to the Borrower under the EPC Contract or prepared by the Operator and required to be delivered to the Borrower under the O&M Contract;

deliver to the Intercreditor Agent (with a copy to the Lenders’ Technical & Environmental Adviser) a copy of any notice of default, notice of force majeure or notice of termination issued pursuant to a Project Document (other than the EPC Contract and the Project Agreement);

notify the Intercreditor Agent of any liquidated damages or indemnity payments becoming receivable or payable by the Borrower under any Project Document (other than the EPC Contract and the Project Agreement) including details of the events or circumstances giving rise to the payment;

upon becoming aware of the same, notify the Intercreditor Agent of any breach of a Project Document which if not remedied within the applicable grace period would entitle any party to terminate such Project Document provided that the Borrower shall be deemed to be aware of any breaches by it; and

any results from a market testing procedure under schedule 17 (*Market Testing Procedure*) of the Project Agreement.

* + 1. Notification of changes to equity interests
       - 1. The Borrower shall notify the Intercreditor Agent of any proposed changes at least twenty (20) days prior to the date of any such proposed change to:

any Key Shareholder’s shareholding in the Borrower;

any EPC Contractor Member’s participation interest in the EPC Contractor;

any EPC Guarantor’s shareholding in any EPC Contractor Member; and

any O&M Guarantor’s shareholding in the Operator.

* + - * 1. Any notice under paragraph 4.1 above shall include a description of the proposed change and, to the extent such change is permitted under the Finance Documents, the basis upon which such change is permitted under the Finance Documents.
    1. Environmental

The Borrower shall:

promptly, but in any event within five (5) Business Days upon occurrence, notify the Intercreditor Agent of any social, labour, health and safety, security or environmental incident, accident or circumstance which has, or is reasonably likely to have, a Material Adverse Effect or material adverse impact on the implementation or operation of the Project in accordance with the Environmental and Social Requirements specifying the nature of such incident or accident or circumstance;

promptly, but in any event within three (3) Business Days upon occurrence, notify the Intercreditor Agent of any significant protest or petition by workers or members of the public directed at or relating to the Project which has, or is reasonably likely to have a Material Adverse Effect or which has become, or is likely to become, public knowledge through media coverage or otherwise;

deliver, showing best efforts to do so prior to the media’s reporting, and in any event within seven (7) days as from the occurrence of any incident or accident or circumstance referred to in paragraphs (a) or (b), a written report (including reasonable details), specifying the nature of such incident or accident or circumstance, any effect resulting or likely to result therefrom and any steps the Borrower is taking to remedy the same and to prevent any future similar event, together with a proposed timetable for remediation;

keep the Intercreditor Agent informed of the on-going implementation of those measures and plans; and

furnish promptly to EBRD such other information as EBRD may from time to time reasonably request in relation to the above (including, in order to facilitate EBRD’s evaluation of the Project and to enable EBRD to examine and address any Project-related complaint made under EBRD’s “Project Complaint Mechanism” (PCM) as referred to in the EBRD website).

* + 1. Other Project information

The Borrower will, promptly, but in any event within five (5) Business Days after becoming aware of the same, notify the Intercreditor Agent of:

any proceedings by or before any Governmental Authority for the purpose of revoking, cancelling, terminating, withdrawing, suspending, modifying or withholding any Authorisation or any Project Document;

any dispute (other than an employment dispute with a value not exceeding EUR 350,000) involving any Major Project Party or any Governmental Authority in respect of the Project or any Project Document of which the Borrower is aware which would have or could reasonably be expected to have a Material Adverse Effect, and, from time to time, provide the Intercreditor Agent with an update on the status of any such dispute;

any labour dispute involving employees of the Borrower, the EPC Contractor or the Operator (or any of their subcontractors), which would have or could reasonably be expected to have a Material Adverse Effect, and, from time to time, provide the Intercreditor Agent with an update on the status of any such dispute;

any claim against the Borrower in relation to the Commercial Areas or the Commercial Area Agreement;

any event which is likely to significantly interrupt the operation of the Project;

any change in Law applicable to the Project or the Borrower which is reasonably likely to have a Material Adverse Effect;

the occurrence of any event of force majeure (howsoever defined in the relevant Project Document)under any Project Document, and, from time to time, provide the Intercreditor Agent with an update on the consequences of any such occurrence;

any total or partial suspension of operation of the Project for a period of longer than ten (10) days;

any event or circumstance which could reasonably be expected to materially delay the Actual Completion Date beyond the Completion Date;

any other event or circumstance which would have or could reasonably be expected to have a Material Adverse Effect,

and will provide details of the same promptly after they become available, including details of any action taken or proposed to be taken in each case.

* + 1. Other information

The Borrower shall supply to the Intercreditor Agent:

all documents required to be dispatched by the Borrower to all of its shareholders or its creditors generally at the same time as they are dispatched (other than those that are immaterial and purely of an administrative nature);

copies of the trade register gazettes where the minutes of any general shareholders’ assembly of the Borrower have been published and (in the case of any capital increase) notarised copies of the resolutions of the board of directors of the Borrower as soon as reasonably practicable after any such general shareholders’ assembly or board of directors meeting;

a certified copy of each Project Document entered into after Financial Close, as soon as reasonably practicable upon execution of any such Project Document;

promptly after becoming aware, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Major Project Party (other than the Administration), and which are:

reasonably likely, if adversely determined, to have a Material Adverse Effect; or

concerning any allegation of any Sanctionable Practice, violation of Corrupt Practices Laws by that Major Project Party; or

concerning any allegation which may lead to that Major Project Party (or, for so long as such person is a Major Project Party, any of its Principals or any of its Affiliates) becoming a Turkish Sanctioned Person;

decisions, rulings or opinions of any dispute resolution panel or arbitral tribunal communicated to the Borrower (directly or indirectly) under or in connection with any Transaction Documents;

promptly, such information as the Security Agent may reasonably require about the Project and compliance of the Borrower and the Shareholders with the terms of any Security Documents;

promptly, such further financial and other information regarding the Borrower or the implementation of the Project as any Finance Party (through the Intercreditor Agent) may reasonably request; and

promptly after becoming aware, any down‑grading by Standard & Poor's or Moody's of the rating for long‑term unsecured and non‑credit enhanced debt obligations of any Acceptable Bank.

* + 1. Advisers

The Borrower will promptly deliver to the Lenders’ Technical & Environmental Adviser and the Lenders’ Insurance Adviser such information in respect of the implementation of the Project as the Lenders’ Technical & Environmental Adviser or the Lenders’ Insurance Adviser may from time to time reasonably require to perform their respective services in accordance with the Finance Documents.

* + 1. “Know your customer” checks
       - 1. If:

the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Signing Date;

any change in the status of the Borrower or another Major Project Party after the Signing Date;

any proposed transfer of any Project Interest; or

a proposed assignment or transfer by a Senior Lender of any of its rights and obligations under this Agreement to a party that is not a Senior Lender prior to such assignment or transfer,

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

* + - * 1. Each Senior Lender shall promptly upon the request of the Intercreditor Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Intercreditor Agent (for itself) in order for the Intercreditor Agent to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
  1. Project Budgets
     1. Construction Budget
        + 1. **Delivery of Construction Budgets**

The Borrower shall prepare and deliver the Initial Construction Budget in accordance with paragraph 14 (Project Budgets) of Part A (Common Financial Close Documents) of Schedule 2 (*Conditions Precedent*).

If, at any time during the Construction Term:

the Borrower or the Intercreditor Agent is of the view that the then-current Construction Budget does not correctly reflect the current timing of the payment or amount of the Construction Costs (in each case by reference to such matter as contemplated in the Initial Construction Budget);

there is a Variation which has been approved by the Intercreditor Agent pursuant to the terms of the Finance Documents;

there is a Default which has an adverse impact on the Construction Budget or the Programme; or

the Borrower or the Intercreditor Agent (acting in consultation with the relevant Advisers) is of the view that there may be a Funding Shortfall,

the Borrower shall, within twenty (20) days of (A) the Borrower forming the view, (B) the circumstances referred to in paragraphs (b)(ii) or (b)(iii) occurring or (C) the Borrower receiving a notice from the Intercreditor Agent, deliver to the Intercreditor Agent (with copies to the Lenders’ Technical & Environmental Adviser) a Draft Construction Budget so as to accurately reflect the budgeting of the Project and/or the budgeting of the construction phase of the Project for the remainder of the Construction Term.

* + - * 1. **Form of Construction Budget**

The Borrower shall ensure that each Draft Construction Budget delivered by it under paragraph 1 (*Construction Budget*) shall:

be in substantially the same form as, and prepared on a basis consistent with, the Construction Budget Template;

be prepared using the Assumptions and accounting policies, practices, procedures and reference periods consistent with the Initial Construction Budget;

set out details of the Available Resources;

set out projections of:

the Project Costs, including a breakdown of:

the Construction Costs; and

any other Project Costs.

* + - * 1. **Approval of Construction Budget**

Each Draft Construction Budget received by the Intercreditor Agent pursuant to paragraph 1.1 (*Delivery of Construction Budget*) shall be forwarded by the Intercreditor Agent to any Finance Party or Advisers as the Intercreditor Agent may reasonably determine for the approval of the Intercreditor Agent (in consultation with the Lenders’ Technical & Environmental Adviser and acting on the instructions of the Instructing Creditors).

Any Draft Construction Budget shall become the Construction Budget for the purposes of this Agreement upon approval by the Intercreditor Agent.

The Intercreditor Agent shall notify the Borrower within twenty (20) days of receipt of the Draft Construction Budget as to whether or not such budget is approved. Each of the Borrower and the Intercreditor Agent may by notice extend the period for consideration of such Draft Construction Budget for a further period of fifteen (15) days (or such other period as may be agreed by the Borrower and the Intercreditor Agent).

If the Intercreditor Agent shall request changes to a Draft Construction Budget and so notifies the Borrower:

if the Borrower agrees such changes or does not object thereto within fifteen (15) days of receipt thereof, the Borrower will prepare a revised Draft Construction Budget reflecting such requested changes which shall then become the Construction Budget; or

if the Borrower objects to any of such changes within fifteen (15) days of receipt thereof, the Intercreditor Agent may refer the same to the determination of the Expert in accordance with provisions of Part F (Expert) of this Schedule 5 (*Information, Budgets and Reporting*).

Until any Draft Construction Budget is approved by the Intercreditor Agent, the last approved Construction Budget shall apply.

* + 1. Operating Budget
       - 1. **Delivery of Operating Budget**

The Borrower shall prepare and deliver to the Intercreditor Agent and the Lenders’ Technical & Environmental Adviser:

no earlier than thirty (30) but no later than fifteen (15) days before the date when the Borrower expects the Actual Completion Date to occur, the initial Operating Budget (the ***Initial Operating Budget***); and

thereafter, no earlier than thirty (30) but no later than fifteen (15) days before the end of each year, its proposed Operating Budget for the next year.

* + - * 1. **Form of Operating Budget**

The Borrower shall ensure that each Draft Operating Budget delivered under this Part B (*Project Budgets*) shall:

save as may otherwise have been agreed between the Intercreditor Agent and the Borrower, be in substantially the same form as the Operating Budget Template;

be prepared using the Assumptions and accounting policies, practices, procedures and reference periods consistent with the Initial Operating Budget;

set out the Borrower’s estimates of Operating Costs and Project Revenues for the relevant year; and

be prepared in a manner consistent with the Project Documents.

* + - * 1. **Approval of Operating Budget**

Each Draft Operating Budget received by the Intercreditor Agent pursuant to paragraph 2.2 (*Form of Operating Budget*) shall be forwarded by the Intercreditor Agent to such other persons as the Intercreditor Agent may reasonably determine for the approval of the Intercreditor Agent (in consultation with the Lenders’ Technical & Environmental Adviser and acting on the instructions of the Instructing Creditors).

The Draft Operating Budget shall become the Operating Budget for the purposes of this Agreement upon approval by the Intercreditor Agent.

The Intercreditor Agent shall notify the Borrower within twenty (20) days of receipt of the Draft Operating Budget as to whether or not such budget is approved. Each of the Borrower and the Intercreditor Agent may by notice extend the period for consideration of that such Draft Operating Budget for a further period of fifteen (15) days (or such other period as may be agreed by the Borrower and the Intercreditor Agent).

If the Intercreditor Agent shall request changes to a Draft Operating Budget and so notifies the Borrower:

if the Borrower agrees such changes or does not object thereto within fifteen (15) days of receipt thereof, the Borrower will prepare a revised Draft Operating Budget reflecting such requested changes which shall then become the Operating Budget; or

if the Borrower objects to any of such changes within fifteen (15) days of receipt thereof, the Intercreditor Agent may refer the same to the determination of the Expert in accordance with provisions of Part F (Expert) of this Schedule 5 (*Information, Budgets and Reporting*).

Until any Draft Operating Budget is approved by the Intercreditor Agent, the last approved Operating Budget shall apply.

* 1. Project Reports
     1. Borrower’s Construction Reports
        + 1. The Borrower shall deliver to the Intercreditor Agent and the Lenders’ Technical & Environmental Adviser a Construction Report, no later than ten (10) Business Days following the last day of:

the month in which the Commencement Date occurs; and

each subsequent month up to and including the month in which the Actual Completion Date occurs.

* + - * 1. Each Construction Report shall set out in respect of the month ending on that day:

details of the progress made on the construction of the Facilities including details of each part of the Works completed, or projected to be completed, Key Milestone Dates achieved, or projected to be achieved, during the month preceding such report and the month succeeding such report and, if there is any difference between such progress and the progress forecast in the preceding Construction Report an explanation therefor;

the Borrower’s estimate of the Actual Completion Date, as applicable, and, if such estimate is not the same estimate as the Borrower’s estimate set out in the immediately preceding Construction Report, an explanation therefor;

details of any other material dispute or proceeding with which the Borrower was involved during the month preceding the date of such report;

details of any insurance claim (if the amount claimed is more than three hundred and fifty thousand Euros (EUR 350,000) or its equivalent in any other currency) and any Force Majeure Event (however defined in any Project Document) which has occurred during such period;

details of the amount forecast to be spent on Construction Costs by the Borrower in respect of the month starting after the date of the Construction Report and a comparison between:

the amount contained in the immediately preceding Construction Report as the forecast of the amount to be spent on Construction Costs by the Borrower in respect of the month after the date of the immediately preceding Construction Report; and

the amount actually spent by the Borrower on Construction Costs during such month and if the amount so spent exceeds:

by ten per cent. (10%) or more the amount so forecast in the Initial Construction Budget; or

the cumulative amount spent on Construction Costs exceeds by one per cent. (1%) the amount so forecast in the Initial Construction Budget, an explanation therefor;

details of the Available Resources;

details of the use of proceeds of the Senior Loans to date, including:

the actual Construction Costs and funding thereof to date;

any other Project Costs actually incurred and funding thereof to date; and

any other use of proceeds of the Senior Loans permitted under the Finance Documents;

if for any reason the current Construction Budget is no longer correct in any material respect, details of the relevant circumstances;

details of the Borrower’s progress in obtaining outstanding Project Permits and of its compliance with all Project Permits and with Environmental and Social Law;

a summary of any financial compensation paid relating to any Environmental Matters or Social Matters, whether to an individual or as a result of mandatory payments under Environmental and Social Law;

a summary of any health and safety, security or environmental tests or studies conducted with respect to the Project, specifying in each case the nature of the tests or studies and the results thereof, together with copies of all results and reports prepared by or provided to the Borrower with respect to the results of all such tests and studies;

a summary of procurement status based on the approved procurement plan (including long lead items, fixed furniture and equipment and sub-contractors);

information on implementation of, and compliance with, the ESAP, including any proposed changes to actions, schedules or costs;

a summary of the construction quality assurance and control outcomes referred to in the EPC Contractor approved quality management plans; and

such other information as the Intercreditor Agent shall reasonably request.

* + 1. Lenders’ Technical & Environmental Adviser Construction Monitoring Reports
       - 1. The Intercreditor Agent shall request that the Lenders’ Technical & Environmental Adviser prepare and deliver to it a construction monitoring report as at the date of each Construction Report due to be delivered under paragraph 1 above.
         2. The Lenders’ Technical & Environmental Adviser shall deliver each construction monitoring report to be prepared by it pursuant to this paragraph 2 (each a ***Construction Monitoring Report***) within fifteen (15) days of receipt of the Borrower’s Construction Report in relation to such month.
         3. The Intercreditor Agent shall instruct the Lenders’ Technical & Environmental Adviser to set out in reasonable detail, in each report delivered by the Lenders’ Technical & Environmental Adviser pursuant to this paragraph 2, in respect of the relevant month:

each matter required to be covered under the terms of appointment of the Lenders’ Technical & Environmental Adviser; and

the Borrower’s compliance with the Environmental and Social Requirements and with the ESAP.

* + 1. Pre-Operational Service review reports
       - 1. The Intercreditor Agent shall request that the Lenders’ Technical & Environmental Adviser prepare and deliver to it:

prior to the start by the Operator of the procurement exercise, a report on the tender documentation in respect of service contracts to be entered into by the Operator;

after appointment by the Operator of preferred bidders for each service contract tendered and prior to entry by the Operator of any such contract, a report on the evaluation summary report prepared by the Operator in respect of the tenders received by the Operator from potential subcontractors of the Operator; and

prior to the Completion Date and prior to agreeing Service Delivery Plans with the Administration, a report on the delivery plans for each Service prepared by the Operator,

in each case, prepared in a manner consistent with the terms of appointment of the Lenders’ Technical & Environmental Adviser.

* + - * 1. The Borrower shall, no later than fifteen (15) days following a request from the Lenders’ Technical & Environmental Adviser, provide (and procure that the Operator shall provide) the Lenders’ Technical & Environmental Adviser with all such information that has been notified to the Borrower (and copied to the Intercreditor Agent) and is reasonably necessary in order to enable the Lenders’ Technical & Environmental Adviser to prepare and deliver any report required under paragraph 3.1 above.
    1. Completion Report
       - 1. Upon the occurrence of the Actual Completion Date, the Intercreditor Agent shall instruct the Lenders’ Technical & Environmental Adviser to prepare a report confirming:

the Actual Completion Date has occurred in accordance with the Project Agreement;

the Construction Use Permit has been obtained;

all the Project Permits required to be obtained by the Project Company as at the Actual Completion Date have been obtained; and

all Construction Costs have been paid in full (or money has been set aside by the Borrower for payment of same).

* + - * 1. The Borrower shall, no later than fifteen (15) days following a request from the Lenders’ Technical & Environmental Adviser, provide the Lenders’ Technical & Environmental Adviser with all such information that has been notified to the Borrower (and copied to the Intercreditor Agent) and is reasonably necessary in order to enable the Lenders’ Technical & Environmental Adviser to prepare and deliver any report required under paragraph 4.1 above.
    1. Borrower’s Operating Report
       - 1. The Borrower will prepare and deliver to the Intercreditor Agent and Lenders’ Technical & Environmental Adviser, within twenty (20) Business Days after the end of each fiscal quarter after the Actual Completion Date, an Operating Report.
         2. Each Operating Report will include:

a report comparing the operating results and cash flows of the Borrower during the periods covered by the Operating Report and by the immediately preceding Operating Report (if any) against the equivalent periods in the relevant Operating Budget;

a report with a forecast for the period to be covered by the next Operating Report comparing the cash flows of the Borrower for that period, against the relevant Operating Budget;

if:

the aggregate amount incurred or paid by the Borrower in respect of all line items of Operating Costs (other than O&M Service Payments) of up to ten per cent. (10%) more than the aggregate amount included in that Operating Budget (for Operating Costs other than O&M Service Payments); or

the Project Revenues are less than five per cent. (5%) of the amount included in that Operating Budget,

a short explanation of the reasons for such occurrence;

details on the implementation of the ESAP, including any proposed changes to actions, schedules or costs;

a summary of any health and safety, security or environmental tests or studies conducted with respect to the Project, specifying in each case the nature of the tests or studies and the results thereof, together with copies of all results and reports prepared by or provided to the Borrower with respect to the results of all such tests and studies; and

such other information as the Intercreditor Agent shall reasonably request.

* + 1. Lenders’ Technical & Environmental Adviser Operational Monitoring Report
       - 1. The Intercreditor Agent shall request that the Lenders’ Technical & Environmental Adviser prepare and deliver to it an operating report, covering:

the matters set out under the terms of appointment of the Lenders’ Technical & Environmental Adviser; and

the Borrower’s compliance with the Environmental and Social Requirements and with the ESAP,

as at:

the end of each quarter of the first two (2) years of the Operation Term; and

thereafter, the end of each year of the Operation Term.

* + - * 1. If, at any time after the Project Completion Date, the Lenders’ Technical & Environmental Adviser informs the Intercreditor Agent that in its opinion there is a material technical matter which requires review, the Intercreditor Agent may request that the Lenders’ Technical & Environmental Adviser prepare and deliver to it a report commenting on the relevant circumstances (it being understood that the Intercreditor Agent shall consult the Lenders’ Technical & Environmental Adviser and the Borrower before deciding whether the matter is sufficiently material to justify it being reviewed).
        2. The Borrower shall, no later than fifteen (15) days following a request from the Lenders’ Technical & Environmental Adviser, provide the Lenders’ Technical & Environmental Adviser with all such information that has been notified to the Borrower (and copied to the Intercreditor Agent) and is reasonably necessary in order to enable the Lenders’ Technical & Environmental Adviser to prepare and deliver any report required under this paragraph 6.
    1. Lenders’ Insurance Adviser Reports
       - 1. The Intercreditor Agent shall request that the Lenders’ Insurance Adviser prepare and deliver to it an insurance report (the ***Insurance Report***):

after the Actual Completion Date; and

thereafter, upon each yearly renewal of the Insurances in relation to the Operation Term,

in each case, confirming that the Insurances required to be in effect for the Operation Term are in full force and effect in accordance with the requirements of the Finance Documents.

* + - * 1. The Borrower shall, no later than fifteen (15) days following a request by the Lenders’ Insurance Adviser, provide the Lenders’ Insurance Adviser with all such information that has been notified to the Borrower (and copied to the Intercreditor Agent) and is reasonably necessary in order to enable the Lenders’ Insurance Adviser to prepare and deliver each Insurance Report in compliance with paragraph 7.1 above.
  1. Environmental and Social Reports
     1. Delivery of Environmental and Social Reports

The Borrower shall deliver to the Intercreditor Agent:

within forty-five (45) days after the end of each financial year, the Environmental and Social Annual Monitoring Report confirming compliance with the ESAP, the Environmental and Social covenants set forth in Clauses 17.16 (*Environmental compliance*) to 17.18 (*Amendment of ESAP*) and all Environmental and Social Requirements, or, as the case may be, identifying any non-compliance or failure, and the actions being taken to remedy it and including such Project related information as the Intercreditor Agent shall reasonably require in order to measure the ongoing development results of the Project against the indicators specified in the Environmental and Social Annual Monitoring Report;

within forty-five (45) days after the end of each financial year, a Development Impact Report in the agreed form;

for OPIC’s benefit, the reports stipulated in Clauses 17.19(b) and 17.19(c) in accordance with terms and conditions provided therein;

for OPIC’s benefit and no later than 1 January of each year, beginning 1 January 2017, the ESHS Performance Report which shall include, at a minimum, the following:

measures taken to operate the Project facilities in a manner consistent with the applicable standards;

the results of all environmental monitoring or sampling activity including, but not limited to:

NOx, SO2 and PM emissions data documenting compliance with emissions limits in Turkey;

ambient air quality monitoring results for NOx, SO2 and PM documenting compliance with the ambient air quality standards in Turkey;

results of noise monitoring at both the boundary of the Project site and at sensitive receptors demonstrating that the Project site is in compliance with the noise limits in the applicable EHS Guidelines;

Annual greenhouse gas emissions from the Project; and

if monitoring results show repeated or significant noncompliance, a report to the Lenders as soon as practicable, demonstrating the steps the Borrower has been or is taking to ensure future compliance;

accidents impacting the environment or workers, including significant spills, or lost time incidents and corrective actions implemented to address these accidents;

emergency response incidents;

any recommended revisions to the environmental and social monitoring and mitigation plan;

any compliance actions taken by the national or local government in Turkey;

summary of stakeholder engagement activities undertaken by the Borrower, including the location of meetings, issues discussed or raised and the breakdown of the number of participants in such activities by gender; and

a list of stakeholder grievances and resolutions, and of worker grievances and resolutions.

* + 1. ESAP Conditions

1. **Pre-construction Phase**

| Number | Subject | Legal Framework (National, Lenders Requirement, Best Practice) | Action | Deadline | Completion Indicator | Responsibility |
| --- | --- | --- | --- | --- | --- | --- |
| 1 | Contractor Compliance | EBRD PR1 & PR2 IFC PS1 & PS2 | Include clauses in contracts requiring compliance with Project HR Policy, ESMP, ESAP, EHS and other Plans linked to ESMP. | Prior to financial close | Review of the updated contract requirements by the Lenders’ Technical & Environmental Adviser to ensure that it contains appropriate clauses that require the contractors and sub-contractors to comply with the EHS requirements to manage the environmental and social risk and adhere to mitigation measures and actions identified and set out in the ESMP and ESIA. | BORROWER |
| 2 | Environmental and Social Management System (ESMS) for BORROWER | IFC PS1/PS2 EBRD PR1/PR2  IFC General EHS Guidelines | Define and implement an ESMS within the framework described in the ESA for the Project.  Establish and maintain an organizational structure with personnel having knowledge, skills, and experience necessary to manage the ESMS and Project ESHS (Environmental Social Health and Safety) issues.  Appoint a qualified Environmental and Social Manager/Team  Train the designated personnel for environmental and social issues and implementation of below mentioned plans. | 30 days prior to construction phase | ESMS  Established and defined organisational structure and roles & responsibilities  Appointed Environmental and Social Manager/Team  Established management plans and procedures  Audit, measurement and training records  Proof documentation for permits and licenses | BORROWER |
| 3 | Permitting | National legislation | Determine legal permits/consents/approvals needed to be obtained before starting construction and prepare a “Legal and Other Requirements Follow-up List” covering permits/consents/approvals  Obtain all necessary permits/consents/approvals (including construction permit) | 30 days prior to construction phase | A comprehensive Legal and Other Requirements Follow-up List  Records of permits, official letters, licenses, approvals, documents etc. | BORROWER/ EPC Contractor |
| 4 | Operational solid waste and waste water | IFC PS3, EBRD PR3, National legislation and best practice | Obtain a confirmation letter from the Municipality regarding appropriate capacity of existing Waste Water Treatment System to accept discharge of waste waters at operational stage.  Obtain a confirmation letter from the Municipality regarding appropriate capacity of existing municipal waste disposal sites and from the medical waste sterilisation facilities in the area to accept municipal and medical waste at project operational stage. | Prior to disbursement | Correspondence with the authorities  Permit for disposal of medical waste  Proof documentation for permits and licenses | BORROWER |
| 5 | Environmental and Social Management System (ESMS)  for EPC Contractor and their subcontractors | IFC PS1/PS2 EBRD PR1/PR2  IFC General EHS Guidelines, | EPC Contractor to develop an ESMS in line with international good practice and guidelines (i.e. ISO 14001: 2004, OHSAS 18001: 2007)  Establish an organizational structure for the implementation of the ESMS  Appoint a qualified Environmental and Social Manager/Team  EPC Contractor to develop and implement detailed final versions of management plans based on the draft versions initiated by the sponsors,  including the following:  1. Stakeholder Engagement Plan (including grievance mechanism for the general public/stakeholders)  2. Employee Grievance mechanism  3. Contractors Management Plan  4. Hazardous Material Management Plan  5. Waste Management Plan  6. Air Quality, Noise and Vibration Management Plan  7. Traffic Management Plan  8. Archaeological Chance Find Procedure  9. Construction Camp Management Plan (including workers accommodation)  10. Construction ESHS Management Plan (including community health and safety issues)  11. Human Resources Management Plan (including worker code of conduct)  12 Emergency Preparedness and Response Plan  13 Spill Response Plan  14 Security Plan  15. Occupational Health and Safety Plan  16. Archaeo- logical Chance Find Procedure  17. Employment and Procurement Plan  18. Policy on Prohibition of Child Labour and Forced Labour  19 Resource Policy and Management Plan  20. ESMS Manual  21. ESMS Policy  22. Wastewater Management Plan | 30 days prior to construction phase | ESMS developed and implemented, Appointed Environmental and Social Manager/Team  Established management plans and procedures  Audit, measurement and training records | EPC Contractor |
| 6 | Concrete Batching Plant | IFC PS3, EBRD PR3, National legislation and best practice | If a second concrete batching plant is required, or a batching plant exceeding 100m3/hr, undertake national environmental regulatory process: PDF | 30 days prior to construction | PDF for Project’s concrete batching plant exceeding 100m3/hr | BORROWER |
| 7 | Fire and life safety |  | Design the Project in accordance with the Regulation on the Protection of Buildings from Fire (issued on: 19.12.2007, Official Gazette (“OG”) No: 26735) and other relevant regulations for fire and life safety.  Conduct a third party audit for life and fire safety plan | Prior to Construction | Third party audit for life and fire safety plan | EPC |

1. **Construction Phase:**

| Number | Subject | Legal Framework (National, Lenders Requirement, Best Practice | Action | Deadline | Completion Indıcator | Responsibility |
| --- | --- | --- | --- | --- | --- | --- |
| 1 | Environ-mental and Social Manage-ment System (ESMS )  for EPC and Sub-contractors | IFC PS1/PS2 EBRD PR1/PR2  IFC General EHS Guidelines | EPC to implement the ESMS in line with international good practice and guidelines (i.e. ISO 14001: 2004, OHSAS 18001: 2007)  Train the designated personnel for environmental and social issues and implementation of detailed plans.  Carry out internal audits and inspections for compliance with ESMS. | Throughout the Construction | Audit, measurement and training records | EPC |
| 2 | Life and fire safety | IFC EHS Guidelines 3.3 | Conduct an independent life and fire safety inspection | Prior to operations phase | Independent audit report | BORROWER |
| 3 | Construction audit | IFC PS2, EBRD PR | Conduct independent audit for assessment of compliance of the construction site with IFC and EBRD relevant performance standards and requirements and the ESAP | Semi-annual | Independent audit report | BORROWER |
| 4 | Solid waste and waste water at construction stage | IFC PS3, EBRD PR3, National legislation and best practice | Obtain a confirmation letter from the Municipality in regards to disposal of solid waste, waste water from construction stage and confirmation in regards to existing capacity of the relevant municipality services.  Obtain necessary permit related with the disposal of excavated soil | 30 days Prior to Operations | Correspondence with the authorities  Proof documentation for permits and licenses  Permit for disposal of excavated soil |  |

1. **Operational Phase**

| Number | Subject | Legal Framework (National, Lenders Requirement, Best Practice | Action | Timetable | Completion Indıcator | Responsibility |
| --- | --- | --- | --- | --- | --- | --- |
| 1 | Commissioning | IFC PS1 | All relevant commissioning tests have been carried out successfully. | 30 days prior to operations | Obtain all necessary approvals for the commencement of the Hospital. | BORROWER |
| 2 | GHS emissions | IFC PS3 | Report on greenhouse gas emissions during the operation of the project | Within a year of operations and reported annually |  | O&M contractor |
| 3 | Operational Contractor Compliance | EBRD PR1 & PR2 IFC PS1 & PS2 | Include clauses in contracts with operational contractors requiring compliance with Project HR Policy, ESMP, ESAP, EHS and other Plans linked to ESMP | 30 days prior to operational phase | Review of the updated contract with operational contractors requirements by the Lenders’ Technical & Environmental Adviser to ensure that it contains appropriate clauses that require the contractors and sub-contractors to comply with the EHS requirements to manage the environmental and social risk and adhere to mitigation measures and actions identified and set out in the ESMP and ESIA. | BORROWER |
| 4 | Medical facility accreditation | OPIC  IFH EHS Guidelines for Health Care Facilities | Coordinate with the MoH. Achieve/maintain Joint Commission International (JCA) accreditation for the life of the loan | As soon as possible but no later than 18 months following commencement of hospital operations | JCI accreditation | BORROWER |
| 5 | Provide operational Environmental and Social Management System | IFC PS1/PS3/, EBRD PR1/PR3, Best practice | Update the mitigation measures in accordance with the EBRD Environmental and Social Standards and IFC EHS Guidelines in relation to wastewater, waste, air, noise and vibration, medical and radioactive waste, and hazardous waste.  Establish and maintain an organizational structure with personnel having knowledge, skills, and experience necessary to manage the ESMS and Project ESHS issues.  Train the designated personnel for environmental and social issues and implementation of below mentioned plans.  Update ESMPs to reflect operational phase of the Project, including:  1. Stakeholder Engagement Plan (including grievance mechanism for the general public/stakeholder)  2. Employee Grievance mechanism  3. Contractors Management Plan  4. Hazardous Material Management Plan  5. Waste Management Plan  6. HWMS in line with the waste management practices given in the IFC Guidelines for Health Care Facilities  7. Air Quality, Noise and Vibration Management Plan  8. Traffic Management Plan  9. Archaeological Chance Find Procedure  10. Human Resources Management Plan (including worker code of conduct)  11. Emergency Preparedness and Response Plan  12. Spill Response Plan  13. Security Plan  14. Occupational Health and Safety Plan  15. Subcontractor Management and Monitoring Plan  16. Sustainable procurement policy  17. Community Health and Safety Management Plan  Carry out relevant monitoring under ESMS | 30 days prior to operational phase | ESMPs updated for operational stage  Appointed Environmental and Social Manager/Team  Audit, measurement and training records | BORROWER |
| 6 | Radioactive materials | IFC PS1/PS3, EBRD PR1/PR3, Best practice | Develop a Radioactive Management Plan | 30 days Prior to operation | Radioactive Management Plan | BORROWER |
| 7 | Infection | IFC PS4, EBRD PS4 | Develop and implement an Infection Control Plan for hospital | 30 days prior to operational phase | Infectious Disease Control Plan | BORROWER |
| 8 | Human Resources | IFC PS2, EBRD PS2 | Develop and implement HR Policy and Management Plan in line with IFC PS2/EBRD PR2 and ensure all workers are aware of its content. | 30 days prior to commencement of operations. | 1. HR Policy 2. HR Management Plan 3. Employee/Worker contracts 4. Procedure for HR coordination among service providers | O&M Contractor |
| 9 | Contractor monitoring and management | IFC PS2, EBRD PS2 | Develop appropriate internal labour monitoring and compliance policy and procedures that specifically address due diligence and monitoring, to include:   * Identification and description of individuals responsible * Frequency of Monitoring * Monitoring checklist/questionnaire that incorporates labor laws, regulations and requirements (including OPIC’s Worker Rights Requirements) * List of labor policies and procedures that will be reviewed * Program to interview direct, contracted and sub-contracted employees * Guidelines for identifying non-compliance indicators “on the ground” * Template for regular monitoring reports that will be submitted to management * Template for corrective/remediation action plan for cases of non-compliance. | 30 days prior to commencement of operations. | Subcontractor Management and Monitoring Plan | 0&M Contractor |
| 10 | Security | IFC PS4, EBRD PS4, the International Code of Conduct for Private Security Providers, ANSI/ASIS PSC 1, and the Voluntary Principles on Security and Human Rights. | Develop and implement Security Management Plan and Assessment of Project security risks for the operational phase to include:   * Coordination with MoH to ensure that security personnel will act in a manner consistent with the applicable legal framework. * Procedures to screen and hire trained security staff not implicated in past abuses. | 90 days prior to commencement of operations. | Security Risk Assessment  Security Management Plan | O&M Contractor |

* 1. Financial Reports and Financial Model
     1. Financial Reports
        + 1. The Borrower shall, no later than twenty-one (21) days following each Calculation Date, prepare and deliver to the Intercreditor Agent, a Financial Report prepared as of that Calculation Date in accordance with this paragraph 1.
          2. Each Financial Report shall:

be in substantially the agreed form;

be prepared on the basis of the Financial Model and set out:

the Assumptions specified by the Borrower and agreed with the Intercreditor Agent relating to such Financial Report; and

such other assumptions as may be agreed by the Intercreditor Agent and the Borrower from time to time;

set out, in relation to each Calculation Period, computations of:

the Net Cash Flow, historic or projected, as the case may be (and each component thereof);

the Project Revenues, historic or projected, as the case may be (and each component thereof);

the Operating Costs, historic or projected, as the case may be (and each component thereof);

include a statement of the amounts standing to the credit of the Debt Service Reserve Account and the EMRS Reserve Account on such Calculation Date.

* + 1. Compliance Certificates
       - 1. The Borrower shall supply to the Intercreditor Agent, with each Financial Report, a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clauses 20.11 (*Financial ratios*) and 19.2 (*Distributions*) as at the date as at which such Financial Report was drawn up.
         2. Each Compliance Certificate shall be signed by two directors of the Borrower and, if required to be delivered in connection with a Distribution Calculation Date, shall be certified by the Auditors.
         3. The Borrower shall supply to the Auditors any supporting documents and information requested by the Auditors to certify the ratios referred to by the Borrower in paragraph 2 of the Compliance Certificate.
    2. Agreement of Assumptions
       - 1. Any Assumptions proposed to be used by the Borrower in a Financial Report must:

be made in good faith after careful consideration and enquiry;

genuinely reflect its views as being reasonable in the circumstances;

include an explanation for any change from the Assumptions used in the previous Financial Report; and

be consistent with the Transaction Documents.

* + - * 1. The Intercreditor Agent:

may consult with any Adviser in relation to any Assumption proposed to be used by the Borrower in a Financial Report and shall notify the Borrower of any recommendation of any Adviser following that consultation, provided that the Intercreditor Agent need not accept any recommendation of such Adviser;

shall communicate to each Senior Lender the proposal of the Borrowers and request that the Instructing Creditors approve such Assumptions; and

shall, within twenty (20) Business Days of receipt of the Borrower’s proposal in relation to the Assumptions, inform the Borrower if it objects to any proposal for the use of an Assumption or if it (acting reasonably) requires any other Assumption to be modified.

* + - * 1. If the Intercreditor Agent objects to any proposal for the use of an Assumption or requires any other Assumption to be modified as referred to in paragraph (c) above, the Borrower and the Intercreditor Agent must consult with each other in good faith with a view to resolving any disagreement no later than thirty (30) days after the Intercreditor Agent has informed the Borrower thereof, failing which, the dispute in question must be referred to an Expert for resolution.
        2. Until such time as any dispute relating to the preparation of a Financial Report or the Assumptions relating thereto is resolved, the Assumptions calculated by the Intercreditor Agent shall prevail and be the basis for the relevant Financial Report or Compliance Certificate.
    1. Financial Model
       - 1. **Custody of the Financial Model**

The Original Financial Model delivered in accordance with Clause 3.1 (*Financial Close documents*) shall be deposited with and shall remain in the custody of the Intercreditor Agent and, subject to any amendments made in accordance with this Agreement, shall constitute the Financial Model for the purposes of the Finance Documents.

No later than thirty (30) days following each Calculation Date, the Borrower shall provide a copy of the Financial Model to the Intercreditor Agent:

updated on the basis of the Financial Report most recently supplied by the Borrower in accordance with this Agreement; and

updating relevant Assumptions (without amending the formulae relating thereto) for all projections, to the extent necessary.

At the request of any Finance Party, the Borrower shall provide to a copy of the Financial Model to such Finance Party.

* + - * 1. **Amendments to the Financial Model**

The Borrower shall not make any changes to the Financial Model without the prior written consent of the Intercreditor Agent other than in accordance with this paragraph 4.2.

The Borrower:

may make amendments to the Financial Model which it reasonably believes are required for the purpose of:

ensuring that the Financial Model complies with this Agreement; and

correcting any manifest error in the form of the Financial Model; and

shall make amendments to the Financial Model which are required to take into account further Assumptions or any other information agreed by the Borrower and the Intercreditor Agent under any this Part E of Schedule 5 (*Information, Budgets and Reporting*).

The Borrower and the Intercreditor Agent may propose to each other amendments to the Financial Model in addition to those described in paragraph (b) above.

The Borrower must pay the costs, if any, incurred in relation to any change to the Financial Model.

If requested by the Intercreditor Agent following any changes:

to the structure of the Financial Model or the formulae within the same; or

which have been determined by an Expert in accordance with paragraph (f) below, the Financial Model must be re-audited at the cost of the Borrower.

If the Intercreditor Agent and the Borrower are unable to agree on any changes to the Financial Model, the Intercreditor Agent may refer the same for determination by an Expert.

Any change to the Financial Model and this Agreement will only be made once agreed between the Intercreditor Agent and the Borrower or determined by an Expert.

* 1. Expert
     + 1. Where any matter is to be referred to an Expert in accordance with this Schedule 5 (*Information, Budgets and Reporting*), the Borrower and the Intercreditor Agent must jointly appoint a person having appropriate expertise with respect to, but no interest in the outcome of, the matter from the list agreed from time to time between the Intercreditor Agent and the Borrower (each an ***Expert***) and use reasonable endeavours to appoint each Expert within five (5) days of the Parties determining the dispute should be referred to an Expert. Failing agreement within fourteen (14) days after the first nomination of a person to be an Expert by either the Borrower or the Intercreditor Agent, the Expert will be appointed, on the application of either of them, by the LCIA.
       2. The Borrower shall bear the costs and expenses of the reference to the Expert.
       3. The Expert will be required to make his determination within thirty (30) days after his appointment or within such longer period as the Borrower and the Intercreditor Agent may agree.
       4. The Intercreditor Agent shall promptly, upon the Expert being appointed, provide the terms of reference to the Expert (with a copy to the Borrower) setting out the context in which the referral is being made. The Borrower and the Intercreditor Agent shall each provide papers setting out their respective positions in reasonable detail to the Expert within fourteen (14) days after determining the dispute should be referred to an Expert (or within five (5) days in the case of a dispute on a Funding Shortfall). The Expert may consult with the Borrower, the Intercreditor Agent and the Lenders' Technical & Environmental Adviser and such other persons as he deems appropriate in reaching his decision.
       5. If the Intercreditor Agent or the Borrower shall so request, the Intercreditor Agent and the Borrower shall each be given an opportunity to review and provide comments on a draft determination by the Expert, provided that the Expert shall not be under any obligation to take into account any such comments.
       6. The Expert will act as an expert in determining the matter referred to him and not as an arbitrator.
       7. Any determination of the Expert will (save for manifest error) be final and binding on all the Parties.

1. Insurance
   * 1. Interpretation

References in this Schedule to clauses, paragraphs and Exhibits shall be construed as references to the clauses of this Schedule and to paragraphs of, and Exhibits to, this Schedule unless the context otherwise requires.

1. ***Approved Reinsurer*** means:
   1. in respect of the Investment Term Insurances, to the extent not more than ninety five per cent. (95%) of the sums insured by the relevant Direct Insurances is reinsured with it;
   2. any reinsurers with a financial strength rating by Standard & Poor of at least A- or an equivalent rating by such rating provider, as may be reasonably acceptable to the Intercreditor Agent acting with the guidance of the Lenders' Insurance Adviser acting reasonably; and
   3. any reinsurers not meeting the rating requirement referred to above but which are otherwise of sound security and international reputation and who are approved in writing prior to inception and at each subsequent renewal by the Intercreditor Agent acting upon the advice of the Lenders' Insurance Adviser.
2. ***CAR Insurance*** means the Construction All Risks insurance set out in paragraph 1 of Exhibit 1 (*Investment Term Insurances*) of this Schedule 6 (*Insurance*).
3. ***Direct Insurance*** and ***Direct Insurances*** means any contract or contracts of insurance between the Borrower and any Insurer.
4. ***Insurances*** means any insurance (including, as applicable, any Direct Insurances and Reinsurances) to be effected or maintained by the Borrower pursuant to this Schedule 6 (*Insurance*).
5. ***Insurers*** means the insurance companies or underwriters (or, if the context so requires, the reinsurance companies or underwriters) providing the Insurances.
6. ***Investment Term Insurances*** means the Insurances specified in Exhibit 1 (*Investment Term Insurances*) of this Schedule 6 (*Insurance*) and the reinsurances thereof required by this Schedule 6 (*Insurances*).
7. ***Material Insurance*** means each Direct Insurance other than professional liability Insurances and any Insurances required under Applicable Law.
8. ***Operation Term Insurances*** means the Insurances specified in Exhibit 2 (*Operation Term Insurances*) of this Schedule 6 (*Insurance*) and the reinsurances thereof required by this Schedule 6 (*Insurances*).
9. ***Reinsurance*** means each of the contracts and policies of reinsurance entered into in accordance with this Schedule 6 (*Insurance*).
10. ***Reinsurer*** means each reinsurer, from time to time, of, or in relation to, any Reinsurance.
    * 1. Insurances to be Effected
         + 1. **Investment Term Insurances**

The Borrower shall procure that the Investment Term Insurances in respect of the risks specified in Exhibit 1, in form and substance complying with the requirements of this Schedule, shall be purchased and maintained in full force and effect at all times on and after the commencement date for that insurance and up to (and including) the expiry date thereof (each as specified in Exhibit 1) and that those insurances are effected against the risks and liabilities and maintained at least in the amounts specified in Exhibit 1 (as varied from time to time as by, or determined pursuant to, this Schedule).

* + - * 1. **Operation Term Insurances**

The Borrower shall procure that the Operation Term Insurances in respect of the risks specified in Exhibit 2, in form and substance complying with the requirements of this Schedule, shall be purchased and maintained in full force and effect at all times on and after the commencement date for that insurance and up to (and including) the expiry date thereof (each as specified in Exhibit 2) and that those insurances are effected against the risks and liabilities and maintained at least in the amounts specified in Exhibit 2 (as varied from time to time as by, or determined pursuant to, this Schedule).

* + - * 1. **Other Insurances**

Without prejudice to the other provisions of this Schedule, the Borrower shall effect and maintain throughout the period of this Agreement any insurance which it is required to maintain by any Applicable Law or by the terms of the Transaction Documents or of any other contract relating to the Project to which it is a party and under which is obliged to purchase and maintain (or procure the purchase and maintenance of) any insurance.

* + 1. Requirements Relating to Insurances
       - 1. **General requirements**

The Borrower shall procure that all Material Insurances and Reinsurances, as applicable, shall at all times:

be purchased by or on behalf of the Borrower and through agents approved in writing by the Intercreditor Agent such approval not to be unreasonably withheld or delayed;

be placed and maintained with insurers and reinsurers of sound security and international reputation who are approved in writing prior to inception and at each subsequent renewal by the Intercreditor Agent;

name:

the Borrower as the principal insured party or the first named insured party; and

the Secured Creditors and their respective officers, directors, employees and assigns each as additional (but not joint) insured party; and

be in a form and on terms at all times in compliance with the requirements and specifications of this Schedule or as may otherwise be approved in writing by the Intercreditor Agent; and

The Borrower shall procure that no Material Insurance or Reinsurance is subject to any coverage exclusion or exception unless it is:

specified within Exhibit 1 or Exhibit 2 (as applicable) as a permitted coverage exclusion or exception;

a necessary standard exclusion or exception within the insurance industry for the type or size of risk covered by that Insurance; or

previously approved in writing by the Intercreditor Agent.

Without prejudice to the obligations of any other party, the Borrower shall ensure having made due enquiry, that every material circumstance which under the terms of the relevant Insurance, is required or ought to be disclosed at any time to any Insurer of every Direct Insurance and every Reinsurer of any Reinsurance, is fully and fairly disclosed to them without misrepresentation.

* + - * 1. **Premia**

The Borrower shall pay or procure the payment on a timely basis of all premiums as required by the terms of the Direct Insurances and the Reinsurances, and in accordance with any credit arrangements agreed with the Insurers and Reinsurers, to produce promptly to the Intercreditor Agent on request copies of receipts (or other evidence of payment) for all premium payments and, in the case of renewals of any Direct Insurances and Reinsurances, to produce evidence of such renewal and the terms thereof.

* + - * 1. **Endorsements**

The Borrower shall procure that:

each Material Insurance has attached to it an endorsement in the form set out in Exhibit 3 (*Form of Insurance Endorsement*) to this Schedule 6; and

each Reinsurance has attached to it an endorsement in the form set out in Exhibit 4 (*Form of Reinsurance Endorsement*) to this Schedule 6.

* + - * 1. **Assignment of Material Insurances**

The Borrower shall assign by way of first ranking security for the Secured Debt all its present and future (i) rights under and in respect of the Material Insurances and (ii) rights, benefits and interest in the Insurance Proceeds (other than claim's monies payable under any Liability Insurance direct to a third party in or towards discharge of a liability of the Company to such third party) to the Security Agent on behalf of the Secured Creditors.

The assignment, notices and acknowledgements shall each be in the agreed form, or otherwise in form satisfactory to the Security Agent (acting reasonably).

* + - * 1. **Reinsurance**

In respect of any Material Insurances, the Borrower shall procure that one or more contracts of Reinsurance is, or are, purchased and maintained in full force and effect throughout the period that such Insurances are required by this Schedule to be maintained.

The Reinsurances shall:

reinsure not less than ninety five per cent. (95%) of each risk insured on an "as original" and fully back to back basis with Approved Reinsurers;

save to the extent not permitted by the Applicable Law, be on the same terms, conditions and exclusions as the underlying Material Insurances (including as to endorsements); and

name the Secured Creditors as additional insured parties or co-insured parties and loss payee;

The Borrower shall procure that a Reinsurance Assignment Deed is entered into by each local insurer of any risk referred to in paragraph (b) above and by the Borrower with the Security Agent and that under the Reinsurance Assignment Deed each local insurer will assign all its rights, title, benefits and interests in the Reinsurances as specified in the Reinsurance Assignment Deed. Each Reinsurance Assignment Deed shall be substantially in the form set out in Exhibit 6 to this Schedule 6. The Borrower shall procure that notice of assignment in the form specified in the Reinsurance Assignment Deed shall be given promptly to every Reinsurer, and acknowledged by such Reinsurers as specified therein and by way of endorsement of the notice on the appropriate policy or policies of Reinsurance.

* + - * 1. **Additional Undertakings**

The Borrower undertakes, in respect of all Insurances, to:

evidence promptly by the provision of original or true copy documents or such evidence agreed at the time as satisfactory to the Intercreditor Agent at the request of the Intercreditor Agent that the Borrower is in compliance with the requirements of this Schedule;

promptly provide to the Intercreditor Agent copies of all cover notes and policies (including all endorsements) issued from time to time in relation to the Direct Insurances and Reinsurances, and of all changes requested or effected thereto and, if so requested by the Intercreditor Agent, of placing slips and all documents disclosed or disclosable to the Insurers or Reinsurers (as applicable) in respect of the placement and maintenance of the Direct Insurances and the Reinsurances and relating to claims notified or notifiable to Insurers, Reinsurers or the insurance brokers; in addition, the Borrower will on request promptly deliver to the Intercreditor Agent the originals of all policies (including endorsements) and placing slips relating to the Direct Insurances and Reinsurances;

comply or procure compliance at all times with the terms and conditions of all Direct Insurances and Reinsurances and to take all action within its power to procure that nothing is at any time done or suffered to be done whereby any Direct Insurance, Reinsurance or other insurance required to be maintained hereunder or under any other contract to which it is a party relating to the Project may be impaired, suspended or rendered void or voidable in whole or in part, or any Insurance Proceeds become uncollectable in full;

procure that all Direct Insurances and Reinsurances, and the procurement thereof, comply at all times with all Applicable Laws, and that all authorisations, consents and approvals required for the purchase and maintenance of the Direct Insurances and Reinsurances on the basis provided in this Schedule are obtained and remain valid and applicable;

procure that:

no person shall have the benefit of any rights under or to enforce any Material Insurance, except for:

persons identified as co-insured persons in Exhibit 1 (Investment Term Insurances) or Exhibit 2 (Operation Term Insurances) (as applicable) to the extent permitted under this Schedule 6; and

persons previously approved in writing by the Intercreditor Agent; and

no person, other than the insurer(s) referred to in paragraph (i) above and the Security Agent, shall have the benefit of any rights under or to enforce any Reinsurance;

take or procure the taking of all risk management and risk control measures in relation to the Project, its site and facilities:

as may be required to comply with each Insurer's or Reinsurer's risk management requirements in respect of the relevant Direct Insurance or Reinsurance; or

if recommended by any Insurer or Reinsurer, which the Intercreditor Agent may reasonably require to protect the direct and indirect interests of the Secured Creditors;

forthwith notify the Insurers, the Reinsurers and the Intercreditor Agent of any increase or material change in any risk insured under any Material Insurance;

not do or permit to be done anything in relation to the Material Insurances or Reinsurances which is liable adversely to affect the rights of the Secured Creditors under such Material Insurances or Reinsurances or their interests (including security interests) in them; and

promptly notify the Intercreditor Agent of any fact, event or circumstance which has caused or may cause the Borrower to be in breach of any provision of this Schedule.

* + - * 1. **Broker's and Reinsurance Broker's Letters of Undertaking**

The Borrower shall ensure that each broker or agent through whom any Material Insurance or Reinsurance required to be effected or renewed pursuant to this Schedule 6 are effected or renewed is acceptable to the Intercreditor Agent and shall procure that each such broker or agent delivers to the Intercreditor Agent a letter of undertaking substantially in the form set out in Exhibit 5 (Form of Broker’s Letters of Undertaking) of this Schedule 6(or such other form as may be agreed between the Intercreditor Agent and the Borrower) no later than five (5) Business Days after each such insurance and/or reinsurance policy is effected or renewed.

* + - * 1. **Broker files**

The Borrower shall procure that each broker or agent through whom, and insurers with whom, any Material Insurance or Reinsurance is effected or maintained in accordance with this Schedule 6 shall maintain intact their files for a period of twelve (12) years following the expiry of the insurance and /or reinsurance policy, and shall supply or procure the supply to the Intercreditor Agent of such information relating to such insurances and reinsurances as the Intercreditor Agent may request in writing, provided that the Intercreditor Agent shall not be entitled to request such information to the extent relating to confidential business affairs of any broker or agent or to the extent covered by confidentiality restrictions benefiting any third party (excluding, for the avoidance of doubt, the Borrower).

* + 1. Changes in the Insurances
       - 1. **Additional Insurances**

The Borrower shall procure that such changes are made to the terms and conditions of the Material Insurances or Reinsurances (or effect and maintain such additional insurances) as may be required by the Intercreditor Agent if the Intercreditor Agent believes that the existing insurances afford less protection to the Secured Creditors than is then available at reasonable cost in the Turkish insurance market (and, if not available, the international insurance market to the extent permitted by Applicable Law) and the international reinsurance market and normally provided to financiers in limited recourse project financings.

If, at the time any of the insurances referred to in paragraph (a) are due to commence or fall for renewal, insurance on those terms is not available at commercially reasonable rates in the Turkish insurance market (and, if not available, the international insurance market to the extent permitted by Applicable Law) or the international reinsurance market, the Borrower may effect insurance on alternative terms previously agreed in writing with the Intercreditor Agent (after consultation with the Insurance Advisor) provided that the Borrower shall, at the request of the Intercreditor Agent, approach the insurance market at reasonable intervals (but not less frequently than every three (3) months) to determine whether any of the insurances or terms required by this Agreement have become available at commercially reasonable rates and shall, promptly thereafter, deliver to the Intercreditor Agent and the Insurance Advisor the results of its investigation and the information from which it made its determination.

* + - * 1. **Material variations in cover**

If any variation is proposed to be made to the terms of any Material Insurance or related Reinsurance, the Borrower shall give at least forty-five (45) days prior written notice thereof to the Intercreditor Agent. No variation to any Material Insurance or Reinsurance shall be effected or agreed by the Borrower until the Intercreditor Agent notifies the Borrower in writing either that the variation is not material to the Secured Creditors or is otherwise agreeable to the Intercreditor Agent. The Intercreditor Agent will not unreasonably withhold or delay its agreement after obtaining any advice that it deems appropriate in considering the Borrower's request.

For the purpose of this paragraph a variation includes (without limitation):

changes to limits of cover and deductible or excess or self-insurance arrangements;

changes to risks insured, to coverage terms, and the inclusion of new exclusions or exceptions;

the purchase of any additional insurance or reinsurance other than as required by this Schedule or as previously approved by the Intercreditor Agent;

any reduction in or cancellation, discontinuance, non-renewal or avoidance of any cover provided under any Insurance; and

any change which might have the effect of causing a breach by the Borrower of any obligation under this Agreement or of any other agreement to which it is a party.

* + 1. Failure to Insure
       - 1. **Intercreditor Agent power to insure**

If at any time and for any reason any Material Insurance or Reinsurance is not in full force and effect on the terms or for the insured values required under this Schedule, then (without prejudice to any of the rights of any of the Secured Creditors under the Finance Documents) the Intercreditor Agent shall forthwith be entitled, at the cost and expense of the Borrower, to procure and pay for such insurance and reinsurance as the Borrower should have effected or procured pursuant to the terms hereof or at any time whilst such failure is continuing.

* + - * 1. **Minimising hazard**

If any required Direct Insurance or Reinsurance is for any reason at any time not in force, the Borrower shall (without prejudice to any other obligations of the Borrower hereunder or under the Finance Documents) take or procure the taking of all such steps to minimise hazard which are within its power and which a prudent person in the position of the Borrower would take in the circumstances, or which are reasonably required by the Intercreditor Agent in writing.

* + 1. Market Capacity

Notwithstanding the foregoing provisions of this Schedule:

the Borrower will not be in breach of its obligations under this Schedule if any Insurance required to be effected or maintained is not available in the Turkish insurance market (and, if not available, the international insurance market to the extent permitted by Applicable Law) or the international reinsurance market on what the Intercreditor Agent acting reasonably considers (based on the advice of the Lenders’ Insurance Adviser) to be reasonable commercial terms, having regard to premiums charged for insuring that risk and the ability of the Borrower to meet the cost of such Insurances; and

if a particular Insurance cannot be effected on reasonable commercial terms, the Borrower will use all reasonable endeavours to eliminate or minimise such uninsured risks as may be required by the Intercreditor Agent.

* + 1. Claims
       - 1. **Pursuing claims against Insurers**

The Borrower shall promptly notify to Insurers or Reinsurers (as applicable) any matter for which it may be entitled to claim under the Direct Insurances or Reinsurances, and shall diligently pursue any valid claim.

* + - * 1. **Claims conduct and reporting**

Subject to paragraph 7.3 (*Larger claims*) below, the Borrower shall have the sole conduct of its claims under the Direct Insurances and Reinsurances arising out of any one loss, but shall keep the Intercreditor Agent informed:

in accordance with Schedule 5 (*Information, Budgets and Reporting*) of this Agreement; and

additionally, at semi-annual intervals, of the progress of any claims so notified under Schedule 5 (*Information, Budgets and Reporting*).

Such information shall identify for each claim under each Direct Insurance the type of claim, the Borrower's claim reserve, the current status of that claim, and such further information relating to that claim as the Intercreditor Agent may request.

* + - * 1. **Larger claims**

In respect of any loss where the actual or estimated totality is, in aggregate, greater than five hundred thousand Euros (EUR 500,000) (or its equivalent in any other currency or currencies (before any deductibles or excesses are taken into consideration) the Borrower shall not compromise or settle any claim without the written consent of the Intercreditor Agent, such consent not to be unreasonably withheld or delayed.

* + 1. Application of Proceeds

All Insurance Proceeds shall be paid and applied in accordance with the terms of the Project Accounts Agreement.

* + 1. Technical Assessment Reports
       - 1. The Borrower shall deliver to the Intercreditor Agent and the Lenders' Insurance Adviser:

a technical assessment report (in the form of a maximum loss study) in relation to earthquake risk affecting the Project and a report prior to the commencement of the Operational Term Insurances, and then at such other intervals as may be requested by the Intercreditor Agent, acting reasonably and in consultation with the Lenders' Insurance Adviser; and

a technical assessment report (in the form of a maximum loss study) in relation to terrorism risk affecting the Project: in advance of the Investment Term Insurances, and a subsequent report prior to the commencement of the Operational Term Insurances, and then at such other intervals as may be requested by the Intercreditor Agent, acting reasonably and in consultation with the Lenders' Insurance Adviser,

(each, a **Technical Assessment Report**),

in each case prepared by an independent consultant (having appropriate expertise with respect to, but no interest in the outcome of, the matter) appointed by the Borrower and acceptable to the Intercreditor Agent (acting in consultation with the Lenders' Insurance Adviser).

* + - * 1. Any determination as to maximum loss in a Technical Assessment Report will (save for manifest error and subject to paragraph 9) be final and binding on all the Parties and:

in respect of earthquake risk, the minimum sum insured in respect of earthquake as set out in paragraph 1.4 and 2.4 of Exhibit 1 (*Investment Term Insurances*) and paragraph 1.3 of Exhibit 2 (*Operating Term Insurances*); and

in respect of terrorism risk, the minimum sum insured in respect of terrorism as set out in paragraph 1.4 and 2.4 of Exhibit 1 (*Investment Term Insurances*) and paragraph 4 of Exhibit 2 (*Operation Term Insurances*),

shall be updated accordingly by the Intercreditor Agent and the Borrower.

1. Investment Term Insurances
   1. CONSTRUCTION "ALL RISKS" INSURANCE
      * 1. **Insureds**
           1. the Project Company
           2. the EPC Contractor
           3. the Finance Parties
           4. the Administration
           5. All other contractors and/or subcontractors of any tier in connection with the carrying out of the Works
           6. Suppliers, manufacturers, professional consultants and engineers for their site activities only in connection with the carrying out of the Works;

each for their respective rights and interests

* + - 1. **Risks Insured**

"All risks" of physical loss or damage to the Works (comprising any permanent and/or temporary works), materials in progress and/or completed (including free issue materials), temporary buildings, camp buildings, office buildings and contents thereof and all other property, including medical equipment and furniture for incorporation therein or for use in connection with the Works relating to the Project (but excluding, for the avoidance of doubt, any plant or equipment owned by the construction Contractor and/or any other contractor and/or subcontractor).

* + - 1. **Period**

From the commencement of construction activities on site until the date of issue of the completion certificate for the works and for the 24 months defects liability period thereafter

* + - 1. **Sum Insured**

At all times an amount not less than the full reinstatement or replacement value of the insured property plus provision to include principal extensions as appropriate.

Not less than EUR 350,000,000 combined construction all risks and construction delay in start up in respect of Earthquake and not less than EUR 185,000,000 combined construction all risks and construction delay in start up in respect of terrorism damage including subsequent fire where terrorism is the proximate cause of such fire.

* + - 1. **Geographical Limits**

Anywhere in Turkey and Europe in connection with the contract including inland transit and storage therein.

* + - 1. **Deductible**

€ 50,000 each and every occurrence increasing to € 500,000 in respect of major perils i.e. DE5/LEG3, testing & maintenance, AOG and in respect to earthquake 10% of the loss subject to a miniumum of € 500,000 and a maximum of €2,000,000.

* + - 1. **Principal Extensions**
         1. Professional fees for architects, surveyors, consulting engineers, including those of the insured;
         2. Costs and expenses incurred for debris removal;
         3. Plans, specifications, drawings and other documentation and their replacement;
         4. Extra charges incurred for overtime, night work or on public holidays;
         5. Extended defects liability cover;
         6. Marine 50/50
         7. Expediting expenses
         8. Guaranteed maintenance but extended maintenance for electronic equipment
         9. Automatic escalation of the sum insured (125%)
         10. Offsite storage
         11. 72 Hour Clause
         12. Loss minimisation expenses
         13. Terrorism
         14. Testing and commissioning
      2. **Principal Exclusions**
         1. Defective design, plan, specification, materials and workmanship exclusion (DE5/LEG3)
         2. Unexplained disappearance or shortage
         3. Wear, tear and gradual deterioration
         4. War, civil war and related perils
         5. Nuclear/radioactive risks
         6. Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds
         7. Consequential financial loss
         8. Cyber risks
         9. Inventory losses, fraud and employee dishonesty
         10. Fines and penalties
  1. CONSTRUCTION DELAY IN START UP INSURANCE
     + 1. **Insureds**
          1. the Project Company
          2. the Finance Parties

each for their respective rights and interests

* + - 1. **Indemnity**

In respect of:

Loss of anticipated revenue sustained during at least the minimum indemnity period arising from a delay in completion of the works relating to the project as a result of loss or damage covered under the Construction “All Risks” Insurance including physical loss or damage which would be indemnifiable but for the application of any deductible;

The economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the anticipated loss of revenue which without such expenditure would have taken place during the minimum indemnity period.

* + - 1. **Period of Insurance**

From the commencement of construction activity at the site until the date of issue of the completion certificate for the works.

* + - 1. **Sums Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period but not less than EUR 350,000,000 combined construction all risks and construction delay in start up in respect of Earthquake and not less than EUR 185,000,000 combined construction all risks and construction delay in start up in respect of terrorism damage including subsequent fire where terrorism is the proximate cause of such fire.

* + - 1. **Deductible**

45 days in the aggregate

90 days in the aggregate in respect of Earthquake

* + - 1. **Minimum Indemnity Period**

16 Months

* + - 1. **Principal Extensions**
         1. Professional fees
         2. Denial of access
         3. Failure of utilities (FLEXA perils)
         4. Constructional plant and equipment
         5. Payments on account
         6. Named suppliers' and manufacturers’ sites (FLEXA perils)
         7. Automatic reinstatement of sum insured and indemnity period
         8. Infectious diseases
         9. Terrorism - terrorism sublimit to include physical loss or damage by fire resulting from acts of terrorism
      2. **Principal Exclusions**
         1. The exclusions under the Construction ‘All Risks’ Insurance, other than for consequential financial losses;
         2. Delayed response by a public body or state authority.
  1. THIRD PARTY PUBLIC LIABILITY INSURANCE
     + 1. **Insureds**
          1. the Project Company
          2. the EPC Contractor
          3. the Finance Parties
          4. the Administration
          5. All other contractors and/or subcontractors of any tier in connection with the carrying out of the Works
          6. Suppliers, manufacturers, professional consultants and engineers for their site activities only in connection with the carrying out of the Works;

each for their respective rights and interests

* + - 1. **Interest**

To indemnify the Insureds against all sums which any of the Insureds becomes legally or contractually liable to pay (including claimant’s costs and expenses) as damages in respect of accidental bodily injury (including illness, death or disease) to any third parties and loss of or damage to third party property happening during the period of insurance and arising out of or in connection with the carrying out of the Works relating to the Project. To include interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities or any like cause.

* + - 1. **Period**

From the commencement of construction activities on site until the date of issue of the completion certificate for the works and for the defects liability period in the construction contract thereafter

* + - 1. **Sum Insured**

Not less than € 25,000,000 each and every occurrence with no limit on the number of occurrences except pollution and contamination which shall be not less than € 25,000,000 each and every occurrence and in the aggregate per annum

* + - 1. **Geographical Limits**

World-wide (excluding USA and Canada)

* + - 1. **Maximum Deductible**
         1. € 50,000 each and every occurrence for third party property damage
         2. Nil for death, injury, illness or disease
      2. **Principal Extensions**
         1. Legal defence costs and expenses
         2. Cross liability clause
         3. Contingent motor liability
         4. Contractual liability
         5. Including directors, officers and employees of the Insureds
      3. **Principal Exclusions**
         1. Liability for death, illness, disease or bodily injury sustained by employees of the insured
         2. Liability arising out of the use of mechanically propelled vehicles
         3. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured
         4. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Administration which is in the care, custody and control of another insured.
         5. Liability arising from seepage and pollution unless caused by a sudden, unintended or unexpected occurrence
         6. Losses indemnified under the Construction "All Risks" or Delay in Start-Up Insurances
         7. Nuclear risks
         8. War and similar risks
         9. Fines and penalties
  1. MARINE CARGO INSURANCE
     + 1. **Insureds**
          1. The Borrower
          2. All contractors and or subcontractors of any tier
          3. The Finance Parties
          4. The Agents
       2. **Risk Insured**

Physical loss of or damage to the major items of equipment only, for incorporation or consumption in the Project occurring during transportation thereof to the site of the Project or its vicinity.

The scope of cover is to be based on open cover basis, for “All Risks” including war and strike risks, covering all transport requirements for the Construction Term of the Project from commencement of loading at the overseas suppliers' premises until completion of unloading at the Project site and including unloading and reloading at temporary locations and trans-shipment to the project site in a policy wording acceptable to the Lenders' Insurance Adviser (such acceptance not to be unreasonably withheld) and amended to reflect the appropriate risks of the Project.

* + - 1. **Period of Insurance**

From the first shipment of property ex-works to the Site until the completion of all shipments of property to the Site.

* + - 1. **Sums Insured**

A sum being an amount equal to the maximum value of any one consignment or shipment in transit or in storage en route at any one location on a replacement cost basis, including customs, insurance and freight charges.

* + - 1. **Maximum Deductible**

Not greater than € 25,000 any one occurrence but no deductible in relation to losses recoverable under Institute Cargo Clauses (C), War, Strikes, General Average, Salvage and Sue and Labour Clauses.

* + - 1. **Main Extensions:**
         1. 50/50 Clause subject to CAR policy to be issued by the same insurer;
         2. Institute of London Underwriters Clauses and cover forms (or equivalent acceptable to the Finance Parties' Insurance Adviser) including:

Institute Cargo Clauses (A)

Institute War Clauses (Cargo)

Institute Strikes Clauses (Cargo)

Institute Classification Clauses

Institute War Cancellation Clause (Cargo)

Institute Radioactive Contamination Exclusion Clause

Institute Cargo Clauses (Air)

Institute War Clauses (Air Cargo)

Institute Strikes Clauses (Air Cargo)

Cargo ISM Endorsement (JC 98/019 1 May 1998)

Cargo ISM Forwarding charges Clause

* + - * 1. Notice of Cancellation seven days for war, strikes, riots, and civil commotion, except 48 hours for sending to and from the United States of America. Otherwise, non-cancellable;
        2. Replacement value (including cost, insurance, freight) plus 10 per cent.
  1. MARINE DELAY IN START UP INSURANCE
     + 1. **Insureds**
          1. The Borrower
          2. The Intercreditor Agent, the Security Agent and the Finance Parties
       2. **Risk Insured**

Loss of anticipated net profit and standing charges (fixed operating costs and debt service) sustained following delay to the Project and the additional expenditure necessarily and reasonably incurred in avoiding or diminishing the loss of revenue which but for that expenditure would have taken place but not exceeding the amount of the loss of revenue thereby avoided as a direct result of physical loss of or damage as a direct result of loss or damage to goods or merchandise to the extent that such loss or damage is covered under the Marine Cargo Insurance policy above.

* + - 1. **Period of Insurance**

From the inception date of the Marine Cargo Policy above until the completion of all shipments of property to the Project Site, including materials, equipment, machinery, spares, supplies and other items for the Project.

* + - 1. **Sum Insured**

An amount to cover debt service and fixed operating expenses for the indemnity period

* + - 1. **Indemnity Period**

Minimum of 12 months or such other time period as may be determined and accepted by the Intercreditor Agent

* + - 1. **Maximum Deductible**

Not longer than 45 days in the aggregate from the Project Commercial Operation Date or the Project Completion Date.

* + - 1. **Extension**

Delay resulting from loss or damage to conveyance.

* + - 1. **Exclusions**

Delay following loss or damage not covered under the Marine Cargo insurance.

1. Operation Term Insurances
   1. PROPERTY "ALL RISKS" INSURANCE
      * 1. **Insureds**
           1. the Project Company
           2. the Service Providers
           3. the Finance Parties
           4. the Administration

each for their respective rights and interests

* + - 1. **Risks Insured**

"All Risks" of loss or damage to property used for or in connection with the ownership maintenance and operation of the health facilities and any provision of the services.

* + - 1. **Sum Insured**

At all times an amount sufficient to cover the maximum foreseeable loss of the Insureds interest, being an estimate of the maximum combined loss of property damage and business interruption which can be reasonably expected to result from an individual event of property damage caused by a risk insured including a suitable provision to include principal extensions as appropriate.

Not less than an amount to equate the estimated maximum loss to the project in respect of earthquake.

* + - 1. **Geographical Limits**

Turkey plus elsewhere whilst in inland transit

* + - 1. **Maximum Deductible**

€ 50,000 any one loss or occurrence and increasing to 2% of the Total Insured Value any one loss or damage caused by earthquake.

* + - 1. **Period of Insurance**

From the date of issue of the completion certificate for the works for the duration of the Agreement and renewable on an annual basis unless otherwise agreed.

* + - 1. **Principal Extensions**
         1. Professional fees
         2. Debris removal
         3. Automatic reinstatement of sum insured
         4. Pollution and contamination to the insured property arising from an event which itself is not otherwise excluded
         5. Repair/reinstatement basis of claims settlement with cash option for non-reinstatement
         6. Plans & documents
         7. Temporary repairs.
         8. Temporary removal.
         9. Loss minimisation.
         10. 72 hours clause.
         11. Payments on account.
         12. Earthquake sublimit not to include physical loss or damage by fire resulting from earthquake.
         13. Capital additions,
      2. **Principal Exclusions**
         1. War, civil war and related perils
         2. Nuclear/radioactive risks
         3. Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds
         4. Wear, tear and gradual deterioration
         5. Consequential financial losses
         6. Cyber risks
         7. Latent defects
         8. Inventory losses. Fraud and employee dishonesty.
  1. THIRD PARTY PUBLIC LIABILITY INSURANCE
     + 1. **Insureds**
          1. the Project Company
          2. the Service Providers
          3. the Finance Parties
          4. the Administration

each for their respective rights and interests

* + - 1. **Risks Insured**
         1. To indemnify the Insureds against all sums which any of the Insureds becomes legally or contractually liable to pay (including claimant’s costs and expenses) as damages in respect of accidental bodily injury (including illness, death or disease) to any third parties and loss of or damage to third party property happening during the period of insurance and arising out of or in connection with the carrying out of the Works relating to the Project. To include interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities or any like cause.
         2. PI and P2 Services for which the Borrower and/or the Operator shall be responsible.
      2. **Sum Insured**

Not less than € 25,000,000 each and every occurrence with no limit on the number of occurrences except pollution and contamination which shall be not less than € 25,000,000 each and every occurrence and in the aggregate per annum.

* + - 1. **Geographical Limits**

Worldwide (excluding USA and Canada).

* + - 1. **Maximum Deductible**

€ 50,000 any one loss or occurrence.

Nil for death, injury, illness or disease

* + - 1. **Period of Insurance**

From the date of issue of the completion certificate for the works for the duration of the Agreement and renewable on an annual basis unless otherwise agreed.

* + - 1. **Principal Extensions**
         1. Legal defence costs and expenses
         2. Cross liability clause
         3. Contingent motor liability
         4. Contractual liability
         5. Including directors, officers and employees of the Insureds
         6. false imprisonment, wrongful arrest or eviction
      2. **Principal Exclusions**
         1. Liability for death, illness, disease or bodily injury sustained by employees of the insured
         2. Liability arising out of the use of mechanically propelled vehicles
         3. Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured
         4. Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Administration which is in the care, custody and control of another insured.
         5. Liability arising from seepage and pollution unless caused by a sudden, unintended or unexpected occurrence
         6. Losses indemnified under the Construction "All Risks" or Delay in Start-Up Insurances
         7. Nuclear risks
         8. War and similar risks
         9. Fines and penalties
         10. Medical malpractice risks where the Insured is providing professional healthcare services (but such term to exclude liability arising in connection with or as a result of the provision of P1 and P2 Services by the Project Company and/or the Services Provider, pursuant to the Project Agreement).
  1. BUSINESS INTERRUPTION INSURANCE
     + 1. **Insureds**
          1. the Project Company
          2. the Finance Parties

each for their respective rights and interests

* + - 1. **Indemnity**

In respect of:

Loss of revenue sustained during at least the minimum indemnity period arising from an interruption or interference in the operation of the project as a result of loss or damage covered under the Property “All Risks” Insurance including physical loss or damage which would be indemnifiable but for the application of any deductible;

The economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the anticipated loss of revenue which without such expenditure would have taken place during the minimum indemnity period.

* + - 1. **Minimum Indemnity Period**

Not less than 16 months

* + - 1. **Sum Insured**

An amount sufficient to cover the sums the subject of the indemnity for the minimum indemnity period.

Not less than an amount to equate to the estimated maximum loss to the project in respect of earthquake.

* + - 1. **Maximum Deductible**

14 days each and every occurrence increasing to 30 days each and every occurrence in respect of earthquake.

* + - 1. **Period of Insurance**

From the date of issue of the completion certificate for the works for the duration of the Agreement and renewable on an annual basis unless otherwise agreed.

* + - 1. **Principal Extensions**
         1. Professional fees
         2. Denial of access
         3. Failure of utilities (FLEXA perils)
         4. Payments on account
         5. Automatic reinstatement of sum insured and indemnity period
         6. Infectious diseases
         7. Earthquake sublimit not to include physical loss or damage by fire resulting from earthquake
  1. TERRORISM
     + 1. **Insureds**
          1. the Project Company
          2. the Service Providers save for business interruption coverage
          3. the Finance Parties
          4. the Administration save for business interruption coverage

each for their respective rights and interests

* + - 1. **Risks Insured**

To indemnify the Insureds in respect of loss of or damage to the project and associated loss of revenue following terrorist acts.

* + - 1. **Sum Insured**

Not less than an amount to equate the Estimated Maximum Loss to the project in respect of terrorism.

* + - 1. **Minimum Indemnity Period**

16 Months

Minimum Indemnity Period.

* + - 1. **Geographical Limits**

The project site in Turkey.

* + - 1. **Maximum Deductible**

€250,000 in respect of physical damage and 30 days for business interruption.

* + - 1. **Period of Insurance**

From the date of issue of the completion certificate for the works for the duration of the Agreement and renewable on an annual basis unless otherwise agreed.

**Other optional classes of insurance which can be included during the Operational Phase where required for the project, include:**

Environmental Liability Insurance.

Employer's Liability Insurance.

Motor Vehicle Insurance.

1. Form of Insurance Endorsement

Notwithstanding any other provision of this Policy, the following endorsement shall apply:

* 1. Definitions

In this endorsement:

1. ***Administration*** means Ministry of Health of the Republic of Turkey;
2. ***Borrower*** means Kocaeli Hastane Yatirim Ve Sağlik Hizmetleri Anonim Şirketi;
3. ***Common Terms Agreement*** means the agreement dated [•] between, amongst others, the Borrower and the Finance Parties;
4. ***Intercreditor Agent*** means UniCredit Bank AG in its capacity as agent for the Finance Parties and includes its successors in that capacity;
5. ***Finance Parties*** has the meaning given to it in the Common Terms Agreement and includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing;
6. ***Insured*** means those parties so described in the schedule of the Policy;
7. ***Insurers*** means the insurer or insurers underwriting this insurance policy;
8. ***Policy*** means the insurance policy to which this endorsement is attached and into which this endorsement is incorporated in its entirety;
9. ***Project*** has the meaning given to it in the Common Terms Agreement;
10. ***Security Agent*** means UniCredit Bank AG in its capacity as security agent for the Secured Creditors and includes its successors in that capacity;
11. ***Secured Creditors*** has the meaning given to it in the Common Terms Agreement and includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing.
    1. Separate Policy

All the provisions of this Policy (except for those relating to limits of liability) shall operate as if there were a separate policy covering each Insured. Accordingly, the liability of the Insurers under this Policy to any one of the Insured shall not be conditional upon the due observance and fulfilment of any other Insured of the terms of this Policy and of any duties imposed upon it relating thereto and shall not be affected by any failure in such observance or fulfilment of any such other Insured.

* 1. Interest of the Finance Parties and (if applicable) the Administration
     + 1. The Insurers acknowledge that the Finance Parties and (in respect of third party liabilities) their respective officers, directors, employees, secondees and assigns are each additional co-insureds under this Policy and that the premium specified in this Policy provides consideration for their being co-insured parties.
       2. Where required by any Project Document, the Insurers acknowledge that the Administration and (in respect of third party liabilities) its officers, directors, employees, secondees and assigns are each additional co-insureds under the sections of this Policy relating to material damage risks and public liability risks and that the premium specified in this Policy provides consideration for their being co-insured parties.
  2. Liability for premium

Neither the Intercreditor Agent, the Finance Parties nor the Administration shall be liable for the payment of any premium under this Policy although they may choose to pay the premium. This provision shall not relieve the Borrower from its obligations to pay any premium under this Policy.

* 1. Disclosure
     + 1. The Finance Parties shall have no duty of disclosure to Insurers in relation to the Policy. Nevertheless, on the written request of the Insurers, the Finance Parties shall provide the Insurers with access to any relevant due diligence report(s) commissioned by the Finance Parties relating to the Project and the Insurers shall keep such report(s) confidential and shall accept such information without rights of recourse against the party / parties that prepared the said reports.
       2. The Insurers acknowledge to the Finance Parties alone that:

they have received adequate information in order to evaluate the risk of insuring the Borrower in respect of the risks hereby insured on the assumption that such information is not materially misleading;

there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties or their directors, officers, employees or agents; and

in agreeing to enter into this Policy, they have not relied upon or taken into account any information supplied to them by any Finance Party.

The acknowledgements provided by the Insurers in this Clause 5.2 shall have no effect on any rights that Insurers might have had under or in relation to the Policy against any party (including the Borrower) other than the Finance Parties and the Intercreditor Agent in the absence of such acknowledgements.

* + - 1. Non-disclosure or misrepresentation by one Insured shall not be attributable to any other Insured who did not actively participate in that non-disclosure or misrepresentation. Without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.
  1. Non-vitiation
     + 1. The Insurers undertake to each Insured that the Policy will not be invalidated as regards the rights and interests of such Insured and that the Insurers will not seek to avoid any liability under this Policy because of any act, neglect, error or omission made by any other Insured, including any failure by any other Insured to disclose any material fact, circumstance or occurrence, any misrepresentation by any other Insured or any breach or non-fulfilment by any other Insured of any condition, warranty or provision contained in the policy.
       2. The Insurers agree that no Insured shall be penalised or prejudiced in any way by any unintentional or inadvertent misrepresentation, non-disclosure, want of due diligence or breach of any declaration, terms, condition or warranty of this Policy (together, ***the Relevant Matter***), but that this shall not apply as regards the individual Insured responsible for the Relevant Matter if that Insured fails to notify the Insurers or the brokers through whom the Policy was placed as soon as reasonably practicable after the management or managers of that Insured become aware or are made aware of the Relevant Matter.
  2. Cancellation
     + 1. The Insurers agree that they shall not seek to cancel or suspend the construction phases of this insurance except:

for non-payment of premium; or

where an insured party consistently fails to comply with Insurers’ requirements relating to survey or loss control action points; or

where an insured party is in breach of an applicable Joint Code of Practice (or local equivalent).

* + - 1. The Insurers shall promptly notify the Intercreditor Agent and the Administration in writing in the event of any:
         1. suspension, cancellation of Sections 1, 2 and 3 of the Investment Term Insurances (Construction All Risks, Delay in Start Up and Third Party Liability respectively) permitted by Clause 7.1 above; or
         2. in the case of cover under Operation Term Insurances Sections 1, 2 or 3 of this Policy (Material Damage - operational period; loss of revenue - Services; public liability - Services), cancellation or non-renewal of this Policy by the Insurers or by the Insured.

The cover provided by this Policy shall continue in force and unaltered for at least forty-five (45) days after written notice of such suspension, cancellation, termination or (in the case of cover under Operation Term Insurances Sections 1, 2 or 3) non-renewal is given to the Intercreditor Agent and the Administration. Nothing in this clause shall give the Insurers any right to suspend, cancel or terminate this Policy which the Insurers do not otherwise have under this Policy.

* + - 1. The Insurers shall promptly notify the Intercreditor Agent in writing of any default in the payment of premium and shall give the Intercreditor Agent at least forty-five (45) days’ notice in writing before voiding this Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.
  1. Changes in cover

The Insurers shall give the Intercreditor Agent at least forty-five (45) days’ notice in writing before any reduction in cover or increase in excess or deductible under this Policy takes effect. Nothing in this clause shall give the Insurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Policy.

* 1. Amendments to Endorsement

During the term of this Policy, the provisions of this endorsement may only be amended by written agreement between the Borrower, the Insurers and the Intercreditor Agent, such amendment to be endorsed on the Policy.

* 1. Notice of claims

Notice of claim by the Intercreditor Agent or the Finance Parties or any other party entitled to indemnity under the Policy shall, in the absence of manifest error, be accepted by Insurers as a valid notification of claim on behalf of all other Insureds subject to the full terms of the Policy.

* 1. Claim Payments / Loss Payee
     + 1. Payments made in accordance with this Clause 11 shall, to the extent of the payment, discharge the Insurers’ liability to pay the Borrower or any other Insured.
       2. In respect of the insurance under this Policy of material damage risks only:

All claim payments or return premium shall be paid into the account in the name of the Borrower with [*name of bank*] with account number [•] and sort code [•] or to such other account as the Security Agent as loss payee may specify in writing.

* + - 1. In respect of the insurance under this Policy of public/civil liability risks only:
         1. all claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the account in the name of the Borrower with [*name of bank*] with account number [•] and sort code [•] or such account as the Intercreditor Agent directs in writing
         2. any return premiums shall be paid to the account in the name of the Borrower with [*name of bank*] with account number [•] and sort code [•] or such other account as the Intercreditor Agent directs in writing.
      2. In respect of the insurance under this Policy of loss of revenue risks only:

All claim payments or return premiums shall be paid to the account in the name of the Borrower with [*name of bank*] with account number [•] and sort code [•] or such other account as the Intercreditor Agent directs in writing.

* 1. Set-off

Insurers may, at their discretion, deduct overdue unpaid premium from claims settlements but shall not set off or deduct premium that is not overdue or any other amounts payable by the Borrower under or in relation to the Policy.

* 1. Waiver of subrogation
     + 1. The Insurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate schedules arising out of any occurrence in respect of which any claim is admitted and is insured hereunder for the benefit of such Insured except against any such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition.
       2. Notwithstanding the foregoing, until such time that all obligations of the Borrower under the Common Terms Agreement have been discharged in full, as confirmed in writing by the Intercreditor Agent, the Insurers hereby agree that they will not exercise any of their rights against the Borrower or the Finance Parties that they may acquire through subrogation unless they have notified the Intercreditor Agent of their intention of doing so and the Intercreditor Agent has confirmed in writing that the exercise of such rights could not reasonably be expected to result in the Borrower’s failure to meet its obligations under the Common Terms Agreement.
  2. Primary insurance

The Insurers agree that this insurance provides the primary cover for risks insured under this Policy. In the event that any risk insured under this Policy is also insured under any other policy of insurance effected by any Insured, the Insurers agree to indemnify the Insured as if such other policy of insurance did not exist except in respect of:

* + - * 1. excess layers of third party cover effected specifically for the Project;
        2. any public liability claim against the Insured which exceeds the applicable limit of indemnity under this Policy, in which case the liability of the Insurers for additional legal costs and expenses shall be limited to the proportion that the applicable limit of indemnity bears to the total claim against the Insured;
        3. any claim under this Policy to which a Marine 50/50 clause applies;
        4. any claim made under a Contingent Motor Liability extension to this Policy; or
        5. any claim relating to a loss which is insured against (or would be insured but for a double insurance provision or similar or the application of a deductible) under:

any other policy specifically effected for the construction or operational phase(s) of the Project; or

a latent or inherent defects policy or engineering or mechanical breakdown policy specifically effected for the Project; or

a related business interruption insurance policy.

* 1. Notice of Security Interest
     + 1. The Insurers acknowledge that by an assignment contained in a borrower security assignment dated [•] (the ***Assignment***), the Borrower assigned by way of security to the Finance Parties all benefits and rights in respect of this insurance and all claims and returns of premiums in respect thereof to which the Insured is or may at a future time become entitled. The Insurers confirm that they have not been notified of any other assignment of or security interest in the Borrower’s interest in this insurance.
       2. However, this acknowledgment is invalid should the provisions of said assignment contradict those contained within this Policy.
  2. Notice
     + 1. All notices or other communications under or in connection with the Policy will be given by fax and post. Any such notice given by Insurers will be deemed to be given on the earlier of:
          1. if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and
          2. if by post, within two (2) business days of release from the relevant Insurer’s office.
       2. The address and fax number of the Intercreditor Agent for all notices under or in connection with the Policy are those notified from time to time by the Finance Parties for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Intercreditor Agent is as follows:

The Intercreditor Agent

Address: [•]

Fax No: [•]

Attention: [•]

* + - 1. The address and fax number of the Administration for all notices under or in connection with the Policy are those notified from time to time by the Administration for this purpose to the Borrower and/or the insurance broker at the relevant time.
  1. Governing law & Jurisdiction

The Policy shall be governed by and interpreted in accordance with Turkish Law (for primary insurance policies).

This endorsement overrides any conflicting provision in this Policy.

1. Form of Reinsurance Endorsement

Notwithstanding any other provision of this Policy, the following endorsement shall apply:

* 1. Definitions

In this endorsement:

1. ***Administration*** means Ministry of Health of the Republic of Turkey;
2. ***Borrower*** means Kocaeli Hastane Yatirim Ve Sağlik Hizmetleri Anonim Şirketi;
3. ***Common Terms Agreement*** means the agreement dated [•] between, amongst others, the Borrower and the Finance Parties;
4. ***Intercreditor Agent*** means UniCredit Bank AG in its capacity as agent for the Finance Parties and includes its successors in that capacity;
5. ***Finance Parties*** has the meaning given to it in the Common Terms Agreement and includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing;
6. ***Insured*** means the insured parties named in the Underlying Insurance Policy collectively, and ***Insured*** means each and any of the Insureds named in the Underlying Insurance Policy;
7. ***Insurers*** means the insurer or insurers participating in the Underlying Insurance Policy from time to time;
8. ***Project*** has the meaning given to it in the Common Terms Agreement and the Project Agreement;
9. ***Reinsurance Policy*** means reinsurance policy No. [•], being the reinsurance policy to which this endorsement is attached and into which this endorsement is incorporated in its entirety;
10. ***Reinsurers*** means the reinsurer or reinsurers underwriting this Reinsurance Policy;
11. ***Security Agent*** means UniCredit Bank AG in its capacity as security agent for the Secured Creditors and includes its successors in that capacity;
12. ***Secured Creditors*** has the meaning given to it in the Common Terms Agreement and includes any assignee, transferee, successor or novated, replacement or additional creditor of or in relation to any of the foregoing;
13. ***Underlying Insurance Policy*** means insurance policy No. [•], being the insurance policy referred to in this Reinsurance Policy, issued by the Insurer, and for which this Reinsurance Policy provides reinsurance.
    1. Liability for premium

The Reinsurers acknowledge that none of the Intercreditor Agent, the Finance Parties nor the Administration shall be liable for the payment of any premium under this Reinsurance Policy.

* 1. Disclosure

The Reinsurers acknowledge for the benefit of the Insurer and the Insureds that:

* + - * 1. they have received adequate information in order to evaluate the risk of insuring the Borrower in respect of the risks hereby reinsured on the assumption that such information is not materially misleading;
        2. there is no information which has been relied on or is required by Reinsurers in respect of their decision to reinsure the Insurer;
        3. no person has been authorised to make any representation on behalf of any of the Finance Parties or their directors, officers, employees or agents;
        4. non-disclosure or misrepresentation by one Insured or the Insurer (or its agent) shall not be attributable to the Insurer or any other Insured who did not actively participate in that non-disclosure or misrepresentation; and
        5. without prejudice to the protections afforded to the Insured by this endorsement, no one Insured represents or warrants the adequacy or accuracy of any information provided or representation made by or on behalf of any other Insured.
  1. Acknowledgment of Non-vitiation

The Insurer and Reinsurers hereby acknowledge and agree to comply and be bound by the non-vitiation clause set forth in the Underlying Insurance Policy.

* 1. Cancellation
     + 1. The Reinsurers agree that they shall not seek to cancel or suspend this insurance except for non-payment of premium.
       2. The cover provided by this Reinsurance Policy shall continue in force and unaltered for at least forty-five (45) days’ after written notice of such suspension, cancellation, termination is given to the Intercreditor Agent and the Administration. Nothing in this clause shall give the Reinsurers any right to suspend, cancel or terminate this Reinsurance Policy which the Reinsurers do not otherwise have under this Reinsurance Policy.
       3. The Reinsurers shall promptly notify the Intercreditor Agent in writing of any default in the payment of premium and shall give the Intercreditor Agent at least forty-five (45) days’ notice in writing before voiding this Reinsurance Policy for non-payment of premium, in order to give an opportunity for that premium to be paid within the notice period.
  2. Changes in cover

The Reinsurers shall give the Intercreditor Agent at least forty-five (45) days’ notice in writing before any reduction in cover or increase in excess or deductible under this Reinsurance Policy takes effect. Nothing in this clause shall give the Reinsurers any right which they do not otherwise have to reduce cover or increase any excess or deductible under this Reinsurance Policy.

* 1. Amendments to Endorsement

During the term of this Reinsurance Policy, the provisions of this endorsement may only be amended by written agreement between the Insurers, the Reinsurers and the Intercreditor Agent, such amendment to be endorsed on the Reinsurance Policy.

* 1. Notice of claims

Notice of claim by the Insurer, Intercreditor Agent or the Finance Parties or any other party entitled to indemnity under the Reinsurance Policy shall, in the absence of manifest error, be accepted by the Reinsurers as a valid notification of claim on behalf of the Insurer and/or the Insureds subject to the full terms of the Reinsurance Policy.

* 1. Claim Payments / Loss Payee

The Insurer irrevocably authorises and instructs the Reinsurers to pay, and the Reinsurers agree to pay, all claims, return premiums, ex-gratia settlements and any other monies payable under or in relation to the Reinsurance Policy, as follows:

* + - 1. In respect of the insurance under this Reinsurance Policy of material damage risks only, all claim payments or return premium shall be paid into the account in the name of the Borrower with [*name of bank*] with account number [•] and sort code [•] or to such other account as the Security Agent as loss payee may specify in writing.
      2. In respect of the insurance under this Reinsurance Policy of third party/public/civil liability risks only:
         1. all claim payments in respect of a third party liability shall be paid to person(s) whose claim(s) constitute the risk or liability insured against except in the case where the Insured has properly discharged its liability to such person(s), in which case the claim payment shall be paid to the account in the name of the Borrower with [name of bank] with account number [•] and sort code [•] or such account as the Intercreditor Agent directs in writing; and
         2. any return premiums shall be paid to the account in the name of the Borrower with [*name of bank*] with account number [•] and sort code [•] or such other account as the Intercreditor Agent directs in writing.
      3. In respect of the insurance under this Reinsurance Policy of loss of revenue risks only, all claim payments or return premiums shall be paid to the account in the name of the Borrower with [*name of bank*] with account number [•] and sort code [•] or such other account as the Intercreditor Agent directs in writing.
      4. Payments made in accordance with this Clause 9 shall, to the extent of the payment, discharge the Reinsurers' liability to pay the Reinsured.
  1. Set-off

No Reinsurer shall be entitled to set off any sums payable to it by the Insurer or any Insured on any account whatsoever (other than any portion of the premium outstanding from the Insurer under the Reinsurance Policy) against any amount payable by the Reinsurers under the Reinsurance Policy.

* 1. Waiver of subrogation
     + 1. The Reinsurers waive all rights of subrogation howsoever arising which they may have or acquire against any Insured described within the appropriate schedules arising out of any occurrence in respect of which any claim is admitted and is reinsured hereunder for the benefit of such Insured except against any such Insured (or officer, director, employee, agent or assign) who has caused or contributed to such an occurrence or claim by fraud, deliberate misrepresentation, deliberate non-disclosure or deliberate breach of policy condition.
       2. Notwithstanding the foregoing, until such time that all obligations of the Borrower under the Common Terms Agreement have been discharged in full, as confirmed in writing by the Intercreditor Agent, the Reinsurers hereby agree that they will not exercise any of their rights against the Borrower or the Finance parties that they may acquire through subrogation unless they have notified the Intercreditor Agent of their intention to do so and the Intercreditor Agent has confirmed in writing that the exercise of such rights could not reasonably be expected to result in the Borrower’s failure to meet its obligations under the Common Terms Agreement.
  2. Notice of Security Interest
     + 1. The Reinsurers acknowledge that by an assignment contained in a security assignment dated [•] (the ***Assignment of Reinsurance***), the Insurer assigned by way of security to the Finance Parties all benefits and rights in respect of this reinsurance and all claims and returns of premiums in respect thereof to which the Insurer and/or the Insured is or may at a future time become entitled. The Reinsurers confirm that they have not been notified of any other assignment of or security interest in the Insurer’s interest in this reinsurance.
       2. However, this acknowledgment is invalid should the provisions of said assignment contradict those contained within this Reinsurance Policy.
  3. Notice
     + 1. All notices or other communications under or in connection with the Reinsurance Policy will be given by fax and post. Any such notice given by Reinsurers will be deemed to be given on the earlier of:
          1. if by fax, when transmitted but only if the sender's fax machine confirms successful transmission; and
          2. if by post, within two (2) business days of release from the relevant Reinsurer’s office.
       2. The address and fax number of the Intercreditor Agent for all notices under or in connection with the Reinsurance Policy are those notified from time to time by the Finance Parties for this purpose to the insurance broker at the relevant time. The initial address and fax number of the Intercreditor Agent is as follows:

The Intercreditor Agent

Address: [•]

Fax No: [•]

Attention: [•]

* + - 1. The address and fax number of the Administration for all notices under or in connection with the Reinsurance Policy are those notified from time to time by the Administration for this purpose to the Borrower and/or the insurance broker at the relevant time.
  1. Governing law & Jurisdiction

The Reinsurance Policy shall be governed by and interpreted in accordance with English law.

This endorsement overrides any conflicting provision in this Reinsurance Policy.

1. Form of Broker’s Letters of Undertaking

**Part A**

**Form of Insurance Broker’s Letter of Undertaking**

[*To be placed on broker’s letterhead*]

To: Unicredit Bank AG (the ***Intercreditor Agent***) as Intercreditor agent for the Finance Parties

Unicredit Bank AG (the ***Security Agent***) as security agent for the Secured Creditors

Dear Sirs,

**We refer to the common terms agreement relating to the financing of the design, construction, operation of the Kocaeli Integrated Health Campus through a public private partnership model (the *Project*), located in Kocaeli, Republic of Turkey dated [**•**] between inter alia, the Borrower, the Intercreditor Agent and the Security Agent (the *Common Terms Agreement*)**

* + 1. We, on behalf of Marsh and its affiliates, confirm that we act as insurance brokers to Kocaeli Hastane Yatirim Ve Sağlik Hizmetleri Anonim Şirketi (the ***Borrower***) in respect of the insurances (as defined in the Common Terms Agreement) set out in Schedule 6 (*Insurance*) of the Common Terms Agreement (the ***Insurance Schedule***) and listed in Annex A (attached to this letter) (the ***Insurances***) arranged by us for it in relation to the Project.
    2. Unless otherwise defined in this letter, terms defined in the Common Terms Agreement as at the date of this letter shall have the same meaning in this letter.
    3. In our capacity as insurance broker in respect of the Insurances, we have been requested by the Borrower, to provide you (meaning the Intercreditor Agent and Security Agent) with certain confirmations relating to the Insurances arranged by us. Accordingly, we hereby confirm, as at the date of this letter, to you in accordance with the terms of this letter:
       - 1. that the Insurances have been arranged by us and are, at the date of this letter, in full force and effect;
         2. that the Insurances include all the terms and conditions set out in the Insurance Schedule and Annex A;
         3. that the amount of cover provided by the Insurances is consistent with the 'sum insured' amounts specified in the Insurance Schedule and set out in Annex A of this letter;
         4. that the Insurances are placed with insurers, which, to the best of our knowledge and belief as at the time of placement, were reputable and financially sound. We do not however make any representations regarding such insurers’ current or future solvency or ability to pay claims;
         5. that a notice of assignment of Insurances (***Notice of Assignment***), in the form attached to this letter as Annex B, (for the policies in place as of the date of this letter) has been served and (for the policies to be in place after the date of this letter) will be served on each Insurer in respect of each of the Insurances and that we will use reasonable endeavours to procure that each Insurer acknowledges each Notice of Assignment as soon as reasonably practical after the date of this letter;
         6. that the Insurances name the Secured Creditors and such other persons as are required to be named under the Common Terms Agreement and/or Insurance Program as set out in Annex A as an insured party;
         7. that the relevant endorsements to the insurance policies attached to this letter as Annex C (the ***Endorsements***) have been agreed by the Insurers in respect of the Insurances for the periods stipulated therein and we undertake to use reasonable endeavours to have such Endorsements agreed by Insurers on each future policy of insurance in respect of the Project;
         8. that the Endorsements have been included as evidenced by the cover notes attached in Annex A to this letter and are in full force and effect and as required under the Insurance Schedule;
         9. that the Endorsements name you as loss payee to the Insurances;
         10. the Insurances name you, and the Secured Creditors and such other persons as are required to be named under the Insurance Schedule as insured parties;
         11. that we have disclosed to the Insurers all information that we have been notified of that may be material to the risks insured against under the Insurances;
         12. all premiums due to date in respect of the Insurances have been paid; and
         13. in our reasonable opinion as insurance brokers, the Insurances are those that would be prudent for an insured with similar assets or a similar business to the Borrower.
    4. We hereby further undertake:
       - 1. to advise you as soon as reasonably possible if any premiums are not paid to us at least five (5) Business Days before the due date (so as to give you a reasonable opportunity of paying such amounts of such premiums outstanding before notification of cancellation on behalf of the Insurers and advise you as soon as reasonably possible of any default in the payment of any premium;
         2. to promptly provide you and in any event at least sixty (60) days prior to the natural expiry of any Insurance, with details of any information reasonably available to us regarding renewal arrangements, Insurers, and terms and conditions of renewal cover or alternatively, if this is the case, to notify you of the fact that no such renewal arrangements have been put in place;
         3. to as soon as reasonably possible notify you when we are informed by an Insurer of any changes in the terms of any Insurance that we reasonably believe, if effected, would result in any material reduction in limits or alteration in coverage (including those resulting from extensions) or increase in deductibles, exclusions or exceptions or would result in termination, cancellation, suspension or expiry (in the latter case, which is not immediately followed by a renewal upon the same terms with the same Insurers of any of the Insurances);
         4. to notify you as soon as reasonably possible if any Insurer gives notice of cancellation, suspension, non- renewal or avoidance of any insurance;
         5. to notify you as soon as reasonably practicable in the event of us being notified in our capacity as broker to the Borrower of any purported assignment of, or the creation of any security interest over, the Insurances, other than in respect of your interest;
         6. to notify you as soon as reasonably possible if we are notified of any act or omission or of any event of which we have been informed by the Borrower and which might reasonably be foreseen as invalidating any insurance or rendering it void, avoidable or unenforceable in whole or in part;
         7. to notify you as soon as reasonably possible after giving or receiving notice of termination of our appointment as insurance broker in relation to the Insurances at least sixty (60) days (or such lesser period as may be provided in a notice of termination received by the insurance broker) prior to our ceasing to act as brokers; and
         8. to hold the insurance cover notes, certificates, endorsements and policies and any renewals and/or extensions thereof or any new or substitute policies, cover notes, certificates, endorsements, renewal and/or extension receipts and confirmation of renewal and/or extension, to the extent held by us, to your order, and to supply copies of the same to you promptly upon your written request,

provided, that we will not be responsible for any consequences that may arise from any delay or failure by the Borrower on premium payment to the Insurer(s).

* + 1. We have arranged the Insurances on the basis of the information and instructions given to us by the Borrower. Save insofar as we have made representations in this letter, you may not rely on any advice which we have given to the Borrower or the Insurers in connection with the Insurances and we make no representation or warranty as to whether the Insurances meet your requirements and you must satisfy yourself accordingly.
    2. The above undertakings and confirmations are subject to any insurer’s right of cancellation (if any) following default in the payment of such premiums, our continuing appointment as insurance broker and, following termination of such appointment, our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination and any lien we may have over the policy and policy documents regarding the Insurances, arising through common law.
    3. All undertakings and other confirmations given in this letter relate solely to the Insurances. They do not apply to any other insurances and nothing in this letter should be taken as providing any undertakings or confirmations in relation to any other such insurances that ought to have been placed or may at some future date be placed by other brokers.
    4. This letter has been prepared exclusively for your use for the specific purpose of your relationship with the Borrower and its business. We accept no responsibility to any third party for any part of the contents of this letter and, in the event that it is disclosed to a third party, any and all liability howsoever arising to that third party is hereby expressly excluded. No person except the parties to this letter have any rights arising out of this letter under the Contracts (Rights of Third Parties) Act 1999.
    5. Our aggregate liability to any persons, companies or organisations who act in reliance on this letter, or on any other broker’s letter of undertaking issued by us in respect of this Project, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of £5 million (or the Euro equivalent of such amount being determined on the basis of the market rate for exchange at the time of any payment), even if we are negligent. We do not limit liability for fraud, fraudulent misrepresentation, personal injury or death caused by our negligence nor do we limit any other liability which may not be lawfully excluded or limited.
    6. All liability we may incur to you, whether in contract, tort (including but not limited to negligence) or otherwise for loss of profit, loss of savings, loss of opportunity or any indirect or consequential loss you is hereby expressly excluded. For the avoidance of doubt, the foregoing shall not prevent you from making any claim under this letter for any loss (except for indirect loss, consequential loss, loss of profit, loss of savings, loss of opportunity) to you arising from any breach by us in respect of the placement of any delay in start- up or business interruption insurances (as the case may be) covered by the terms of this letter.
    7. Notwithstanding anything in this letter, we are and remain solely the agent of the Borrower, and with the exception of our obligations hereunder, owe duties only to the Borrower.
    8. This letter may not be reproduced by the Intercreditor Agent, Security Agent, Secured Creditors or the Finance Parties or used for any other purpose without our prior written consent.
    9. This letter is given by us on the instructions of the Borrower and with the Borrower's full knowledge and consent as to its terms as evidence by the signature below. Accordingly the Borrower hereby waives any potential liability we might otherwise have had to it arising from actions taken by us to comply with the terms of this letter (including without limitation, any particular liability relating to conflict of interest).
    10. This letter shall be governed by and shall be construed in all respects in accordance with English law and any dispute as to its terms shall be submitted to the exclusive jurisdiction of the English courts.

Please countersign and return a copy of this letter to indicate that you accept its terms. By signing you also warrant that you have authority to and do so bind yourself and any third parties for whom you are agent to the terms of this letter.

Yours faithfully

For and on behalf of Marsh Limited

We hereby instruct and consent to Marsh Limited giving the above letter to the Intercreditor Agent (acting for and on behalf of the ***Finance Parties***):

**For and on behalf of the Borrower**

We hereby acknowledge receipt of the original of this letter and agree to its terms:

**For and on behalf of the Intercreditor Agent**

**For and on behalf of the Security Agent**

1. The Insurances

During the Investment Term (Exhibit 1) of this Schedule 6

Contractors All Risks

Construction Third Party Liability – Primary

Construction Delay in Start Up

Construction Third Party Liability Excess

Terrorism – Construction All Risks and Delay in Start Up.

During the Operational Term (Exhibit 2) of this Schedule 6

Property “Al Risks”

Third Party Public Liability

Business Interruption

Terrorism

1. Form of Notice of Assignment

[*Insert Notice of Assignment from Security Document*]

1. The Endorsements

[*Insert the relevant Lenders’ insurance endorsements*]

**Part B**

**Form of Reinsurance Broker’s Letter of Undertaking**

[*To be placed on broker’s letterhead*]

To: [●] (the ***Intercreditor Agent***) as Intercreditor agent for the Finance Parties

[●] (the ***Security Agent***) as security agent for the Secured Creditors

Dear Sirs,

**We refer to the common terms agreement relating to the financing of the design, construction, operation of the Kocaeli Integrated Health Campus through a public private partnership model (the *Project*), located in Kocaeli, Republic of Turkey dated [●] between inter alia, Kocaeli Hastane Yatirim Ve Sağlik Hizmetleri Anonim Şirketi (the Borrower), the Intercreditor Agent and the Security Agent (the *Common Terms Agreement*)**

* + 1. We, on behalf of Marsh and its affiliates, confirm that we act as reinsurance brokers to [Insurer’s name to be inserted] (the Insurer) in respect of the insurances (as defined in the Common Terms Agreement) set out in Schedule 6 (Insurance) of the Common Terms Agreement (the Insurance Schedule) and listed in Annex A (attached to this letter) (the Reinsurances) arranged by us for it in relation to the Project.
    2. Unless otherwise defined in this letter, terms defined in the Common Terms Agreement as at the date of this letter shall have the same meaning in this letter.
    3. In our capacity as reinsurance broker in respect of the Reinsurances, we have been requested by the Insurer, to provide you (meaning the Intercreditor Agent and Security Agent) with certain confirmations relating to the Reinsurances arranged by us. Accordingly, we hereby confirm, as at the date of this letter, to you in accordance with the terms of this letter:
       - 1. that the Reinsurances have been arranged by us and are, at the date of this letter, in full force and effect;
         2. that the Reinsurances include all the terms and conditions set out in the Insurance Schedule and Annex A;
         3. that the amount of cover provided by the Reinsurances is consistent with the 'sum insured' amounts specified in the Insurance Schedule and set out in Annex A of this letter;
         4. that the Reinsurances are placed with reinsurers, which, to the best of our knowledge and belief as at the time of placement, were reputable and financially sound. We do not however make any representations regarding such reinsurers’ current or future solvency or ability to pay claims;
         5. that a notice of assignment of Reinsurances (Notice of Assignment), in the form attached to this letter as Annex B, (for the policies in place as of the date of this letter) has been served and (for the policies to be in place after the date of this letter) will be served on each Reinsurer in respect of each of the Reinsurances and that we will use reasonable endeavours to procure that each Reinsurer acknowledges each Notice of Assignment as soon as reasonably practical after the date of this letter;
         6. that the Reinsurances name the Secured Creditors and such other persons as are required to be named under the Common Terms Agreement and/or Insurance Program as set out in Annex A as an reinsured party;
         7. that the relevant endorsements to the reinsurance policies attached to this letter as Annex C (the Endorsements) have been agreed by Reinsurers in respect of the Reinsurances for the periods stipulated therein and we undertake to use reasonable endeavours to have such Endorsements agreed by Reinsurers on each future policy of reinsurance in respect of the Project;
         8. that the Endorsements have been included as evidenced by the cover notes attached in Annex A to this letter and are in full force and effect and as required under the Insurance Schedule.
         9. that the Endorsements name you as loss payee to the Reinsurances;
         10. the Reinsurances name you, and the Secured Creditors and such other persons as are required to be named under the Reinsurance Schedule as insured parties;
         11. that we have disclosed to the Reinsurers all information that we have been notified of that may be material to the risks insured against under the Reinsurances.
         12. all premiums due to date in respect of the Reinsurances have been paid; and
         13. in our reasonable opinion as reinsurance brokers, the Reinsurances are those that would be prudent for a reinsured with similar assets or a similar business to the Insurer.
    4. We hereby further undertake:
       - 1. to advise you as soon as reasonably possible if any premiums are not paid to us at least five (5) Business Days before the due date (so as to give you a reasonable opportunity of paying such amounts of such premiums outstanding before notification of cancellation on behalf of the Reinsurers and advise you as soon as reasonably possible of any default in the payment of any premium;
         2. to promptly provide you and in any event at least sixty (60) days prior to the natural expiry of any Reinsurance, with details of any information reasonably available to us regarding renewal arrangements, Reinsurers, and terms and conditions of renewal cover or alternatively, if this is the case, to notify you of the fact that no such renewal arrangements have been put in place);
         3. to as soon as reasonably possible notify you when we are informed by a Reinsurer of any changes in the terms of any Reinsurance that we reasonably believe, if effected, would result in any material reduction in limits or alteration in coverage (including those resulting from extensions) or increase in deductibles, exclusions or exceptions or would result in termination, cancellation, suspension or expiry (in the latter case, which is not immediately followed by a renewal upon the same terms with the same Reinsurers of any of the Reinsurances);
         4. to notify you as soon as reasonably possible if any Reinsurer gives notice of cancellation, suspension, non- renewal or avoidance of any reinsurance;
         5. to notify you as soon as reasonably practicable in the event of us being notified in our capacity as broker to the Insurer of any purported assignment of, or the creation of any security interest over, the Reinsurances, other than in respect of your interest;
         6. to notify you as soon as reasonably possible if we are notified of any act or omission or of any event of which we have been informed by the Insurer and which might reasonably be foreseen as invalidating any reinsurance or rendering it void, avoidable or unenforceable in whole or in part;
         7. to notify you as soon as reasonably possible after giving or receiving notice of termination of our appointment as reinsurance broker in relation to the Reinsurances at least sixty (60) days (or such lesser period as may be provided in a notice of termination received by the reinsurance broker) prior to our ceasing to act as brokers; and
         8. to hold the reinsurance cover notes, certificates, endorsements and policies and any renewals and/or extensions thereof or any new or substitute policies, cover notes, certificates, endorsements, renewal and/or extension receipts and confirmation of renewal and/or extension, to the extent held by us, to your order, and to supply copies of the same to you promptly upon your written request,

provided, that we will not be responsible for any consequences that may arise from any delay or failure by the Insurer on premium payment to the Reinsurer(s).

* + 1. We have arranged the Reinsurances on the basis of the information and instructions given to us by the Insurer. Save insofar as we have made representations in this letter, you may not rely on any advice which we have given to the Borrower and/or the Insurer in connection with the Reinsurances and we make no representation or warranty as to whether the Reinsurances meet your requirements and you must satisfy yourself accordingly.
    2. The above undertakings and confirmations are subject to any reinsurer’s right of cancellation (if any) following default in the payment of such premiums, our continuing appointment as reinsurance broker and, following termination of such appointment, our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination and any lien we may have over the policy and policy documents regarding the Reinsurances, arising through common law.
    3. All undertakings and other confirmations given in this letter relate solely to the Reinsurances. They do not apply to any other reinsurances and nothing in this letter should be taken as providing any undertakings or confirmations in relation to any other such reinsurances that ought to have been placed or may at some future date be placed by other brokers.
    4. This letter has been prepared exclusively for your use for the specific purpose of your relationship with the Insurer and their respective businesses. We accept no responsibility to any third party for any part of the contents of this letter and, in the event that it is disclosed to a third party, any and all liability howsoever arising to that third party is hereby expressly excluded. No person except the parties to this letter have any rights arising out of this letter under the Contracts (Rights of Third Parties) Act 1999.
    5. Our aggregate liability to any persons, companies or organisations who act in reliance on this letter, or on any other broker’s letter of undertaking issued by us in respect of this Project, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of £5 million (or the Euro equivalent of such amount being determined on the basis of the market rate for exchange at the time of any payment), even if we are negligent. We do not limit liability for fraud, fraudulent misrepresentation, personal injury or death caused by our negligence nor do we limit any other liability which may not be lawfully excluded or limited.
    6. All liability we may incur to you, whether in contract, tort (including but not limited to negligence) or otherwise for loss of profit, loss of savings, loss of opportunity or any indirect or consequential loss you is hereby expressly excluded. For the avoidance of doubt, the foregoing shall not prevent you from making any claim under this letter for any loss (except for indirect loss, consequential loss, loss of profit, loss of savings, loss of opportunity) to you arising from any breach by us in respect of the placement of any delay in start- up or business interruption reinsurances (as the case may be) covered by the terms of this letter.
    7. Notwithstanding anything in this letter, we are and remain solely the agent of the Insurer, and with the exception of our obligations hereunder, owe duties only to the Insurer.
    8. This letter may not be reproduced by the Intercreditor Agent, Security Agent, Secured Creditors or the Finance Parties or used for any other purpose without our prior written consent.
    9. This letter is given by us on the instructions of the Insurer and with the Insurer's full knowledge and consent as to its terms as evidence by the signature below. Accordingly the Insurer hereby waives any potential liability we might otherwise have had to it arising from actions taken by us to comply with the terms of this letter (including without limitation, any particular liability relating to conflict of interest).
    10. This letter shall be governed by and shall be construed in all respects in accordance with English law and any dispute as to its terms shall be submitted to the exclusive jurisdiction of the English courts.

Please countersign and return a copy of this letter to indicate that you accept its terms. By signing you also warrant that you have authority to and do so bind yourself and any third parties for whom you are agent to the terms of this letter.

Yours faithfully

For and on behalf of Marsh Limited

We hereby instruct and consent to Marsh Limited giving the above letter to the Intercreditor Agent (acting for and on behalf of the ***Finance Parties***):

**For and on behalf of the Borrower**

We hereby acknowledge receipt of the original of this letter and agree to its terms:

**For and on behalf of the Intercreditor Agent**

**For and on behalf of the Security Agent**

**Annex A The Reinsurances**

During the Investment Term (Exhibit 1) of this Schedule 6

Contractors All Risks

Construction Third Party Liability – Primary

Construction Delay in Start Up

Construction Third Party Liability Excess

Terrorism – Construction All Risks and Delay in Start Up.

During the Operational Term (Exhibit 2) of this Schedule 6

Property “Al Risks”

Third Party Public Liability

Business Interruption

Terrorism

**Annex B Form of Notice of Assignment**

[Insert Notice of Assignment from Security Document]

**Annex C The Endorsements**

[Insert the relevant Lenders’ reinsurance endorsements]

1. Form of Reinsurance Assignment Deed

**[ Insert Date ]**

**KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ**as the ***Company***

**[•]**as the ***Insurer***

**UNICREDIT BANK AG**as the ***Intercreditor Agent***

**UNICREDIT BANK AG**as the ***Security Agent***

**KOCAELİ INTEGRATED HEALTH CAMPUS PPP PROJECT  
REINSURANCE ASSIGNMENT DEED**

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**THIS DEED** is dated and made between:

1. **KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ**, a company incorporated under the laws of Turkey (the ***Company***);
2. **UNICREDIT BANK AG**, as intercreditor agent for and on behalf of the Finance Parties (the ***Intercreditor Agent***);
3. **UNICREDIT BANK AG**, as security agent for and on behalf of the Secured Creditors (the ***Security Agent***);
4. **[•]** as the Insurer (the ***Insurer***).

**Whereas**

1. The Company and the Insurer enter into this Deed in connection with the Common Terms Agreement.
2. It is intended that this Deed takes effect as a deed notwithstanding the fact that a party may only execute this Deed under hand.
3. The Insurer has agreed to provide insurance to the Company, the Secured Creditors and other co-insured parties in accordance with the terms of the Direct Insurances.

**It is agreed** as follows:

1. Interpretation
   1. Incorporated definitions

Words and expressions defined in the Common Terms Agreement have the same meanings when used in this Deed unless otherwise provided or the context otherwise requires.

* 1. Further definitions

Except to the extent that the context requires otherwise, in this Deed:

1. ***Act*** means the Law of Property Act 1925.
2. ***Assigned Rights*** means all of the Insurer’s present and future right, title and interest in, to and in respect of the Reinsurances and in all or any monies whatsoever received or receivable under or in respect of the Reinsurances, including (a) all future renewals of policies and contracts of reinsurance, being reinsurances of the Direct Insurances, including all monies received or receivable thereunder, (b) return premiums becoming due under the Reinsurances, and (c) the benefit of this Deed.
3. ***Common Terms Agreement*** means the common terms agreement made on or about the date of this Deed by, among others, the Company (as borrower), certain banks and financial institutions, the Intercreditor Agent and the Security Agent, as the same may be from time to time amended or supplemented.
4. ***Direct Insurance*** and ***Direct Insurances*** means any contract or contracts of insurance between the Company and the Insurer (and any renewal or replacement of such contract whether on the same or different terms).
5. ***Enforcement Event*** means an Event of Default in respect of which a notice has been served in accordance with clause 20.32 (*Remedies*) of the Common Terms Agreement.
6. ***English Security Agreement*** means the security agreement dated on or about the date hereof between the Company and the Security Agent.
7. ***Intercreditor Deed***  means the agreement dated on or around the date hereof between, amongst others, certain banks and financial institutions, the Intercreditor Agent and the Security Agent.
8. ***Material Direct Insurance*** means all Direct Insurances other than Direct Insurances in respect of motor vehicles, workmen’s compensation and employers’ liability risks.
9. ***Policies*** means the risks and liabilities as set out in the insurance policies as evidenced in the insurance policies as attached at schedule 6 (*Insurances*) to the Common Terms Agreement.
10. ***Receiver*** has the meaning specified in the Intercreditor Deed.
11. ***Reinsurance*** means each contract of reinsurance between the Insurer and the Reinsurers in respect of and in so far as they relate to the Direct Insurances.
12. ***Reinsurer***means each reinsurer, from time to time, of, or in relation to, any Reinsurance.
13. ***Security Agent and Hedging Deed*** means the agreement dated on or around the date hereof between, amongst others, certain banks and financial institutions, the Intercreditor Agent, the Company and the Security Agent.
14. ***Secured Creditors*** has the meaning specified in the Security Agent and Hedging Deed.
15. ***Secured Debt*** has the meaning specified in the Security Agent and Hedging Deed.
16. ***Secured Liabilities*** means all monies, debts and liabilities which now are or have been or at any time hereafter may be or become due, owing or incurred by the Insurer to the Company or to the Security Agent (in any capacity) under or in connection with any Direct Insurance (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently) or in respect of any breach by the Insurer of this Deed.
17. ***Security Period*** means the period beginning on the date of this Deed and ending on the Discharge Date.
    1. Construction

The provisions of clause 1.6 (*Construction*) of the Common Terms Agreement shall apply to this Deed as if set out in full with references to “this Deed” being treated as references to this Deed.

* 1. Third parties
     + 1. Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the ***Third Parties Act***) to enforce or to enjoy the benefit of any term of this Deed.
       2. Notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

1. Payment arrangements

All payments to each of the Insureds shall be made in accordance with the loss payee provisions in the Insurances (including the requirement that they shall be paid to specific accounts of the Company or as otherwise required by the policy conditions).

1. Undertaking to perform

Nothing in this Deed affects the obligations of the Insurer to perform all of its respective obligations under each Insurance, and to discharge the Secured Liabilities when due in accordance with the terms of each Insurance and this Deed.

1. Assignment of reinsurances
   1. Assignment by way of Security

By way of security for the due and prompt payment in full of the Secured Liabilities, the Insurer, with full title guarantee hereby assigns to the Company and to the Security Agent (for and on behalf of the Secured Creditors) *pari passu* the Assigned Rights, and the Company and the Security Agent each hereby accepts the assignment from the Insurer.

* 1. Consent to assignment by the Company

The Insurer hereby acknowledges and consents (so far as required) to the assignment of, and grant of a security interest in, all of the Company’s rights, title and interest under this Deed (including, without limitation, the benefit of the assignments referred to in Clause 4.1 (Assignment by way of Security)) to the Security Agent (acting on behalf of and for the benefit of the Secured Creditors) pursuant to the English Security Agreement.

* 1. Notices of assignment

The Insurer shall promptly following execution of this Deed and also promptly following renewal or replacement of any Reinsurance, as well as if and when so requested from time to time by the Security Agent:

* + 1. give a notice in the form of Schedule 1 (Form of Notice to the Reinsurer) duly completed to each Reinsurer in relation to the relevant Reinsurance and provide copies of such notices contemporaneously to the Company and the Security Agent and to any reinsurance broker through whom the Reinsurance has been arranged, renewed or replaced, as the case may be;
    2. procure that, in each case, a copy of the acknowledgment of assignment from the Reinsurer is attached to all Reinsurances; and
    3. obtain or instruct its reinsurance broker to obtain from each Reinsurer an acknowledgement of that notice of assignment substantially in the form set out at the bottom of that notice of assignment (or in such other form as the Security Agent may accept) and shall provide a copy of such acknowledgement to the Company and the Security Agent promptly on receipt.
  1. Double Settlement

In the event that the Insurer has settled fully and finally any claim under the Direct Insurances, the benefit of the right to reimbursement in respect of that claim from the Reinsurers under the relevant Reinsurances shall be reassigned by the Company or the Security Agent (as the case may be) to the Insurer.

* 1. Reassignment

At the end of the Security Period the Company and the Security Agent shall, at the request of the Insurer and cost of the Company, promptly take whatever action is necessary to reassign the Assigned Rights to the Insurer (without recourse or warranty).

1. Insurer representations and warranties
   1. Representations and warranties

The Insurer makes the representations and warranties set out in this Clause to the Company and to the Security Agent. These representations and warranties are made on the date of this Deed and, with the exception of Clause 5.5 (Claims), are deemed to be repeated by the Insurer on each subsequent date with reference to the facts and circumstances then existing.

* 1. Title

The Insurer is the sole beneficial owner of the Assigned Rights and the Assigned Rights are free from any charge, encumbrance or lien of any kind (other than as created by this Deed).

* 1. Insurance Policies Binding

All premiums due to date in respect of each Direct Insurance have been paid and each Direct Insurance imposes a valid, legally binding and enforceable obligation on the Insurer in accordance with its terms, and each Direct Insurance is in full force and effect.

* 1. No events justifying avoidance

So far as the Insurer is aware, having made reasonable enquiries, no event or circumstance has occurred, nor has there been any act or omission by the Company, the Insurer, a Reinsurer or any other person, which might cause any Insurance to be void, voidable, suspended or cancelled, or any indemnifiable claim thereunder to be uncollectable in full, net of any applicable excesses.

* 1. Claims

Except as disclosed in writing to the Company and the Security Agent prior to the date of this Deed, the Insurer has not made any claim under the Reinsurance.

1. Insurer undertakings
   1. Duration

With the exception of Clause 6.5(c) (Information and Co-operation) below, the undertakings in this Clause remain in force until the end of the Security Period.

* 1. Insurance

The Insurer shall:

* + 1. maintain each Reinsurance;
    2. comply with all obligations under and in connection with each Insurance (including ensuring the payment of any premium and all other things necessary to keep each Reinsurance in full force and effect); and
    3. not do or permit anything to be done which may cause any Reinsurance to be void, voidable, suspended or cancelled, or any claim under any Reinsurance to be uncollectable in full,

and neither the Company nor the Security Agent will have any liability for any obligations in respect of any Reinsurance.

* 1. Reinsurance Cover Arrangements

In order to enable the Company to fulfil its contractual commitments to the Security Agent and others in the following regard, the Insurer undertakes that, unless the Security Agent otherwise agrees:

* + 1. the Insurer shall facultatively reinsure not less than 95 per cent. of every risk assumed under any Material Direct Insurance on an “as original” and fully back to back basis, and
    2. all Reinsurances shall (i) comprise reinsurances of the liabilities assumed by the Insurer under each Material Direct Insurance, (ii) subject only to sub-paragraph (a) above, be placed and maintained with Reinsurers approved from time to time in accordance with the Common Terms Agreement, (iii) be reinsured for the full limits of every underlying risk under the Material Direct Insurances, (iv) be in a form and on terms at all times previously approved in writing by the Security Agent, and (v) be governed by English law or such other law as the Security Agent may require.
  1. Renewals of Reinsurance Policy

The Insurer shall:

* + 1. forthwith on the expiry or cancellation of any Reinsurance, procure that it is renewed or replaced on the same terms and conditions and with the same Reinsurers, or with such other Reinsurer(s) approved from time to time in accordance with the Common Terms Agreement or on such other terms and conditions as the Company and the Security Agent may jointly agree or reasonably require; and
    2. notify the Company and the Security Agent of its proposals for the renewal or replacement of any Reinsurance at least 45 days before its expiry or cancellation and the identity of the proposed Reinsurer, the terms and conditions of the contract of reinsurance that will apply following renewal or replacement, and the premium payable.
  1. Information and Co-operation

The Insurer shall:

* + 1. supply to the Company and the Security Agent promptly:
       1. on request by the Company or the Security Agent, evidence of timely payment of the premium for each Insurance and Reinsurance;
       2. certified copies of each Insurance and Reinsurance (including endorsements), certified copies of each certificate, cover note and renewal receipts and confirmation of renewal received by it or any of its agents in relation to any Insurance and any Reinsurance and any other communication received by it or any of its agents from any Reinsurer or any third party in relation to the Reinsurance;
       3. details of any claim made under the Insurance and Reinsurance and on request, copies of all correspondence between the Insurer and the Reinsurers or their respective agents relating to any such claim;
       4. such further information in its possession or control regarding any Insurance and Reinsurance as the Company or the Security Agent may reasonably request;
    2. if the security conferred by this Deed has become enforceable take such steps (at the Company’s cost) as the Company, the Security Agent or the Receiver (as the case may be) may require to enforce the Insurer’s rights under the Reinsurance, including (if so required) initiating and pursuing legal or arbitration proceedings in the Insurer’s name, and shall do nothing (by act or omission) which would prejudice any right or interest of the Company, the Security Agent (or its beneficiaries) or a Receiver in respect of the Assigned Rights;
    3. maintain intact files (including all documents disclosed and correspondence) in connection with the Insurances and claims thereunder and the Policies and shall make available to the Security Agent on reasonable request for its review of those documents held by the Insurer on behalf of the Company, and provide you (at the Company’s cost) with copies of any such documents;
    4. give notice to the Security Agent as soon as it reasonably practicable in the event of it becoming aware of any attempted assignment or the creation of any security interest over any of the Insurances;
    5. notify the Security Agent as soon as reasonably practicable on becoming aware of any material change which is proposed to be made in the terms of the Insurances and which, if effected, would result in any material reduction in limits or coverage (including those resulting from extensions) or in any material increase in deductibles, exclusions or exceptions; and
    6. as soon as reasonably practicable to pass on to the Security Agent copies of any material notices under the Insurances which affect the Company or the Finance Parties.

1. Restrictions on dealing

The Insurer shall not:

* 1. create or permit to subsist any security interest of any kind over any Assigned Rights other than as created by this Deed;
  2. sell, transfer, assign or otherwise dispose of any Assigned Rights or any interest in any Assigned rights; or
  3. request or agree to any variation to the terms of any Insurance without the prior written consent of both the Company and the Security Agent.

1. Enforcement of security
   1. Timing and manner of enforcement
      1. The security constituted by this Deed shall become immediately enforceable upon the occurrence of an Enforcement Event.
      2. The power of sale and other powers conferred by this Deed and Section 101 of the Act, (as varied or amended by this Deed), shall be immediately exercisable upon and at any time after the occurrence of any Enforcement Event.
      3. After the security constituted by this Deed has become enforceable, the Company or the Security Agent may enforce all or any part of the security in any manner it sees fit provided that in the event of any conflicting instructions, the Security Agent’s instructions will prevail.
   2. General

For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed and Section 103 of the Act (restricting the power of sale) and Section 93 of the Act (restricting the right of consolidation) do not apply to the security constituted by this Deed.

* 1. Contingencies

If the Company or the Security Agent enforces the security constituted by this Deed at a time when no monies are due under a Material Direct Insurance but at a time when amounts may or will become so due, the Company or the Security Agent (or the Receiver) may pay the proceeds of any subsequent recoveries effected by it into the account specified in the loss payee provisions in the Insurances.

* 1. No liability as mortgagee in possession

None of the Company, the Security Agent or any Receiver will be liable, by reason of entering into possession of an Assigned Right, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

* 1. Agent of the Insurer

Each Receiver is deemed to be the agent of the Insurer for all purposes and accordingly is deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act.

* 1. Privileges

Each Receiver, the Company and the Security Agent are each entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act.

* 1. Protection of third parties

No person (including a purchaser) dealing with the Company or the Security Agent or a Receiver (or their or his agents) will be concerned to enquire whether the Secured Liabilities have become payable or whether any power which the Company or the Security Agent or the Receiver is purporting to exercise has become exercisable.

* 1. Redemption of prior Mortgages

At any time after the security constituted by this Deed has become enforceable, the Company or the Security Agent may deal with any prior security interest affecting any Assigned Right as it sees fit and the costs of the same (including any redemption) shall be for the Company’s account.

1. Receiver
   1. Appointment of Receivers
      1. The Security Agent or the Company may (without notice) by deed or otherwise in writing signed by any officer or manager of the Security Agent or any person authorised for this purpose by the Security Agent, appoint one or more persons to be a Receiver:
         1. if requested by the Insurer; or
         2. upon the occurrence of an Enforcement Event.
      2. Section 109(1) of the Act shall not apply to this Deed.
      3. If the Company or the Security Agent appoints more than one person as Receiver, the Security Agent may give those persons power to act either jointly or severally.
   2. Removal of Receivers

The Company or the Security Agent may by notice in writing remove any Receiver appointed by it (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receivership) whenever it thinks fit and appoint a new Receiver instead of any Receiver whose appointment has terminated for any reason.

* 1. Agent of Insurer

Any Receiver shall be the agent of the Insurer for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Insurer is solely responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver. No Secured Creditor will incur any liability (either to the Insurer or any other person) by reason of the appointment of a Receiver or for any other reason.

* 1. Remuneration

The Company or the Security Agent may (subject to section 36 of the Insolvency Act 1986) determine the remuneration of any Receiver appointed by it and any maximum rate imposed by any law (including under section 109(6) of the Act) shall not apply to this Deed.

* 1. Powers of Receivers

Any Receiver appointed pursuant to Clause 9.1 (Appointment of Receivers) shall have the following rights, powers and discretions (in addition to those conferred by the Act on any Receiver appointed under the Act):

* + 1. take immediate possession of, get in and collect any Assigned Right;
    2. pay any premium due in respect of a Reinsurance;
    3. dispute, settle, compromise or adjust any claim relating in any way to an Assigned Right, and may exercise all rights in relation to an Assigned Right which may seem to him to be expedient;
    4. give valid receipts for all monies and execute all assurances and things which may be proper or desirable for realising any Assigned Right;
    5. delegate his powers in accordance with Clause 10 (Delegation); and
    6. do all other acts and things which he may consider desirable for realising an Assigned Right or incidental to any of his express rights under this Deed, may act as the absolute beneficial owner of the Assigned Rights and may use the name of the Insurer in the exercise of any of its powers under this Deed.

1. Delegation

The Company, the Security Agent and any Receiver may (without any liability for such delegate) delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed. Any such delegation may be made upon the terms (including power to sub-delegate) and subject to any regulations which the Company, the Security Agent or such Receiver (as the case may be) may think fit.

1. Application of proceeds

Any monies received by the Company, the Security Agent or any Receiver after the security constituted by this Deed has become enforceable shall be applied in accordance with clause 4.1 (*Order of Application*) of the Intercreditor Deed.

1. Further assurances

The Insurer shall, at the Company’s expense, take whatever action the Company, the Security Agent or a Receiver may reasonably require for:

* + 1. perfecting, protecting or realising the security intended to be created by this Deed over any Assigned Right; or
    2. facilitating the exercise of the rights of the Company, the Security Agent or a Receiver under this Deed.

1. Power of Attorney
   * 1. The Insurer, by way of security, irrevocably and severally appoints the Company, the Security Agent and each Receiver and any of their delegates or sub-delegates to take any action which the Insurer is obliged to take under this Deed including under Clause 12 (*Further assurances*) or has the right to take in respect of any Assigned Right and further agrees to grant an irrevocable power of attorney in the form set out in Schedule 2 (Power of Attorney). The Insurer ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this Clause. Any costs incurred by the Insurer pursuant to this Clause shall be for the Company’s account.
     2. Each of the Company, the Insurer and each Receiver releases the Security Agent from any restrictions on representing several persons and self-dealing under any applicable law (including Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*)), to the extent legally possible to the Company, the Insurer and each Receiver. If the Company, the Insurer or any Receiver is barred by its constitutional documents or by-laws from granting such exemption, it shall notify the Security Agent accordingly.
2. Miscellaneous
   1. Continuing Security

This security is continuing and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

* 1. Additional security

This Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Company or the Security Agent.

* 1. Evidence

A certificate or determination by an appointed loss adjuster of any amount of the Secured Debt is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

* 1. Counterparts

This Deed may be executed in any number of counterparts, and by each party hereto on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

* 1. Rights of Successors

This Deed is constituted and shall operate in favour of the successors, assignees and transferees of the Company and of the Security Agent.

* 1. Assignment

The Insurer may not assign, transfer or pledge any of its rights and/or obligations under this Deed. The Company or the Security Agent may assign the benefit of and its rights under this Deed.

* 1. Security Agent

The parties acknowledge that the Security Agent has executed this Deed for and on behalf of the Secured Creditors, and that the Secured Creditors have delegated to the Security Agent the authority to undertake certain functions on their behalf, including (*inter alia*) those specified in Clause 14.8 (Security Agent’s Rights) below.

* 1. Security Agent’s Rights

Without prejudice to the rights of the Security Agent under this Deed, in the event that the security granted by the Company under the Security Documents has become enforceable thereunder the Security Agent shall be at liberty to exercise all the rights and discretions vested in the Company under this Deed, either in its own name or in the name of the Company, to the exclusion of the rights of the Company to act on its own behalf. As between the parties to this Deed a certificate signed by a duly authorised person on behalf of the Security Agent to the effect that the security granted by the Company under the Security Documents has become exercisable as aforesaid shall be conclusive of that fact.

* 1. Amendment

This Deed may only be amended by an instrument in writing signed by or on behalf of all parties hereto.

* 1. Deed

This Deed shall be deemed to be executed as a deed for the purposes of all rights and remedies implied by law.

1. Waivers and remedies cumulative

The rights of the Company and the Security Agent under this Deed may be exercised as often as necessary, are cumulative and not exclusive of their rights under the general law and may be waived only in writing and specifically. Delay in exercising or non-exercise of any such right is not a waiver of that right.

1. Notices
   1. Method

Any notice or other communication to be served under or in connection with this Deed shall be made in writing and, unless otherwise stated, served in person or by post, fax or any electronic method of communication approved by the Company or Security Agent to the relevant party at its address or fax number shown immediately after its name in Clause 16.4 (Addresses for notices) or such other address or number notified by it to the other parties to this Deed, marked for the attention of the person or department there specified.

* 1. Deemed Service

Any notice or other communication served by post will, unless otherwise stated, be effective five (5) Business Days after being deposited in the post (with postage prepaid) in an envelope addressed to it at that address or on delivery if delivered personally or by courier to the relevant address. A notice or other communication sent by fax will, unless otherwise stated, be effective when received in legible form. Any communication or notice by electronic method will be effective only when actually received in readable form and if addressed in the manner specified by the Company or Security Agent for this purpose.

* 1. Proof of Service

In proving service of any notice or other communication, it will be sufficient to prove:

* + 1. in the case of a letter, that such letter was properly stamped or franked, addressed and placed in the post or in the case of personal delivery, was left at the correct address; and
    2. in the case of a fax transmission, that such fax was duly transmitted to the fax number, as appropriate, of the addressee referred to in Clause 16.1 (Method).
  1. Addresses for notices
     1. The address, facsimile number and contact details of the Company are:

Kocaeli Hastane Yatirim Ve Sağlik Hizmetleri Anonim Şirketi

Address: Çukurambar Mah. 1480. Sok, No:2, Besa Plaza, A Blok Kat:18 Daire:68-70, 06530, Çankaya/Ankara

Fax: +90 312 287 35 33

Email: [Yalcin.Eliguzeloglu@gama.com.tr](mailto:Yalcin.Eliguzeloglu@gama.com.tr) / nkaraca@turkerler.com / Gizem.Karabulut@gamaturkerler.com.tr

Attention: Yalçın Eligüzeloğlu / Nurhan Uyduranoglu Karaca / Gizem Karabulut

* + 1. The address, facsimile number and contact details of the Security Agent are:

UniCredit Bank AG

Address: Arabellastr. 14

D-81925 Munich

Germany

Fax: +49 89 378 41517

Email: [dietmar.kahl@unicredit.de/](mailto:dietmar.kahl@unicredit.de/) [philipp.sager@unicredit.de](mailto:philipp.sager@unicredit.de)

Attention: Dietmar Kahl/ Philipp Sager

* + 1. The address, facsimile number and contact details of the Intercreditor Agent are:

UniCredit Bank AG

Address: Arabellastr. 14

D-81925 Munich

Germany

Fax: +49 89 378 41517

Email: [dietmar.kahl@unicredit.de/](mailto:dietmar.kahl@unicredit.de/) [philipp.sager@unicredit.de](mailto:philipp.sager@unicredit.de)

Attention: Dietmar Kahl/ Philipp Sager

* + 1. The address, facsimile number and contact details of the Insurer are:

Address: [●]

Fax: [●]

Email: [●]

Attention: [●]

* + 1. Any party to this Deed may change its contact details by giving the other parties not less than seven days’ notice.
  1. Addresses for notices

The Security Agent, the Insurer and the Company agree and undertake that each notice to be issued in accordance with this Deed shall also be delivered to the Intercreditor Agent, provided that the parties hereto irrevocably agree and undertake that this Deed shall not impose any express or implied obligations and/or liabilities on the Intercreditor Agent.

1. Severability

If any provision of this Deed is or becomes illegal, invalid or unenforceable in any jurisdiction that shall not affect:

* + 1. the validity or enforceability in that jurisdiction of any other provision of this Deed; or
    2. the validity or enforceability in other jurisdiction of that or any other provision of this Deed,

and the parties hereto will negotiate in good faith to achieve (so far as possible) all the objectives of this Deed in a manner that is valid, legal and enforceable.

1. Governing law

This Deed shall be governed by and construed in all respects in accordance with English law.

1. Arbitration
   1. Submission to Arbitration

Any dispute, controversy or claim arising out of or relating to this Deed, or the breach termination or invalidity thereof, (a ***Dispute***) shall be finally settled by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law in force at that time (the ***UNCITRAL Rules***). The London Court of International Arbitration (***LCIA***) shall act as appointing authority.

* 1. Commencement of proceedings and joinder
     1. Any party to this Deed may, either individually or together with any other party to this Deed, initiate arbitration proceedings pursuant to this Clause against one or more other parties to this Deed by sending a notice of arbitration to all other parties to this Deed (whether or not such parties are named as respondents in the notice of arbitration).
     2. Any party to this Deed named as respondent in a notice of arbitration or a notice of claim may join any other party to this Deed in any arbitration proceedings hereunder by submitting a written notice of claim against that party, provided that such notice is also sent to all other parties to this Deed within thirty (30) days from the receipt by such respondent of the relevant notice of arbitration or notice of claim.
     3. Any party to this Deed may intervene in any arbitration proceedings hereunder by submitting a written notice of claim against any party to this Deed, provided that such notice is also sent to all other parties to this Deed within thirty (30) days from the receipt by such intervening party of the relevant notice of arbitration or notice of claim.
     4. Any party so joined or intervening shall be bound by any award rendered by the arbitral tribunal even if such party chooses not to participate in the arbitration proceedings.
  2. Formation of Arbitral Tribunal
     1. There shall be three (3) arbitrators appointed as follows. If the request for arbitration names only one claimant and one respondent, and no party has exercised its right to joinder or intervention in accordance with paragraph (b) below, the claimant and the respondent shall each nominate one arbitrator within fifteen (15) days after the expiry of the period during which parties can exercise their right to joinder or intervention under paragraph (b) below. The third arbitrator, who shall act as presiding arbitrator, shall be nominated by agreement of the parties within thirty (30) days of the appointment of the second arbitrator. If any arbitrator is not nominated within these time periods, the appointing authority shall make the appointment(s).
     2. If more than two parties are named in the notice of arbitration, or at least one party exercises its right to joinder or intervention in accordance with paragraph (a) above, the claimant(s) shall jointly nominate one arbitrator and the respondent(s) shall jointly nominate the other arbitrator, both within fifteen (15) days after the expiry of the period during which parties can exercise their right to joinder or intervention under paragraph (a) above. If the parties fail to nominate an arbitrator as provided above, the appointing authority shall, upon the request of any party, appoint all three arbitrators and designate one of them to act as chairperson. If the claimant(s) and respondent(s) nominate the arbitrators as provided above, the third arbitrator, who shall act as chairperson, shall be nominated by agreement of the parties within thirty (30) days of the appointment of the second arbitrator. If the parties fail to nominate the chairperson as provided above, the chairperson shall be appointed by the appointing authority.
     3. The legal seat of arbitration shall be England and the place of arbitration shall be London, United Kingdom.
     4. The language of arbitration shall be English.
  3. The arbitral award
     1. The award shall be rendered within three (3) months of the appointment of the arbitral tribunal, unless the parties agree that such limit be extended or the arbitral tribunal, considering the nature of the Dispute, determines that such limit must be extended in the interest of justice.
     2. The arbitral tribunal is not empowered to award punitive damages, and each party hereby waives any right to seek or recover punitive damages with respect to any Dispute resolved by arbitration under this Section.
  4. Consolidation of proceedings

The arbitral tribunal shall have authority to consider and include in any proceeding, decision or award any further dispute properly brought before it by any Finance Party insofar as such dispute arises out of any Finance Document but, subject to the foregoing, no other parties or other disputes shall be included in, or consolidated with, the arbitral proceedings.

* 1. Recourse to courts
     1. Notwithstanding any provisions of the UNCITRAL Rules and section 44 of the Arbitration Act 1996:
        1. the arbitral tribunal shall not be authorized to take or provide and the Company shall not be authorized to seek from the arbitral tribunal; and
        2. the Company shall not be authorized to seek from any judicial authority,

any interim measures of protection or pre award relief against any of the Finance Parties.

* + 1. The parties hereby waive any rights under the Arbitration Act 1996 or otherwise to appeal any arbitration award to, or to seek determination of a preliminary point of law by, the courts of England.
       1. The Parties exclude the jurisdiction of the courts under sections 45 and 69 of the Arbitration Act 1996.
  1. Waiver of immunity

To the extent that the Company or any Insurer may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Company and each Insurer hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the Applicable Laws of such jurisdiction.

1. Privileges and immunities of EBRD

Nothing in this Deed shall be construed as a waiver, renunciation or other modification of any immunity, privileges or exemptions of EBRD accorded under the Agreement Establishing the European Bank for Reconstruction and Development, international convention or any applicable law. Notwithstanding the foregoing, EBRD has made an express submission to arbitration under Clause 19 (Arbitration) and accordingly, and without prejudice to its other privileges and immunities (including, without limitation, the inviolability of its archives), it acknowledges that it does not have immunity from suit and legal process under Article 5(2) of Statutory Instrument 1991, No. 757 (The European Bank for Reconstruction and Development (Immunities and Privileges) Order 1991), or any similar provision under English law, in respect of the enforcement of an arbitration award duly made against it as a result of its express submission to arbitration pursuant to Clause 19 (Arbitration).

**THIS DEED** has been entered into as a deed on the date stated at the beginning of this Deed.

###### Schedule 1 Form of Notice to the Reinsurer

###### Part A Notice to Reinsurer

From: [•] (the ***Insurer***)

To: [       ] (the ***Reinsurer***);

[*Date*]

Dear Sirs,

**Assignment of reinsurance policy rights under an agreement entitled Reinsurance Assignment Deed dated** [•] **between the Insurer, Kocaeli Hastane Yatirim Ve Sağlik Hizmetleri Anonim Şirketi (the *Company*) and** [•] **(the Security Agent):**

**Reinsurance Policy No** [•] **(the *Reinsurance Policy*)**

**Insurance policy No** [•] **(the *Insurance Policy*)**

This letter constitutes notice to you that pursuant to the Reinsurance Assignment Deed, the Insurer has assigned to the Company and the Security Agent *pari passu* by way of security all present and future rights in the Reinsurance Policy (including all monies payable under or in respect thereof) in so far as such rights relate to the Insurance Policy whether by way of claims, return of premiums or otherwise. References to the ***Reinsurance******Policy*** include any amendment to the Reinsurance Policy and the renewal or replacement of the Reinsurance Policy with you. We refer you to the Reinsurance Assignment Deed for a full description of the rights which we have assigned.

We have contracted with the Company and the Security Agent that the Reinsurance Policy shall at all times contain a loss payee clause in the following terms:

“For the benefit of the Security Agent the Reinsurer agrees to pay all claims, return premiums and any other monies payable under or in relation to this contract in respect of a loss insured under the policy (as such term is defined in the Finance Parties’ endorsement attached to this reinsurance Policy) to the appropriate bank account or party indicated in the list immediately following this clause or to such other account as the Security Agent as loss payee may specify in writing, and that no instruction, whether by the Insurer or by any person other than the Security Agent, to make any such payment to any other person or account shall be honoured by the Reinsurer unless given or countersigned by the Security Agent, or such other person as the Security Agent may notify to the Reinsurer in writing. All such payments shall be made by the Reinsurer without any deduction or set-off (save for any unpaid premium under this reinsurance Policy) on any account or of any kind. A payment to the loss payee in accordance with this clause shall, to the extent of that payment, discharge in respect of the insurance policy No [•] (the ***Insurance Policy***) (i) the liability of the Reinsurer to pay the Insurer or other claimant insured party, and (ii) the liability of the Insurer to the Insureds under the Insurance Policy reinsured hereby. The Security Agent may authorise the payment by a Reinsurer to a third party of a claim where it is applied directly to discharge fully and finally an insured liability of the Company to that third party. The arrangements in this clause shall continue to apply notwithstanding the liquidation or insolvency of either of the Insurer or the Reinsurer.”

In the event that any insolvency law may reasonably be considered to pose a risk of double payment by the Reinsurer if any such direct payments were to be made, such amendments to this provision as the Security Agent (in consultation with the Lenders’ Insurance Adviser) and the Reinsurer agree are necessary or desirable to avoid double payment by the Reinsurers shall be negotiated by the Security Agent (in consultation with the Lender’s Insurance Adviser) and the Reinsurer in good faith. In the event that (i) the Parties fail to so agree in good faith; (ii) there is a current claim under the Reinsurances in respect of a loss insured under the Reinsurance Policy; and (iii) the Insurer is, or becomes during the currency of that claim, subject to an Insolvency Event in accordance with any insolvency law, the final discharge of that current claim under the Reinsurances shall be executed jointly by the Insurer and the Security Agent.

Nothing in this notice shall give successors to the original Insurer any rights to recover sums already paid to or by the original Insured. Furthermore, nothing in this notice shall require the Reinsurers to pay more than their share under the reinsurance of any claim.

After your receipt of this notice all payments arising under or from the Reinsurance Policy in respect of a loss insured under the Reinsurance Policy should be made to:

[*Details to be inserted*]

Notwithstanding the above, payments arising under or from the Reinsurance Policy in respect of a loss insured under the Reinsurance Policy should be made, save to the extent not permitted by applicable law, to such other account or person as the Security Agent notifies to you in writing (the ***Alternate Payment Notice***). The Alternate Payment Notice shall state that the security held by the Security Agent has become enforceable. Upon receiving such an Alternate Payment Notice, you must comply with the Security Agent’s instructions, save to the extent not permitted by applicable law, without:

seeking or receiving any further authority or instructions from us;

any enquiry by you as to whether or not the security has become so enforceable;

having received any justification for the statement; and

having received any confirmation of the validity of the notice or instruction,

save where you want to satisfy yourselves that such payment is not contrary to applicable law.

We irrevocably instruct and authorise you to:

disclose to the Company and the Security Agent following a request from either of them, any information relating to the Reinsurance Policy and any claim under it; and

comply with the terms of the above loss payee clause in the Reinsurance Policy,

without any reference to or further authority from us and without any inquiry by you as to the justification for or validity of the notice or instructions.

By executing the attached acknowledgement to this Notice, you agree that:

you shall accept any payment of premium, call or other sum payable in respect of the Reinsurance Policy from the Insurer’s broker or the Security Agent and such payment shall, to the extent of such payment, discharge (i) the liability of the Company to pay premium to the Insurer, and (ii) the liability of the Insurer to pay premium to you;

the Insureds shall be entitled by virtue of the Contract (Rights of Third Parties) Act 1999 to enforce the benefit of the Reinsurance Policy; and

your obligation is to pay under this Reinsurance Policy and in accordance with the loss payment provisions of the Reinsurance Policy arising when the ceding Insurer’s reinsured liability becomes payable (whether by agreement or compromise by the Insurer of a claim, court order or arbitral award) and is not dependent on the Insurer having actually paid a claim or settled a liability to the Company, the Secured Creditors or any other person.

In addition, you should note that:

we, as the Insurer, continue to be liable for all obligations for which the Insurer is expressed to be liable under the Reinsurance Policy, and neither the Company nor the Security Agent has any liability in respect of the Reinsurance Policy;

if the Company fails:

to pay or procure the payment on a timely basis of all premiums as required by the terms of the Insurances;

in accordance with any credit arrangements agreed with the Insurers and Reinsurers, to produce promptly to the Security Agent on request copies of receipts (or other evidence of payment) for all premium payments; or

the Security Agent (acting reasonably and after consultation with the Lenders’ Insurance Adviser) may elect to pay on behalf of the Company or the Insurer (as the case may be) such premiums that may be due and payable by withdrawing relevant amounts from [*Details to be inserted*]; provided that where reinsurance brokers have been appointed, the Security Agent (acting reasonably) shall be entitled to elect to pay any premiums to the reinsurance brokers rather than directly to the Reinsurers, and the Security Agent shall have no liability to any party for effecting payment of premiums or other amounts in this way;

all notices given by you in respect of the Reinsurance Policy should be sent copied to [•] and to the Security Agent at [*Details to be inserted*] (or such other address as either of them may notify to you in writing);

no amendment which may be adverse to the Company’s interests or those of the Secured Creditors may be made to the Reinsurance Policy (without limitation, any increase in deductible, excess or retention will constitute such an adverse change). However notwithstanding anything else contained herein you shall always retain the right to change the Reinsurance Policy in the event of material change or other adverse development of the risk. Adverse development will include but not be limited to poor loss record, poor management of risks, financial failure of principal insured and political instability;

we have irrevocably appointed attorneys under the Reinsurance Assignment Deed to, at any time during the Security Period, act as our attorney to take any action which we are obliged to take under the Reinsurance Assignment Deed or have the right to take by virtue of the Reinsurance Policy and to enforce our rights under the Reinsurance Policy, and you are requested to follow any instructions given to you by any such attorney (in the event of conflicting instructions, those given to you by the Security Agent shall prevail); and

the instructions in this letter may not be revoked or amended without the written consent of the Security Agent.

This letter is governed by English law.

Please confirm your agreement to the above by sending the attached acknowledgement to the Company with a copy to ourselves and to the Security Agent.

Yours faithfully,

By: ……………………………………………..

(Authorised Signatory)

[•]

###### Part B Acknowledgement of Reinsurer

[On letterhead of the Reinsurer]

To: Kocaeli Hastane Yatirim Ve Sağlik Hizmetleri Anonim Şirketi (the ***Company***)

Address: [*Details to be inserted*]

Fax: [*Details to be inserted*]   
Attention: [*Details to be inserted*]

Copy: [•] (the ***Insurer***)

Address: [*Details to be inserted*]

Fax: [*Details to be inserted*]  
Attention: [*Details to be inserted*]

[*Date*]

Dear Sirs,

We confirm receipt from the Insurer of the above notice of the Assignment (the ***Notice***) in respect of the Reinsurance Policy. We have noted and accept the terms of the Notice.

We confirm that (i) the Reinsurance Policy is in full force and effect subject to its terms and stipulations; (ii) we are not aware of any breach by the Insurer of the Reinsurance Policy; (iii) we have not received notice of the interest of any third party in the Reinsurance Policy with respect to the rights arising under the Insurance Policy; and (iv) we will make any payments due under the Reinsurance Policy in respect of a loss insured under the Reinsurance Policy as provided in the Notice.

Yours faithfully,

By: ……………………………………………..

(Authorised signatory)

[*Reinsurer*]

Name:

Title:

###### Schedule 2 Power of Attorney

* + - 1. By this Power of Attorney, dated the [•] day of [•], [•](the ***Insurer***) hereby irrevocably and severally appoints Kocaeli Hastane Yatirim Ve Sağlik Hizmetleri Anonim Şirketi (the ***Company***), [•] (the ***Security Agent***), each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Insurer is obliged to take under the deed of assignment of rights in respect of policies of reinsurance dated [•]entered into between the Insurer, the Company and the Security Agent (the ***Reinsurance Assignment Deed***), as well as to enforce all rights of the Insurer with respect to the Assigned Rights, including without limitation the right:

to ask, require, demand, receive any and all monies and claims for monies due under or arising out of the Assigned Rights;

to exercise rights and elect remedies in respect of the Assigned Rights (including without limitation all remedies set out in the Reinsurance Assignment Deed);

to file any claims or take any action or institute any proceedings which the Company or the Security Agent may deem to be necessary or advisable in connection with the Assigned Rights;

to assist in relation to the creation, perfection or protection of any security intended to be created by the Reinsurance Assignment Deed; and

to facilitate the realisation of any Assigned Right, including, in each case:

to execute any transfer, conveyance, assignment or assurance of any property whether to the Company, the Security Agent or to either of their nominees;

to give any notice, order, demand or direction; and

to make any registration or obtain any consent,

which, in any such case, the Company or Security Agent may think expedient; and

to take any action which the Insurer has the right to take under or by virtue of any policy of reinsurance.

* + - 1. The Insurer hereby irrevocably and unconditionally authorises each of the Company and the Security Agent in its sole discretion to delegate in whole or in part the powers granted by this Power of Attorney to such other person or persons as may be selected by it and to revoke such delegation in its sole discretion.
      2. The Insurer hereby ratifies all that an attorney shall lawfully do or cause to be done, in each case, pursuant to the powers granted in this Power of Attorney. The Insurer hereby acknowledges and agrees that in acting pursuant to this power of attorney each of the Company and the Security Agent shall be acting in its own interest and, in the case of the Security Agent, on behalf of the Secured Creditors. The Insurer acknowledges and agrees that the Company, Security Agent and the Secured Creditors shall have no fiduciary duties to the Insurer and the Insurer hereby waives any claims to the rights of a beneficiary of a fiduciary relationship hereunder.
      3. Capitalised terms used in this Power of Attorney and not otherwise defined shall have the same meaning as in the Reinsurance Assignment Deed.
      4. This Power of Attorney shall be governed by and construed in accordance with English law.
      5. This Power of Attorney shall terminate at the end of the Security Period.

This Power of Attorney has been entered into as a deed on the date stated at the beginning of this Power of Attorney.

**SIGNATURE BLOCK**[*To be added*]

1. Project Permits
   1. Investment Term
      * 1. Execution and registration of the Servitude Right Agreement.
        2. Notice for construction site, site delivery protocol with the Administration.
        3. Excavation permit (*hafriyat izni / atık taşıma ve kabul belgesi*), (if required).
        4. Construction licence and to the extent it is not a prerequisite for inclusion in the construction license, if and when required:

heliport construction permission (*Heliport Yapım İzni*); and

license for retaining walls.

* + - 1. To the extent it is not a prerequisite for inclusion in the zoning permits, the traffic/road reorganization approval (if and when required).
      2. Preparation of project description file (‘PDF’) in accordance with the regulation on environmental impact assessment (if and when required) for Side Plants, or an environmental impact assessment decision in accordance with the regulation on environmental impact assessment (if and when required).
      3. Access road permit (if and when required).
      4. Demolition permit (*Yıkım Ruhsatı*).[[22]](#footnote-22)
  1. Operation Term
     + 1. Occupancy permit, to be obtained by the Borrower prior to the commencement of the Operation Term.
       2. Environmental permit and license (if and when required for the Operation Term).
       3. Waste management permit or letter from the relevant municipality ensuring the collection and discharge of the wastes in accordance with applicable legislation (if and when required for the Operation Term).
       4. Sewage system connection certificate for the Operation Term.
       5. Elevators annual report to be received from the authorised institution under the relevant legislation.

1. Reserved Discretions
   * 1. Definitions and Interpretation
        + 1. In this Schedule 8:

***Reserved Discretions*** means any or all of the reserved discretions appearing in a Table; and

***Table*** means each table appearing in Exhibit 1 (*Project Agreement*), Exhibit 2 (*EPC Contract*), Exhibit 3 (EPC Bonds), Exhibit 4 (EPC Guarantee), Exhibit 5 (O&M Contract), Exhibit 6 (O&M Performance Bonds), Exhibit 7 (O&M Guarantees) and Exhibit 8 (Interface Agreement) of this Schedule 8.

* + - * 1. For the purposes of this Schedule 8, where a Reserved Discretion states:

***PC***, this refers to ***Positive Control***, which means that, subject to paragraph 2 of this Schedule, the Intercreditor Agent may require the Borrower to take the action referred to in the relevant Reserved Discretion if and as directed by the Intercreditor Agent.

***NC***, this refers to ***Negative Control***, which means that, subject to paragraph 2 of this Schedule, the Intercreditor Agent may require the Borrower not to take the action referred to in the relevant Reserved Discretion.

***EC***, this refers to ***Either Control***, which means that the Intercreditor Agent may use either Positive Control or Negative Control (as it deems appropriate in each case) in relation the Borrower's exercise of the relevant Reserved Discretion.

* + - * 1. References in this Schedule to the Borrower shall also refer, where appropriate, to the Borrower's Representative.
        2. Capitalised terms used in a Table have the meanings given to them in the document to which that table relates, unless the context requires otherwise.
    1. General

Upon any Reserved Discretion becoming exercisable the Borrower must promptly notify the Intercreditor Agent stating the relevant Reserved Discretion and:

whether and (if applicable) how the Borrower wishes to exercise the relevant Reserved Discretion; and

where the relevant Reserved Discretion is one that the relevant Project Document states is exercisable only within a specified time period, the date that is two (2) Business Days’ prior to the date upon which that Reserved Discretion ceases to be exercisable under the terms of the relevant Project Document (the ***Relevant Date***).

* + - * 1. After any Reserved Discretion becomes exercisable, the Borrower may give notice to the Intercreditor Agent setting out the factors which, in the Borrower's opinion, the Intercreditor Agent should take into account in considering if and how it wishes to control the exercise of the Borrower of the relevant Reserved Discretion.
        2. Following its notification under paragraph 2.2 above, the Intercreditor Agent shall (if appropriate, on or before the Relevant Date) inform the Borrower of:

in the case of a Reserved Discretion over which the Intercreditor Agent has Positive Control, if and (if applicable) how the Borrower must exercise the relevant Reserved Discretion; and/or

in the case of a Reserved Discretion over which the Intercreditor Agent has Negative Control, whether the Borrower must refrain from exercising the relevant Reserved Discretion.

* + - * 1. Subject to paragraph 2.5 below, if the Intercreditor Agent fails to inform the Borrower in accordance with paragraph 2.3 above in respect of a Reserved Discretion that must be exercised by a Relevant Date or, where there is no Relevant Date, within fifteen (15) Business Days’ of such notification, the Borrower may (on that occasion only) exercise that Reserved Discretion in the manner it determines acting in good faith without the consent of the Intercreditor Agent.
        2. If the Borrower exercises a Reserved Discretion in accordance with the terms of paragraph 2.4, the Borrower undertakes to:

exercise such Reserved Discretion in a manner that does not jeopardise the rights and interests of the Secured Creditors under the Finance Documents; and

upon request by the Intercreditor Agent, to give further notice to the Intercreditor Agent setting out the full details of how the Reserved Discretion has been exercised and the outcome.

* + - * 1. Notwithstanding paragraph 2.4 and 2.5 above, the Borrower shall not be entitled to issue a notice of default or a notice of termination under any Project Document without the prior written approval of the Intercreditor Agent in accordance with Clause 18.7(b) (*Project Documents)* of this Agreement.
    1. No Default or Breach

Nothing in this Schedule 8 (*Reserved Discretions*) shall require the Borrower to:

exercise or refrain from exercising a Reserved Discretion or to exercise a Reserved Discretion in a particular way if to do so would cause or constitute a Default; or

breach the terms of a Project Document.

For the avoidance of doubt, if the exercise of any Reserved Discretion, or the exercise of any discretion or right in relation to any matter set out in Exhibit 2 to Exhibit 8 (inclusive) below, in either case in accordance with a direction issued by the Intercreditor Agent, results in any amendment to any Project Document (other than the Project Agreement), such amendment shall not be subject to any Reserved Discretion.

1. Project Agreement

All terms used in this Table but not otherwise defined in this Agreement shall have the meaning given to them in the Project Agreement.

|  | **Reserved Discretion** | **Control** |
| --- | --- | --- |
| Clause 7.9(b) | To make a written submission of amendments to the Final Design. | EC |
| Clause 14.5 | To notify the Administration of the occurrence of an Excusing Cause. | PC |
| Clause 18.13(b) | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) if one or all of the Chief Executives do not approve and sign the minutes of the Liaison Committee. | PC |
| Clause 24.7 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on determination regarding deficiency of Works. | PC |
| Clause 28.4 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on the Final Commissioning Programme or on the changes to the scope or date of the Administration's Commissioning. | PC |
| Clause 30.2(b)(iii) | (a) To agree on any amendments to the Project Agreement in order to minimise the effects of the suspension of the Works. | PC |
| (b) To terminate the Project Agreement in case of no agreement on item (a) above. | EC |
| Clause 30.3 | To agree amendments to the Programme resulting from matters referred to in clauses 21.3, 29.7 and 30.1 of the Project Agreement. | PC |
| Clause 32.2 | To use the right of first refusal in respect of the best offer selected by the Administration in the relevant Market Testing Procedure. | NC |
| Clause 32.3 | To request consent of the Administration for the carrying out of additional Commercial Activities within the Health Facilities. | NC |
| Clause 34.5(c) | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement in the absence of agreement on measures to be taken in respect of the increased monitoring of the Borrower. | PC |
| Clause 34.11 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement to determine if the Administration was reasonable in requesting relevant steps. | PC |
| Clause 39.5 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on the calculation of the Lease Payments. | PC |
| Clause 41.2 | (a) To agree any amendments to the Financial Model with the Administration. | PC |
| (b) To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on proposed amendments to the Financial Model. | PC |
| Clause 43.4(b) | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) if no agreement on the occurrence or effects of a Change in Law Directly Related to the Provisions of the Project Agreement. | PC |
| Clause 43.6 | To give notice of the need for a variation which is necessary in order to enable the Project Company to comply with a Change in Law which is not a Change in Law Directly Related to the Provisions of the Project Agreement. | PC |
| Clause 44.2 (b) | To exercise its optional right to implement a Work Variation. | NC |
| Clause 45.9 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) if no agreement on whether a Delay Event has occurred and the revision of the Scheduled Completion Date and (if applicable) the relevant Phase Completion Date. | PC |
| Clause 45.14 | To agree with the Administration the amount of compensation payable under clause 45.10 of the Project Agreement. | EC |
| To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) if no agreement on amount of compensation in connection with a Delay Event. | PC |
| Clause 46.2 | To claim an event of Force Majeure (as defined in the Project Agreement). | PC |
| Clause 47.3 | To exercise the options available to the Borrower in accordance with Clause 47.3 (b) of the Project Agreement in respect of a Project Company Event of Default. | EC |
| Clause 47.4 | (a) To agree to any corrections to the programme for remedying the relevant Project Company Events of Default put forward in accordance with Clause 47.3(b)(ii). | PC |
| (b) To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) if no agreement on the corrections to the remedy programme. | PC |
| Clause 48.2 | To exercise options available to the Borrower in respect of any Administration Event of Default. | EC |
| Clauses 49.1, 49.4 and 49.5 | To request or agree to a voluntary termination of the Project Agreement. | EC |
| Clause 53.2 | To transfer rights and obligations under the Project Agreement. | EC |
| Schedule 10, paragraph 10 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on the objections of the Borrower to the comments given by the Administration related to a Submitted Item. | PC |
| Schedule 10, paragraph 12 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on whether compliance with the Administration's comments would constitute a Variation. | PC |
| Schedule 12, paragraph 5 | [To refer the dispute regarding issuance of a Phase Actual Completion Certificate to the Independent Technical Auditor.] | PC |
| Schedule 13, paragraph 4.9 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on any matter relating to a Draft Proposal. | PC |
| Schedule 13, paragraph 4.20 | To exercise the pre-emption right to provide an equivalent bid to the Compliant Tender in the Equipment Market Research. | EC |
| Schedule 14 paragraph 1.1 of section A (*Introduction*) | To agree to any revisions to the rules set out in schedule 14 (*Service Requirements*) of the Project Agreement. | EC |
| Schedule 14, paragraph 3.3 of section A (*Introduction*) | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on any Monthly Report. | PC |
| Schedule 17, paragraph 3 | To object to any change requested by the Administration in the Service Requirements for a Market Tested Service. | EC |
| Schedule 17, paragraph 8 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) if no agreement is reached on any matter relating to the Draft Proposal within 20 (twenty) Business Days of the Administration's receipt of the Draft Proposal. | PC |
| Schedule 17, paragraph 12 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on whether a person is eligible for prequalification. | PC |
| Schedule 17, paragraph 25 | (a) To negotiate in respect of making the Performance Monitoring System fairer and more reasonable by amendments to the Performance Monitoring System concerning the relevant Service. | PC |
| (b) To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on the Performance Monitoring System and the adjustment to the service payment. | PC |
| Schedule 21, Part A, paragraph 3 | Amend Part B of Schedule 21 (*Insurance Requirements*). | EC |
| Schedule 22, Part 2, paragraph 3.1 | To select option (a) or (b) in response to a Variation Enquiry. | EC |
| Schedule 22, Part 3, paragraph 2.2 | (a) To agree the payment schedule and evidence in connection with adjustments to Availability Payments resulting from capital expenditure pursuant to Clause 44.2 (b) of the Project Agreement. | NC |
| (b) To go to dispute resolution in accordance with Schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if agreement on the payment schedule and evidence in connection with adjustments to Availability Payments resulting from capital expenditure pursuant to Clause 44.2(b) of the Project Agreement is not reached. | PC |
| Schedule 23, paragraph 6 | To send a document to the Administration indicating the relevant sums of termination compensation and related documentation. | PC |
| Schedule 23, paragraph 8 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement in respect of the amount of the termination compensation. | PC |
| Schedule 29, paragraph 7 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on the method of calculation of the Refinancing Gain and the share thereof for the Administration. | PC |

1. EPC Contract

All capitalised terms used in this Table but not otherwise defined in this Agreement shall have the meaning given to them in the EPC Contract.

| **Reference** | **Reserved Discretion** | **Control** |
| --- | --- | --- |
| Clause 13.10 | To make a written request to the EPC Contractor following the occurrence of any one of the events in Clause 13.10, to procure that the relevant Bond is reissued and the Bond Provider is replaced by another Acceptable Bank. | PC |
| Clause 13.11 | To call the then outstanding balance of the Bond and to make deductions, against any amounts so held in respect of any claim for which it would have been entitled to call against an extended or re-issued Bond due to the failure of the EPC Contractor to extend or renew the Bond, or procure a reissued Bond (as applicable) upon the occurrence of a Bond Replacement Event. | PC |
| Clause 24.2 | To give a written notice to the EPC Contractor that the level of monitoring and inspection activity will be increased where the Administration has not issued an equivalent instruction to the Project Company. | PC |
| Clause 24.3 | To request the EPC Contractor to open up for inspection any part or parts of the Works where such part or parts of the Works is or are defective and/or deficient where the Administration has not issued an equivalent instruction to the Project Company. | PC |
| Clause 25.1D | To determine a fair and reasonable amount by which damages for delay shall be reduced when part of the relevant phase or works have been completed. | NC |
| Clause 28.19(a) | To instruct the EPC Contractor to rectify and remedy any Defect during the Defect Rectification Period. | PC |
| Clause 28.19(b) | To request amendments where necessary and provide approval of the corrective action plans put forward by the EPC Contractor to remedy Defects to the Works according to the EPC Contract and the Project Agreement. | PC |
| Clause 28.21 | To elect to instruct the EPC Contractor or the O&M Contractor to make good the relevant Defect. | EC |
| Clause 28.23 | To pay to the EPC Contractor an amount equal to such recovery or credit such amount against any sums then owing by the EPC Contractor to Project Company. | NC |
| Clause 28.24 | To rectify a Defect by itself or through third parties, at the EPC Contractor's risk. | EC |
| Clause 28.25 | To issue the EPC Final Completion Certificate to the EPC Contractor. | PC |
| Clause 30.3 | To instruct the EPC Contractor to suspend or postpone the carrying out of all or part of the Works. | EC |
| Clause 39.15 | To request any changes to be made to the draft final statement submitted by the EPC Contractor. | PC |
| Clause 39.16 | To deliver an Interim Payment Certificate for those parts of the draft final statement which are approved. | PC |
| Clause 39.16 | To go to dispute resolution in accordance with Clause 59 and schedule 26 (*Dispute Resolution Procedure*) if no agreement on any aspect of the final statement. | PC |
| Clause 39.18 | To issue the Final Payment Certificate to the EPC Contractor. | PC |
| Clause 39.24 | To obtain prior written consent of the EPC Contractor to exercise its right to deduct any sum due and payable to the Project Company from any sum then due and payable to the EPC Contractor under this EPC Contract. | PC |
| Clause 40.6 | To request insurance claims to be made under Clause 40.6. | PC |
| Clause 45.12 | To determine the amount of any compensation to the EPC Contractor in the event of a Compensation Event. | EC |
| Clause 45.16 | To determine and agree a later Completion Date and/or to go to dispute resolution in accordance with Clause 59 and schedule 26 (*Dispute Resolution Procedure*) of the Project Agreement if no agreement on such time extension. | PC |
| Clause 45.17(e) | To accept the EPC Contractor's estimate or to go to dispute resolution in accordance with Clause 59 and schedule 26 (*Dispute Resolution Procedure*) if no agreement on the amount of the EPC Contractor's entitlement. | PC |
| Clause 47.3(b) | To issue a notice of default. | EC |
| Clause 47.3(a), 47.5 and 49.3 | To issue a notice to terminate the EPC Contract (subject to Clause 18.7(b) of this Agreement). | EC |
| Clause 47.4 | To accept or not to accept (including agreeing any corrections to) any programme provided by the EPC Contractor in accordance with Clause  47.3(b)(ii) of the EPC Contract. | EC |
| Clause 47.4 | To refer a matter for resolution in accordance with Clause 59 and schedule 26 (*Dispute Resolution Procedure*) if no agreement can be reached on the programme provided by the EPC Contractor pursuant to Clause 47.3(b)(ii) of the EPC Contract. | EC |
| Clause 53.2 | To require the EPC Contractor to agree to the novation of the EPC Contract. | PC |
| Schedule 10,  Paragraph 10 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the EPC Contract if there is no agreement on a Submitted Item. | EC |
| Schedule 12, Appendices A and B | To approve the Completion Tests and detailed Programme for the Investment Period (subject to Clause 18.5 (*Tests on Completion*) of this Agreement). | EC |
| Schedule 22, Part 3, paragraph 1 | To instruct any Project Company Variation (subject to Clause 18.4 (*Construction*) of this Agreement). | EC |
| Schedule 22, Part 3, paragraph 2 | To confirm the EPC Contractor’s notice that the relevant instruction is a Project Company Variation or state that in the Project Company 's opinion the relevant instruction should not be treated as a Project Company Variation. | EC |
| Schedule 22, Part 3, paragraph 4 | To agree upon the matters stated in the EPC Contractor's notice submitted pursuant to paragraph 4 of part 3 of schedule 22 (*Variation Procedure*) of the EPC Contract (including adjustments to the Contract Price and the Payment Schedule, and any extensions of time). | EC |
| Schedule 22, Part 3, paragraph 5 | To instruct the EPC Contractor to proceed with implementing a Project Company Variation in circumstances where the Parties have not agreed upon matters stated in the EPC Contractor's notice submitted pursuant to paragraph 4 of part 3 of schedule 22 of the EPC Contract. | EC |
| Schedule 22, Part 3, paragraph 6 | To withdraw an instruction for a Project Company Variation. | EC |
| Schedule 26, Paragraph 3 | To initiate the Expert Procedure in accordance with paragraph 4 (*Expert Procedure*) of this Schedule if settlement through mutual agreement cannot be reached within 20 (twenty) Business Days from the day on which a written notice of the Dispute is sent. | EC |
| Schedule 26, paragraphs 4.4 and 4.14 | To go to arbitration in accordance with paragraph 5 (*Arbitration*) of Schedule 26 (*Dispute Resolution Procedure*) of the EPC Contract if settlement through mutual agreement and Expert Procedure cannot be reached in accordance with paragraphs 3 and 4 (*Expert Procedure*) of Schedule of Schedule 26 of the EPC Contract. | EC |

1. EPC Bonds

All capitalised terms used in this Table but not otherwise defined in this Agreement shall have the meaning given to them under any of the (i) EPC Performance Bonds or (ii) the EPC Advance Payment Bond (the ***EPC Bonds***).

| **Reserved Discretion** | **Control** |
| --- | --- |
| To make any demand or claim under any EPC Bond. | PC |
| To give any discharge or waiver in respect of payment under any EPC Bond. | EC |

1. EPC Guarantee

All capitalised terms used in this Table but not otherwise defined in this Agreement shall have the meaning given to them in the EPC Guarantee.

| **Reference** | **Reserved Discretion** | **Control** |
| --- | --- | --- |
| General | To make any demand or claim on the EPC Guarantor. | PC |
| General | To give any discharge or waiver under the EPC Guarantee. | EC |

1. O&M Contract

All capitalised terms used in this Table but not otherwise defined in this Agreement shall have the meaning given to them in the O&M Contract.

| **Reference** | **Reserved Discretion** | **Control** |
| --- | --- | --- |
| Clause 13.5 | To make a written request for the reissue of the Operation Term Performance Bond or O&M Performance Bond and/or the replacement of the Bond Provider following the occurrence of Bond Replacement Event. | EC |
| Clause 13.5 | To approve the O&M Contractor’s mitigation strategy in relation to an event of extraordinary circumstances in the financial markets of the European Union and the United States of America that has the effect of causing a downgrade of the credit ratings of a significant number of bond providers, including the Bond Provider. | EC |
| Clause 13.6 | To make a written request for the extension or renewal of the O&M Performance Bond. | PC |
| Clause 14.3 | To elect to conduct the defence of a claim against the O&M Contractor which the Project Company has indemnified the O&M Contractor in respect of, in accordance with Clause 14.2A. | PC |
| Clause 33.7 | To approve any Unprogrammed Maintenance and Repair Works. | EC |
| Clause 34.4 | To give a Warning Notice to the O&M Contractor. | EC |
| Clause 34.6 | To exercise remedial rights against the O&M Contractor in accordance with Clauses 34.7 to 34.12. | EC |
| Clause 36.9 | To give consent to the O&M Contractor regarding the employment of a person who discloses a conviction or is subject to a conviction. | NC |
| Clause 39.10 (e) and (f) | To review and give a notice to approve the EMRS Program and updated Part B of Schedule 18 (*Payment Mechanism*). | EC |
| Clause 44.3 | To require a Project Company Variation. | EC |
| Clause 47.3 | To issue a notice to terminate the O&M Contract under Clause 47.3(a) or a notice of default under Clause 47.3(b). | EC |
| Clause 47.4 | To accept or not to accept (including agreeing any corrections to) any programme provided by the O&M Contractor in accordance with Clause 47.3(b)(ii) of the O&M Contract. | EC |
| Clause 47.4 | To refer for determination in accordance with schedule 26 (Dispute Resolution Procedure) if no agreement can be reached on the programme provided by the O&M Contractor pursuant to Clause 47.3(b)(ii) of the O&M Contract. | EC |
| Clause 49.1 and 49.4 | To issue a notice to, or agree upon, termination of the O&M Contract. | EC |
| Clause 51.1 | To agree the amount of the O&M Contractor’s liability for compensation for termination in accordance with Clause 47 (*O&M Contractor’s Events of Default)*. | EC |
| Clause 53.2 | To require the O&M Contractor to agree to the novation of the O&M Contract. | PC |
| Clause 53.4 | To give prior written consent to any assignment, transfer, or disposal of any interest by the O&M Contractor. | NC |
| Schedule 10,  Paragraph 10 | To go to dispute resolution in accordance with schedule 26 (*Dispute Resolution Procedure*) of the O&M Contract if there is no agreement on a Submitted Item. | EC |
| Schedule 22, Part 3, paragraph 1 | To instruct the O&M Contractor to vary the Services. | EC |
| Schedule 22, Part 3, paragraph 2 | To revoke or confirm the instruction is a Project Company Variation and to refer any dispute in this regard to be determined in accordance with Schedule 26 (*Dispute Resolution Procedure*). | EC |
| Schedule 22, Part 3, paragraph 6 | To withdraw an instruction for a Project Company Variation. | EC |
| Schedule 26, Paragraph 3 | To initiate the Expert Procedure in accordance with paragraph 4 (*Expert Procedure*) of this Schedule if settlement through mutual agreement cannot be reached within 20 (twenty) Business Days from the day on which a written notice of the Dispute is sent. | EC |
| Schedule 26, paragraphs 4.4 and 4.14 | To go to arbitration in accordance with paragraph 5 (*Arbitration*) of Schedule 26 of the O&M Contract if settlement through mutual agreement and Expert Procedure cannot be reached in accordance with paragraphs 3 and 4 (*Expert Procedure*) of Schedule 26 of the O&M Contract. | EC |

1. O&M Performance Bonds

All capitalised terms used in this Table but not otherwise defined in this Agreement shall have the meaning given to them under any O&M Performance Bonds.

| **Reserved Discretion** | **Control** |
| --- | --- |
| To make any demand or claim under any O&M Performance Bond. | PC |
| To give any discharge or waiver in respect of payment under any O&M Performance Bond. | EC |

1. O&M Guarantees

All capitalised terms used in this Table but not otherwise defined in this Agreement shall have the meaning given to them in the O&M Guarantees.

| **Reference** | **Reserved Discretion** | **Control** |
| --- | --- | --- |
| General | To make any demand or claim on the O&M Guarantor. | PC |
| General | To give any discharge or waiver under the O&M Guarantee. | EC |

1. Interface Agreement

All capitalised terms used in this Table but not otherwise defined in this Agreement shall have the meaning given to them in the Interface Agreement.

| **Reference** | **Reserved Discretion** | **Control** |
| --- | --- | --- |
| Clause 5.1 | To pay to any other Party such sums as agreed or determined in accordance with the Interface Agreement except where the sums are agreed or determined in accordance with Schedule 1 of the Interface Agreement. | EC |
| Clause 7.3 | To agree to a Claim pursuant to the receipt of a Claims Notice. | EC |
| Clause 8.8 | To make a payment pursuant to the reallocation of a Pass-Down Liability from a Sub-Contractor to the Project Company except where the reallocation is determined in accordance with Schedule 1 of the Interface Agreement. | EC |
| Clause 15.4 | To give prior written consent to any assignment by a Sub-Contractor of its interests in the Interface Agreement. | NC |
| Schedule 1, Paragraph 3 | To initiate the Expert Procedure in accordance with paragraph 4 (*Expert Procedure*) of this Schedule if settlement through mutual agreement cannot be reached within 20 (twenty) Business Days from the day on which a written notice of the Dispute is sent. | EC |
| Schedule1, paragraphs 4.4 and 4.14 | To go to arbitration in accordance with paragraph 5 (*Arbitration*) of Schedule 1 of the Interface Agreement if settlement through mutual agreement and Expert Procedure cannot be reached in accordance with paragraphs 3 and 4 (*Expert Procedure*) of Schedule 1 of the Interface Agreement. | EC |

1. Requirements for Commercial Area Agreements
   * 1. General Requirements
        + 1. The Commercial Area Agreement shall include negative undertakings of the Commercial Area Real Estate Company preventing the same from:

initiating or supporting or taking any steps with a view to applying for proceedings analogous to those referred to in Clauses 20.7 (*Insolvency proceedings*) and 20.8 (*Creditor’s process*) against or in respect of the Borrower;

suing or bringing any legal proceedings against the Borrower in connection with the Commercial Area Agreement;

attaching, seizing or otherwise exercising any remedy for the recovery of any debt against the Borrower.

* + - * 1. The Commercial Area Agreement shall provide that amounts payable by the Commercial Area Real Estate Company to the Borrower shall be paid to the Distributions Account.
    1. Security Interests

The Commercial Area Agreement shall prevent the Commercial Area Real Estate Company from granting any Security Interest over:

the Commercial Area Agreement or any receivables of the Commercial Area Real Estate Company thereunder;

Site; and

any assets which, upon termination of the Project Agreement, must be returned to the Administration in accordance with the Project Agreement or Applicable Law,

in each case unless each beneficiary of the relevant Security Interest has given an undertaking to the Intercreditor Agent (in form and substance satisfactory to the Intercreditor Agent) to the effect that enforcement of such Security Interest shall be subject to the consent of the Intercreditor Agent.

* + 1. Third Party Rights and Termination
       - 1. The Commercial Area Agreement shall include a right in favour of the Administration, enforceable by the Administration as a third party, to terminate the Commercial Area Agreement with immediate effect upon termination of the Project Agreement.
         2. The Commercial Area Agreement shall include an undertaking of the Commercial Area Real Estate Company:

not to enter into any agreement with any party involved in the construction, development, operation or maintenance of any Commercial Area (each a ***third party agreement***) unless such third party agreement includes provisions to the effect that, if the Administration does not elect to take over such third party agreement upon termination of the Project Agreement, such third party agreement shall terminate with immediate effect upon termination of the Project Agreement; and

not to engage any activity or take any action that may trigger a breach of the Project Agreement.

1. Anti-Corruption Guidelines and Prohibited Activities
   1. Anti-Corruption Guidelines

The purpose of these guidelines is to clarify the meaning and interpretation of the terms ***Corrupt Practices***, ***Fraudulent Practices***, ***Coercive Practices***, ***Collusive Practices***, ***Obstructive Practice***, ***Theft*** and ***Misuse of an FI Lender’s Resources*** (collectively, the ***Prohibited Practices*** and each, a ***Prohibited Practice***) in the context of the Project, as those terms are defined in the EBRD’s Enforcement Policy and Procedures (November 2015) (the ***EPPs***).

As a general principle applicable to all Prohibited Practices, a party will not be liable for actions taken by an unrelated third party unless the party has participated in the Prohibited Practice or has aided, abetted or conspired with such third party in the commission of the Prohibited Practice.

* + 1. Corrupt practices

A ***Corrupt Practice*** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

**Interpretation**

The conduct in question must involve the use of improper means (such as bribery or kickbacks) by someone to induce another person to act or to refrain from acting in the exercise of that person’s duties, in order to obtain or retain business, or to obtain an undue advantage. Antitrust, securities and other violations of law that are not of this nature fall outside of the definition of corrupt practices but may still be scrutinised under alternative procedures.

It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These payments are not viewed as Corrupt Practices, so long as they are permitted under local law and fully disclosed in the payer's books and records. Similarly, a party will not be held liable for Corrupt Practices committed by entities that administer bona fide social development funds or charitable contributions.

The offering, giving, receiving or soliciting of corporate hospitality and gifts that are reasonable and customary by internationally-accepted standards shall not constitute a Corrupt Practice unless the action violates applicable law.

The payment or reimbursement of reasonable travel and entertainment expenses incurred by a third party consistent with existing practice under relevant law and international conventions will not be viewed as a Corrupt Practice.

No FI Lender condones facilitation payments regardless of whether they are criminalised or not. Such payments, which are illegal in most countries, are dealt with in accordance with relevant law and international conventions.

* + 1. Fraudulent practices

A ***Fraudulent Practice*** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

**Interpretation**

An act or omission, including a misrepresentation, will be regarded as made recklessly if the actor is indifferent as to whether the information or representation is true or false. Mere inaccuracy in such information or representation, committed through simple negligence, is not tantamount to a ***Fraudulent Practice***.

Fraudulent Practices are intended to cover acts or omissions that are directed to or against an FI Lender or that are otherwise of legitimate concern to an FI Lender (e.g., in EBRD’s case, a misrepresentation to an EBRD member country in connection with the award or implementation of a contract or concession in a project financed by the EBRD).

* + 1. Coercive practices

A ***Coercive Practice*** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

**Interpretation**

A Coercive Practice is an action undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognisable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

* + 1. Collusive practices

A ***Collusive Practice*** means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

**Interpretation**

Collusive Practices may take the form of actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of another Prohibited Practice.

* + 1. Obstructive practice

An ***Obstructive Practice*** means (i) destroying, falsifying, altering or concealing of evidence material to an FI Lender investigation, which impedes the FI Lender’s investigation; (ii) making false statements to investigators in order to materially impede an FI Lender’s investigation into allegations of a Prohibited Practice; (iii) failing to comply with requests to provide information, documents or records in connection with an FI Lender’s investigation; (iv) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to an FI Lender investigation or from pursuing the investigation; or (v) materially impeding the exercise of the FI Lender’s contractual rights of audit or inspection or access to information.

**Interpretation**

An action legally or properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action has the effect of impeding an investigation, will not constitute an Obstructive Practice.

* + 1. Theft

***Theft*** means misappropriation of property belonging to another party. Interpretation

A party’s appropriation of property belonging to another will not be regarded as Theft if:

the party appropriates the property in the reasonable belief that it has a legal right to deprive the other of such property, on behalf of itself or of a third person; or the party appropriates the property in the reasonable belief that the party would have the other’s consent if the other knew of the appropriation and the circumstances of it; or

the party appropriates the property in the reasonable belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

A party’s appropriation of property belonging to another may be Theft notwithstanding that the party is willing to pay for the property.

Property will be regarded as belonging to a person if that person has possession or control of it, or has a proprietary right or interest to it (other than an interest arising only from an agreement to transfer or grant an interest).

Where a party obtains property due to another’s mistake and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation, the property will be regarded (as against such party) as belonging to the person entitled to restoration, and an intention not to make restoration will be regarded as an intention to deprive that person of the property.

Theft may be committed willingly or negligently but, unlike a Fraudulent Practice, it need not include a misrepresentation.

It is immaterial whether the misappropriation is made with a view to gain or for the party’s own benefit.

* + 1. Misuse of an FI Lender’s resources

***Misuse of an FI Lender’s Resources*** means improper use of an FI Lender’s resources, committed either intentionally or through reckless disregard.

**Interpretation**:

Misuse of an FI Lender’s Resources is the use of an FI Lender’s resources for a purpose other than the one for which such resources were provided.

Unlike Theft, Misuse of an FI Lender’s Resources need not involve the taking of property out of another's possession as the party may be in rightful possession of the FI Lender resources in question.

Unlike Fraudulent Practice, Misuse of an FI Lender’s Resources need not involve a misrepresentation. In fact, at the time when a representation with respect to the intended use of the FI Lender’s resources is made, the party may intend to use the resources for a particular purpose, but if it later changes its mind and uses the FI Lender’s resources for another purpose, without obtaining the relevant FI Lender’s prior written consent (e.g., where it uses the proceeds of an FI Lender loan for the repayment of debts, rather than for the development of a project for which the loan was provided), such action will constitute Misuse of an FI Lender’s Resources.

* 1. Prohibited Activities
     + 1. Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, PCB’s, wildlife or products regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (***CITES***).
       2. Production or trade in weapons and munitions.
       3. Production or trade in alcoholic beverages (excluding beer and wine).
       4. Production or trade in tobacco.
       5. Gambling, casinos and equivalent enterprises.
       6. Production or trade in radioactive materials. This does not apply to the purchase of medical equipment, quality control (measurement) equipment and any equipment where the FI Lenders consider the radioactive source to be trivial and/or adequately shielded.
       7. Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than twenty per cent. (20%).
       8. Drift net fishing in the marine environment using nets in excess of 2.5 km. in length.
       9. Production or activities involving harmful or exploitative forms of forced labor/harmful child labor.
       10. Commercial logging operations for use in primary tropical moist forest.
       11. Production or trade in wood or other forestry products other than from sustainably managed forests.

1. Environmental and Social Action Plan
2. **Pre-construction Phase**

| Number | Subject | Legal Framework (National, Lenders Requirement, Best Practice) | Action | Deadline | Completion Indicator | Responsibility |
| --- | --- | --- | --- | --- | --- | --- |
| 1 | Contractor Compliance | EBRD PR1 & PR2 IFC PS1 & PS2 | Include clauses in contracts requiring compliance with Project HR Policy, ESMP, ESAP, EHS and other Plans linked to ESMP | Prior to financial close | Review of the updated contract requirements by the LTA to ensure that it contains appropriate clauses that require the contractors and sub-contractors to comply with the EHS requirements to manage the environmental and social risk and adhere to mitigation measures and actions identified and set out in the ESMP and ESIA. | SPV |
| 2 | Environmental and Social Management System (ESMS) for SPV | IFC PS1/PS2 EBRD PR1/PR2  IFC General EHS Guidelines | Define and implement an ESMS within the framework described in the ESA for the Project  Establish and maintain an organizational structure with personnel having knowledge, skills, and experience necessary to manage the ESMS and Project ESHS (Environmental Social Health and Safety) issues.  Appoint a qualified Environmental and Social Manager/Team  Train the designated personnel for environmental and social issues and implementation of below mentioned plans. | 30 days prior to construction phase | ESMS  Established and defined organisational structure and roles & responsibilities  Appointed Environmental and Social Manager/Team  Established management plans and procedures  Audit, measurement and training records  Proof documentation for permits and licenses | SPV |
| 3 | Permitting | National legislation | Determine legal permits/consents/approvals needed to be obtained before starting construction and prepare a “Legal and Other Requirements Follow-up List” covering permits/consents/ approvals  Obtain all necessary permits/consents/approvals (including construction permit) | 30 days prior to construction phase | A comprehensive Legal and Other Requirements Follow-up List  Records of permits, official letters, licenses, approvals, documents etc. | SPV/EPC Contractor |
| 4 | Operational solid waste and waste water | IFC PS3, EBRD PR3, National legislation and best practice | Obtain a confirmation letter from the Municipality regarding appropriate capacity of existing Waste Water Treatment System to accept discharge of waste waters at operational stage.  Obtain a confirmation letter from the Municipality regarding appropriate capacity of existing municipal waste disposal sites and from the medical waste sterilisation facilities in the area to accept municipal and medical waste at project operational stage. | Prior to disbursement | Correspondence with the authorities  Permit for disposal of medical waste  Proof documentation for permits and licenses | SPV |
| 5 | Environmental and Social Management System (ESMS)  for EPC and their subcontractors | IFC PS1/PS2 EBRD PR1/PR2  IFC General EHS Guidelines | EPC to develop an ESMS in line with international good practice and guidelines (i.e. ISO 14001: 2004, OHSAS 18001: 2007)  Establish an organizational structure for the implementation of the ESMS  Appoint a qualified Environmental and Social Manager/Team  EPC to develop and implement detailed final versions of management plans based on the draft versions initiated by the sponsors, including the following:  1. Stakeholder Engagement Plan (including grievance mechanism for the general public/stakeholders)  2. Employee Grievance mechanism  3. Contractors Management Plan  4. Hazardous Material Management Plan  5. Waste Management Plan  6. Air Quality, Noise and Vibration Management Plan  7. Traffic Management Plan  8. Archaeological Chance Find Procedure  9. Construction Camp Management Plan (including workers accommodation)  10. Construction ESHS Management Plan (including community health and safety issues)  11. Human Resources Management Plan (including worker code of conduct)  12. Emergency Preparedness and Response Plan  13. Spill Response Plan  14. Security Plan  15. Occupational Health and Safety Plan  16. Archaeological Chance Find Procedure  17. Employment and Procurement Plan  18. Policy on Prohibition of Child Labour and Forced Labor  19. Resource Policy and Management Plan  20. ESMS Manual  21. ESMS Policy  22. Wastewater Management Plan | 30 days prior to construction phase | ESMS developed and implemented, Appointed Environmental and Social Manager/Team  Established management plans and procedures  Audit, measurement and training records | EPC |
| 6 | Concrete Batching Plant | IFC PS3, EBRD PR3, National legislation and best practice | If a second concrete batching plant is required, or a batching plant exceeding 100m3/hr, undertake national environmental regulatory process: PDF | 30 days prior to construction | PDF for Project’s concrete batching plant exceeding 100m3/hr | SPV |
| 7 | Fire and life safety |  | Design the Project in accordance with the Regulation on the Protection of Buildings from Fire (issued on: 19.12.2007, Official Gazette (“OG”) No: 26735) and other relevant regulations for fire and life safety.  Conduct a third party audit for life and fire safety plan | Prior to Construction | Third party audit for life and fire safety plan | EPC |

1. **Construction Phase**

| Number | Subject | Legal Framework (National, Lenders Requirement, Best Practice | Action | Deadline | Completion Indıcator | Responsibility |
| --- | --- | --- | --- | --- | --- | --- |
| 1 | Environmental and Social Management System (ESMS )  for EPC and Subcontractors | IFC PS1/PS2 EBRD PR1/PR2  IFC General EHS Guidelines | EPC to implement the ESMS in line with international good practice and guidelines (i.e. ISO 14001: 2004, OHSAS 18001: 2007)  Train the designated personnel for environmental and social issues and implementation of detailed plans.  Carry out internal audits and inspections for compliance with ESMS. | Throughout the Construction | Audit, measurement and training records | EPC |
| 2 | Life and fire safety | IFC EHS Guidelines 3.3 | Conduct an independent life and fire safety inspection | Prior to operations phase | Independent audit report | SPV |
| 3 | Construction audit | IFC PS2, EBRD PR | Conduct independent audit for assessment of compliance of the construction site with IFC and EBRD relevant performance standards and requirements and the ESAP | Semi-annual | Independent audit report | SPV |
| 4 | Solid waste and waste water at construction stage | IFC PS3, EBRD PR3, National legislation and best practice | Obtain a confirmation letter from the Municipality in regards to disposal of solid waste, waste water from construction stage and confirmation in regards to existing capacity of the relevant municipality services.  Obtain necessary permit related with the disposal of excavated soil | 30 days Prior to Operations | Correspondence with the authorities  Proof documentation for permits and licenses  Permit for disposal of excavated soil |  |

1. **Operational Phase**

| Number | Subject | Legal Framework (National, Lenders Requirement, Best Practice | Action | Timetable | Completion Indıcator | Responsibility |
| --- | --- | --- | --- | --- | --- | --- |
| 1 | Commissioning | IFC PS1 | All relevant commissioning tests have been carried out successfully. | 30 days prior to operations | Obtain all necessary approvals for the commencement of the Hospital. | SPV |
| 2 | GHS emissions | IFC PS3 | Report on greenhouse gas emissions during the operation of the project | Within a year of operations and reported annually |  | O&M contractor |
| 3 | Operational Contractor Compliance | EBRD PR1 & PR2 IFC PS1 & PS2 | Include clauses in contracts with operational contractors requiring compliance with Project HR Policy, ESMP, ESAP, EHS and other Plans linked to ESMP | 30 days prior to operational phase | Review of the updated contract with operational contractors requirements by the LTA to ensure that it contains appropriate clauses that require the contractors and sub-contractors to comply with the EHS requirements to manage the environmental and social risk and adhere to mitigation measures and actions identified and set out in the ESMP and ESIA. | SPV |
| 4 | Medical facility accreditation | OPIC  IFH EHS Guidelines for Health Care Facilities | Coordinate with the MoH. Achieve/maintain Joint Commission International (JCA) accreditation for the life of the loan | As soon as possible but no later than 18 months following commencement of hospital operations | JCI accreditation | SPV |
| 5 | Provide operational Environmental and Social Management System | IFC PS1/PS3/, EBRD PR1/PR3, Best practice | Update the mitigation measures in accordance with the EBRD Environmental and Social Standards and IFC EHS Guidelines in relation to wastewater, waste, air, noise and vibration, medical and radioactive waste, and hazardous waste.  Establish and maintain an organizational structure with personnel having knowledge, skills, and experience necessary to manage the ESMS and Project ESHS issues.  Train the designated personnel for environmental and social issues and implementation of below mentioned plans.  Update ESMPs to reflect operational phase of the Project, including:  1. Stakeholder Engagement Plan (including grievance mechanism for the general public/stakeholder)  2. Employee Grievance mechanism  3. Contractors Management Plan  4. Hazardous Material Management Plan  5. Waste Management Plan  6. HWMS in line with the waste management practices given in the IFC Guidelines for Health Care Facilities  7. Air Quality, Noise and Vibration Management Plan  8. Traffic Management Plan  9. Archaeological Chance Find Procedure  10. Human Resources Management Plan (including worker code of conduct)  11. Emergency Preparedness and Response Plan  12. Spill Response Plan  13. Security Plan  14. Occupational Health and Safety Plan  15. Subcontractor Management and Monitoring Plan  16. Sustainable procurement policy  17. Community Health and Safety Management Plan  Carry out relevant monitoring under ESMS | 30 days prior to operational phase | ESMPs updated for operational stage  Appointed Environmental and Social Manager/Team  Audit, measurement and training records | SPV |
| 6 | Radioactive materials | IFC PS1/PS3, EBRD PR1/PR3, Best practice | Develop a Radioactive Management Plan | 30 days Prior to operation | Radioactive Management Plan | SPV |
| 7 | Infection | IFC PS4, EBRD PS4 | Develop and implement an Infection Control Plan for hospital | 30 days prior to operational phase | Infectious Disease Control Plan | SPV |
| 8 | Human Resources | IFC PS2, EBRD PS2 | Develop and implement HR Policy and Management Plan in line with IFC PS2/EBRD PR2 and ensure all workers are aware of its content. | 30 days prior to commencement of operations. | 1. HR Policy 2. HR Management Plan 3. Employee/Worker contracts 4. Procedure for HR coordination among service providers | O&M Contractor |
| 9 | Contractor monitoring and management | IFC PS2, EBRD PS2 | Develop appropriate internal labor monitoring and compliance policy and procedures that specifically address due diligence and monitoring, to include:   * Identification and description of individuals responsible * Frequency of Monitoring * Monitoring checklist/questionnaire that incorporates labor laws, regulations and requirements (including OPIC’s Worker Rights Requirements) * List of labor policies and procedures that will be reviewed * Program to interview direct, contracted and sub-contracted employees * Guidelines for identifying non-compliance indicators “on the ground” * Template for regular monitoring reports that will be submitted to management * Template for corrective/remediation action plan for cases of non-compliance. | 30 days prior to commencement of operations. | Subcontractor Management and Monitoring Plan | 0&M Contractor |
| 10 | Security | IFC PS4, EBRD PS4, the International Code of Conduct for Private Security Providers, ANSI/ASIS PSC 1, and the Voluntary Principles on Security and Human Rights. | Develop and implement Security Management Plan and Assessment of Project security risks for the operational phase to include:   * Coordination with MoH to ensure that security personnel will act in a manner consistent with the applicable legal framework. * Procedures to screen and hire trained security staff not implicated in past abuses. | 90 days prior to commencement of operations. | Security Risk Assessment  Security Management Plan | O&M Contractor |

1. Environmental and Social Annual Monitoring Report Template

[•]

**ENVIRONMENTAL AND SOCIAL PERFORMANCE**

**ANNUAL MONITORING REPORT (AMR)**

**Reporting Period**: (**month/year**) through (**month/year**)

**AMR Completion Date**: (**day/month/year**)

* + 1. Introduction

The Common Terms Agreement dated \_\_\_\_\_\_\_\_\_\_ for the **KOCAELİ INTEGRATED HEALTH CAMPUS PPP PROJECT** requires **KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ** (the ***Borrower***) to prepare a comprehensive Annual Monitoring Report (***AMR***) on the environmental and social (***E&S***) performance of its facilities and operations. The following template may be supplemented with annexes as appropriate to ensure all relevant information on project performance is reported.

Contents:

Project Information

Client’s Representation Statement by Sponsor authorised representative

Summary of Key E&S Aspects during the Reporting Period

Action Plan Status and Update

Developmental Outcome (DOTs) Indicators

Deviations/non compliances

Client’s Feedback

* + 1. Client’s Representation Statement by Authorised Representative

I, [*Name*] in my role of position and representing KOCAELİ HASTANE YATIRIM VE SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ certify that:

The Project is in compliance with all applicable E&S Requirements as described in the Common Terms Agreement and all actions required to be undertaken pursuant to the Environmental and Social Action Plan (***ESAP***) and any subsequent supplemental action plans.

In relation to the Project there are no:

circumstances or occurrences that have given or would give rise to violations of E&S and labor Laws or E &S and labor claims;

social unrest, local population disruption or negative NGO campaigns or activities against the project;

material social or environmental risks or issues in relation to the Project other than those identified by the E&S Assessment and the Environmental and Social Review Summary;

to the best of the Borrower’s knowledge existing or threatened complaints, orders, directives, claims, citations or notices from any Authority due to E&S issues;

any written communication from any person, concerning the Project’s failure to comply with any matter covered by the Performance Standards; (and/or)

to the best of the Borrower’s knowledge ongoing or threatened strikes, slowdowns or work stoppages by employees of the Borrower or any contractor or subcontractor with respect to the Project.

All information contained in this AMR is true, complete and accurate in all respects at the time of submission and no such document or material omitted any information the omission of which would have made such document or material misleading.

There have not been any new company activities (e.g. expansions, construction works, etc) that could generate adverse environmental impacts, and there have been no new ESA studies, audits, or E&S action plans conducted by or on behalf of [•], with respect to any Environmental or Social standards/regulation/ applicable to the Project that the Intercreditor Agent has not been notified of.

[•]

Signature:

Date:

* + 1. Summary of Key E&S Aspects during the Reporting Period

This section aims to identify the key E&S progress/activities/incidents during the Reporting period (include key issues for the Reporting Period e.g. non compliances, significant incidents[[23]](#footnote-23), social unrest, significant improvements/initiatives regarding E&S performance, etc.).

* + - * 1. **Project Status**

Select the current status of the project and provide a brief description of the developments in relation to the project over the reporting period. For example, has construction been started or completed, has new equipment been installed, has production capacity increased, or is the investment in new projects considered?

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Design | Construction | Expansion | Operation | Closure | Other (specify) |

* + - * 1. **IFC’s Performance Standards Implementation and EBRD's Performance Requirements**

PS1: Assessment and Management of Environmental and Social Risks and Impacts:

PR1: Assessment and Management of Environmental and Social Impacts and Issues:

Please provide details on the status of the following **voluntary** Management systems certification schemes at your facility, provide details below?

|  | **Not being considered** | **Future consideration** | **Planning to implement** | **Currently implementing** | **Successfully implemented** | **Date of certification/ re‑certification** |
| --- | --- | --- | --- | --- | --- | --- |
| ISO 9001 – Quality |  |  |  |  |  |  |
| ISO 14001 – Environment |  |  |  |  |  |  |
| OHSAS 18001 – OHS |  |  |  |  |  |  |
| Other |  |  |  |  |  |  |

Describe any changes in the organizational structure to manage environment, health and safety, labor and social aspects during the reporting period. Describe number of personnel in charge of E&S issues.

Describe any changes in the organizational structure to manage environment, health and safety, labor and social aspects during the reporting period. Describe number of personnel in charge of E&S issues.

Describe the level of environmental, social and health and safety training provided to staff. Provide annex with list of topics, hours of training and number of participants.

During the reporting period, are you aware of any events that may have caused damage; brought about injuries or fatalities or other health problems; attracted the attention of outside parties; affected project labor or adjacent populations; affected cultural property; or created liabilities for your company?

|  |  |
| --- | --- |
| Yes | No |

Provide details

Describe any ongoing public consultation and disclosure, liaison with non-governmental organizations (***NGOs***), civil society, local communities or public relations efforts on environmental and social aspects.

Briefly describe new initiatives implemented during the reporting period or additional managerial efforts on E&S aspects (e.g. Energy/water savings, sustainability report, waste minimization, etc.)

Briefly describe the number and type of comments and/or grievances received by the Company in relation to E&S Issues? How many have been resolved and how many are pending? (Please attach a table with grievance redress registry).

PS2. Labor and Working Conditions

PR2: Labour and Working Conditions:

Have you changed your Human Resources (***HR***) policies, procedures or working conditions during the reporting period?

|  |  |  |
| --- | --- | --- |
| Yes | No | Provide details |

Provide the following information regarding your workforce (Note: during the operation of the hospital list up the employees under the Operation Company):

| **# of direct employees** | **# female direct employees** | **# employees terminated** | **# employees hired** | **# Contractor employees[[24]](#footnote-24)** |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

* + - * 1. **Occupational Health and Safety**

Describe the main changes implemented in terms of Occupational Health and Safety (***OHS***) during the reporting period, e.g. identification of hazards, substitution of chemicals, new controls, etc.

Please fill in the tables below and if available, please compare to national industry applicable average. As applicable, please also provide the data for the previous two years (e.g. 2012, 2013) to assess any trends. (During the hospital operation, No. of employees refers to employees under the Operational Company).

| **Report Total numbers for each parameter** | **This reporting period** | | **Reporting period – Previous year** | |
| --- | --- | --- | --- | --- |
| **Direct employees** | **Contractor employees** | **Direct employees** | **Contractor employees** |
| Number of employees |  |  |  |  |
| Total man‑hours worked |  |  |  |  |
| Number of fatalities |  |  |  |  |
| Number of LTAs• |  |  |  |  |
| LTA Frequency Rate (No. of LTAs/million working hours) |  |  |  |  |
| Total number of lost workdays |  |  |  |  |
| Severity Rate (No. of lost days/million working hours) |  |  |  |  |
| Number of new occupational disease cases |  |  |  |  |
| Number of Vehicle collisions resulting in injuries |  |  |  |  |

Provide details for the non-fatal injuries during this reporting period:

| **Company or contractor employee?** | **Total workdays lost** | **Description of injury** | **Cause of accident** | **Corrective measures to prevent reoccurrence** |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

Describe in detail fatalities and vehicle accidents, including corrective measures (provide copies of OHS investigation and respective corrective plan).

**Life and Fire Safety**

Please complete the following table for each location. Multiply tables as necessary.

| **Fire Safety Verification Activities** | **Mandatory Frequency** | **Date(s) Performed** | **Observed Deficiencies** | **Corrective Actions and Schedule For Implementation** |
| --- | --- | --- | --- | --- |
| Fire Drills | Minimum: three/year |  |  |  |
| Inspect and certify fire detection and suppression electrical and mechanical systems. | Minimum: one/year |  |  |  |
| Inspect, refill/recharge portable fire extinguishers | Minimum: two inspections/ year |  |  |  |

PS3. Resource Efficiency and Pollution Prevention

PR3: Resource Efficiency and Pollution Prevention and Control

Provide the following environmental monitoring data for this reporting period. If you already have all the data requested available in another format, this can be submitted instead. Please provide precise locations of all monitoring points.

**Effluents Levels for Health Care Facilities**

Complete the table below to provide quantitative data on [•] Health Effluents Levels. Please provide Turkey’s Adjective maximum levels in Turkey’s Adjective units in the table below.

How many monitoring point for effluents for health care waste will [•] Health has? [•]

| **Effluents Levels : Monitoring Point Location1** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| **Pollutants** | **WBG/IFC/EU Maximum Levels (WBG/IFC Units)** | | **[•] Health Performance (WBG/IFC/EU Units)** | | **Country of Investment Adjective Maximum Levels (Country of Investment Adjective Units)2** | **[•] Health Performance (Country of Investment Adjective Units)2** |
| pH 6 | 6‑9 | S.U |  | S.U |  |  |
| Biochemical oxygen demand (BOD5) | 50 | mg/l |  | mg/l |  |  |
| Chemical oxygen demand COD | 250 | mg/l |  | mg/l |  |  |
| Oil and Grease | 10 | mg/l |  | mg/l |  |  |
| Total Suspended Solid(TSS) | 50 | mg/l |  | mg/l |  |  |
| Cadmium(cd) | 0.05 | mg/l |  | mg/l |  |  |
| Chromium(Cr) | 0.5 | mg/l |  | mg/l |  |  |
| Lead(Pb) | 0.1 | mg/l |  | mg/l |  |  |
| Mercury (Hg) | 0.01 | mg/l |  | mg/l |  |  |
| Chlorine, total residual | 0.2 | mg/l |  | mg/l |  |  |
| Phenols | 0.5 | mg/l |  | mg/l |  |  |
| Total coliform bacteria | 400 | MPNa/ 100ml |  | MPNa/ 100ml |  |  |
| Polychlorinated dibenzodioxin and dibenzofuran (PCDD/F) | 0.1 | Ng/L |  | Ng/L |  |  |
| Temperature increase | <3b | 0c |  | 0c |  |  |

\_\_\_\_\_\_\_\_\_\_\_\_

Notes:

a MPN = Most Probable Number

b At the edge of a scientifically established mixing zone which takes into account ambient water quality, receiving water use, potential receptors and assimilative capacity

1 Provide a scaled facility map showing the precise location of all discharges from health care waste facilities.

2 Report country standards only if the host country regulations/standards are more stringent than World Bank Group EHS guidelines. Projects are expected to achieve whichever that is more stringent.

**Non Hazardous Waste Management**

Please provide information on the methods of collection and disposal of solid and hazardous waste. Please add rows if needed.

| **Waste Type** | **Annual Quantity Generated(1)** | **Method of Storage, Handling and/or Treatment** | **Disposal or Discharge Method** |
| --- | --- | --- | --- |
| Excavation waste |  |  |  |
| Waste plastic |  |  |  |
| Waste metal |  |  |  |
| Domestic waste |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Hazardous Waste Management**

Please provide information on the methods of collection and disposal of solid and hazardous waste and report the measurement result for each reporting period to the Lenders. Please add rows if needed.

| **Waste Type** | **Annual Quantity Generated(1)** | **Method of Storage, Handling and/or Treatment** | **Disposal or Discharge Method** |
| --- | --- | --- | --- |
| Waste Oil |  |  |  |
| Waste fuel |  |  |  |
| Waste chemical containers (such as paint) |  |  |  |
| Medical Waste |  |  |  |
|  |  |  |  |
|  |  |  |  |

Please describe works undertaken, if any, for waste minimization for the reporting period.

**Hazardous Materials Management**

Please provide information on the methods of collection, storage and disposal of hazardous materials.

| **Hazardous Material** | **Hazard Class** | **Annual Quantity** | **Maximum Quantity Stored on Site** |
| --- | --- | --- | --- |
| Radioactive wastes |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

Hazardous Material Substitution

Please report works undertaken, if any, to minimize handling of hazardous materials.

**Noise Level**

Complete the table below to provide quantitative data on [•] Health Project Noise levels. Please provide maximum levels in Turkish E&S legislation units in the table below. Please add rows for additional construction sites.

How many monitoring points for Noise Sources ast [•] Health Project have? [•]

| **Noise Level: Monitoring Point Location** | | | | | |
| --- | --- | --- | --- | --- | --- |
| **Receptors** | | **WBG/IFC Maximum Levels (WBG/IFC Units)** | **[•] Health Performance (WBG/IFC Units)** | **Maximum Levels in Turkish E&S Legislation (Adjective Units)2** | **[•] Health Performance (Units)** |
|  | **One Hour Laeq (dBA)** |  |
|  | Daytime 07:00‑22:00 | 55 dBA | dBA |  |  |
|  | Night time 22:00‑07‑00 | 45 dBA | dBA |  |  |

Acceptable Effective Dose Limits for Workplace Radiological Hazards

Complete the table below to provide quantitative data on [•] Health workplace radiation exposure levels. Please provide Turkey’s maximum levels in Turkey’s Adjective units in the table below.

How many monitoring points for radiation emission/hazards will [•] Health Project has? [•]

| **Workplace Radiation Exposure Levels: Monitoring Point Location1** | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Exposure type** | **Workers** | **WBG/IFC Maximum Levels (WBG/IFC Units)** | | **Project Name Performance (WBG/IFC Units)** | | **Turkey’s Adjective Maximum Levels (Country of Investment Adjective Units)2** | **[•] Health Performance (Country of Investment Adjective Units)2** |
| Five consecutive year average | Workers (min.19 years of age) | 20 | mSv/year |  | mSv/year |  |  |
| Apprentices and students (16‑18 years of age) | ‑ | mSv/year |  | mSv/year |  |  |
| Single year exposure – effective dose | Workers (min.19 years of age) | 50 | mSv/year |  | mSv/year |  |  |
| Apprentices and students (16‑18 years of age) | 6 | mSv/year |  | mSv/year |  |  |
| Equivalent dose to the lens of the eye | Workers (min.19 years of age) | 150 | mSv/year |  | mSv/year |  |  |
| Apprentices and students (16‑18 years of age) | 50 | mSv/year |  | mSv/year |  |  |
| Equivalent dose to the extremities (hands, feet) or the skin | Workers (min.19 years of age) | 500 | mSv/year |  | mSv/year |  |  |
| Apprentices and students (16‑18 years of age) | 150 | mSv/year |  | mSv/year |  |  |

\_\_\_\_\_\_\_\_\_\_\_

1 Provide a scaled facility map showing the precise location of radiations hazard points.

2 Report country standards only if the host country regulations/standards are more stringent than the World Bank Group EHS guidelines. Projects are expected to achieve whichever that is more stringent.

**Air Emissions and Ambient Air Quality:**

Please describe the combustion facilities including the combustion technology, capacity and the fuel type. Please provide air emission monitoring reports while submitting the AMR, if available.

Please replicate the below table for each applicable combustion unit

| **Combustion Technology/Fuel** | | **WBG/IFC Maximum**  **Levels**  **(WBG/IFC Units)** | **Project Name Performance**  **(WBG/IFC Units)** | **Country of Investment Adjective Maximum Levels**  **(Country of Investment Adjective Units)2** | | **Project Name Performance (Country of Investment Adjective Units)2** | |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Engine** | | | | | | | |
|  | Nitrogen Oxides (NOx) | 200 (Spark Ignition)  400 (Dual Fuel) | ug/m3 |  |  |  |  |
| Dry Gas, Excess O2 content (%) | 15 |  |  |  |  |  |
| **Boilers** | | | | | | | |
|  | Nitrogen Oxides (NOx) | 320 mg/Nm3 | mg/Nm3 |  |  |  |  |
| Dry Gas, Excess O2 content (%) | 3 |  |  |  |  |  |

Ambient air quality:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Monitored ambient NO2 air quality levels (actual)** | | **Predicted ambient NO2 air quality levels (predicted)** | | **Turkish ambient NO2 air quality standards** | |
| Averaging time | 24-hour, | Annual Ave. | 24-hour, | Annual Ave. | 24-hour, | Annual Ave. |
| Unit | ug/m3 | | | | | |
| Point A |  |  |  |  |  |  |
| Point B |  |  |
| Point C |  |  |
| Point D |  |  |
| Point E |  |  |
| ------- |  |  |

Note: Please attach the summary information about the ambient NO2 air quality monitoring program used by the Company (e.g. methodology, equipment, frequency, map showing sampling point).

Utility Consumption, Energy Efficiency and Greenhouse Gas Emissions Data

Table 1. Utility Consumption

| **Annual Utility Consumption** | | | |
| --- | --- | --- | --- |
| **Natural Gas (cubic meters and GJ)** | **Other Fuels (Please specify if any) (tons and GJ)** | **Electricity (MWh)** | **Water (m3)** |
|  |  |  |  |
|  |  |  |  |

Table 2. Greenhouse Gas Emissions Estimation – Please provide the calculations performed to quantify CO2 emissions as an attachment.

Greenhouse Gas Emissions Estimation – Please provide the calculations performed to quantify CO2 emissions as an attachment.

Site:

| **Indicator** | **Annual Quantity** | **Units** |
| --- | --- | --- |
| CO2‑eq Emission |  | Tons CO2/year |
| Total Production |  | Tons |
| CO2 Emission Intensity |  | Kg CO2/ton product |

Total Company/Country:

| **Indicator** | **Annual Quantity** | **Units** |
| --- | --- | --- |
| CO2‑eq Emission |  | Tons CO2/year |
| Total Production |  | Tons |
| CO2 Emission Intensity |  | Kg CO2/ton product |

Please provide details about energy and water efficiency plans, programs and the progress made for the reporting period.

Please provide information on the status of wastewater treatment plant to be constructed.

Please provide information on the status of official permit from Municipality of wastewater generated at Kocaeli Health to be discharged to sewer system.

PS4 – Community Health, Safety and Security

PR4 – Health and Safety:

Using the table below list and briefly describe any new initiatives implemented in relation to community health and safety during the reporting period. Include risk assessments, new infrastructure and equipment; hazardous materials and safety management and transportation.

| **Mitigation Measure** | **Expected or actual date of Implementation** | **Planned future mitigation efforts?** |
| --- | --- | --- |
|  |  |  |
|  |  |  |

During the reporting period any emergency drills have been conducted with community participation? Are the communities aware of the emergency response plans?

Please describe any changes in the Borrower’s engagement with private/public security forces during the reporting period and any corresponding agreements.

* + 1. Action Plan Status and Update

Please provide a summary of the implementation status of the ESAP titled *[•] Integrated Health Campus Project Environmental and Social Action Plan (ESAP), [•]*. Please refer to the initial ESAP for the indicators and deliverables and define the dates when pending actions will be implemented.

* + 1. Development Outcome Tracking (DOTs) Indicators

| **Environmental and Social Indicators** | | | | |
| --- | --- | --- | --- | --- |
| **Indicator** | **Units** | **Value Previous CY** | **Value Current CY** | **Observations/Comments** |
| **Energy Consumption per unit** | | | | |
| Annual Energy Consumption | kWh |  |  |  |
| Annual Fuel Consumption (Specify the type of fuel) | GJ |  |  |  |
| Annual Energy Production | tons |  |  |  |
| **Water Consumption per unit** | | | | |
| Annual Water Consumption | m3 |  |  |  |
| Annual Production | tons |  |  |  |
| OHS Frequency | | | | |
| Lost time injuries per million man hours worked |  |  |  |  |
| Greenhouse Gas Emissions | | | | |
| CO2 Equivalent Emissions | tons |  |  |  |

| **Environmental and Social Indicators** | | | | |
| --- | --- | --- | --- | --- |
| **Indicator** | **Units** | **Value Previous CY** | **Value Current CY** | **Observations/Comments** |
| **Tax paid**  All transfers to the government made by client company should be included. Typically this includes payments to the government in the form of income or profit taxes, sales and excise taxes, and VAT receipts. Other payments collected by the government include royalties, bonuses, dividends, mgmt / concession fees, value of profit oil and production-sharing. | TRYm |  |  |  |
| **Wages paid**  Wage bill is the total amount of money that a company or organization pays to its employees. | TRYm |  |  |  |
| **Direct employment**  Number of Employees at the Project Company |  |  |  |  |
| **Direct female employment**  Number of Female employees at the Project Company |  |  |  |  |
| **Indirect employment**  Permanent jobs at the direct suppliers that can be attributed to the activities of the company being financed |  |  |  |  |
| **Indirect female employment**  Permanent jobs occupied by females at the direct suppliers that can be attributed to the activities of the company being financed |  |  |  |  |
| **Number of inpatients**  Total annual number of inpatients consultation |  |  |  |  |
| **Number of outpatients**  Total annual number of outpatients consultation |  |  |  |  |
| **Number of emergency patients**  Total annual number of emergency consultation |  |  |  |  |

* + 1. Deviation/Non Compliance

The following are the deviation/non compliances identified during this reporting period in reference to the following:

IFC’s Performance Standards;

EBRD's Performance Requirements;

OPIC Environmental and Social Policy Statement;

Environmental and Social Action Plan;

Non-compliance with local environmental and Social regulations;

Applicable EHS Guidelines; and

Equator Principles.

If there was any non-compliance/deviation during the reporting period please record and provide additional information if necessary. Please explain the cause and, if appropriate, describe the planned corrective actions to prevent re occurrence.

| **Areas of Interests** | **Non‑Compliances Identified** | **Corrective Action Plan** | **Status of Completion** | **Completion Date** |
| --- | --- | --- | --- | --- |
| EBRD's Performance Requirements (PR1-10) |  |  |  |  |
| IFC’s Performance Standards (PS1‑8) |  |  |  |  |
| Environmental and Social Action Plan |  |  |  |  |
| Local environmental and Social regulations |  |  |  |  |
| Applicable EHS Guidelines |  |  |  |  |

1. Net Present Value

where:

***t*** is the first Calculation Period starting on the Calculation Date

***T*** is the last Calculation Period ending on the Final Maturity Date

***NCF(n)*** is the Net Cash Flow projected to be received during the time period ***n***

***WACD(k)*** is the weighted average cost of debt during period ***k***, calculated as

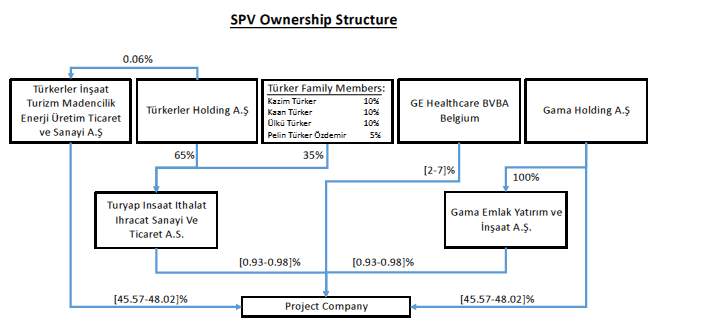


where

***I*** is the cumulative interest payable during period k

***B*** is the balance of the Senior Loans outstanding as at the first day of period k

1. Corporate Structure Chart



1. Maximum Drawdown Profile

*[to be inserted by the Financial Close Agreement]*

1. Legal Reservations
   * 1. Turkish law
        + 1. The term “enforceable” as used in this Agreement or as it relates to the Finance Documents means that the obligations assumed by the relevant party under the relevant document are of a type which the Turkish courts normally enforce. It does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms. In particular:

enforcement may be limited by bankruptcy, execution proceedings, insolvency, liquidation, debt restructuring (*konkordato*), deferment of bankruptcy proceedings (*iflasın ertelenmesi*) and other laws of general application relating to or affecting the rights of creditors;

enforcement may be limited by general principles of good faith, reasonableness, or public policy rules;

enforcement of an agreement may be limited by remedies available before Turkish courts;

where obligations are to be performed in a jurisdiction outside the Republic of Turkey, they may not be enforceable in Turkey to the extent their performance would be illegal under the laws of that jurisdiction;

enforcement may be limited by remedies such as statute of limitation or taking concurrent proceedings in different jurisdictions; and

where a judgment is obtained from a foreign court/arbitral tribunal, the enforcement of such judgment may be limited by the Turkish law provisions regarding the recognition and enforcement of foreign judgments.

* + - * 1. Under the Turkish International Private and Procedural Law (Law No. 5718), a judgment of a court established in a country other than Turkey may not be enforced in the Turkish courts unless:

such judgment has become final in accordance with the laws of the country in which the court rendering the judgment is established;

there is in effect a treaty between the country in question and Turkey providing for the reciprocal enforcement of judgments,

there is *de facto* reciprocity in the field of enforcement of judgments;

in connection with the rendering of such judgment, the person against whom enforcement is sought does not raise objections in the Turkish courts to the effect that he was not duly summoned to or represented before the courts of England or that the judgment was rendered in his absence in violation of the laws of England;

the judgment is not incompatible with a judgment of a court in the Republic between the same parties and relating to the same issues or, as the case may be, with an earlier foreign judgment on the same issue and enforceable in the Republic;

in order to ensure the enforceability or admissibility into evidence of the Agreement at the time of the institution of any action or proceeding in Turkey, it will be necessary to:

produce a translation thereof (certified by a Turkish notary public or Consul General of Turkey) into the Turkish language;

pay statutory court fees and applicable statutory charges and the stamp taxes;

pay lawyers’ fees in accordance with the most recent tariff in force at the time of judgment as published in the Official Gazette, together with other court expenses; and

deposit, at the court’s discretion, security for costs (“cautio judicatum solvi”), provided however, that the court may in its discretion waive such requirement for security in the event that the plaintiff is considered to be:

a national of one of the contracting states of the Hague Convention; or

a national of a state that has signed a bilateral treaty with Turkey, which has been duly ratified, containing inter alia a waiver of the cautio judicatum solvi requirement on a reciprocal basis.

* + 1. English law
       - 1. Equitable remedies may be granted or refused at the discretion of a court.
         2. Laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors.
         3. Claims can become time-barred under the Limitation Acts.
         4. An undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void.
         5. Defences of set-off or counterclaim.

**SIGNATURE PAGE**

**Borrower**

**EXECUTED** for and on behalf of

**KOCAELİ HASTANE YATIRIM VE** )

**SAĞLIK HİZMETLERİ ANONİM ŞİRKETİ** )

a company constituted in Turkey, )

by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

being persons who, in accordance with the laws of )

that territory, are duly authorised to act on behalf of )

the company )

**SIGNATURE PAGE**

**FI Arrangers**

**EXECUTED** for and on behalf of )  
**EXPORT DEVELOPMENT** ) **CANADA** )  
by )   
and )

**EXECUTED** for and on behalf of )  
**EUROPEAN BANK FOR**  ) **RECONSTRUCTION AND** )  
**DEVELOPMENT** )  
by )

**EXECUTED** for and on behalf of )  
**OVERSEAS PRIVATE INVESTMENT** ) **CORPORATION** )  
by )

**SIGNATURE PAGE**

**Original Senior Lenders**

**EXECUTED** for and on behalf of )  
**EXPORT DEVELOPMENT** ) **CANADA** )  
by )   
and )

**EXECUTED** for and on behalf of )  
**EUROPEAN BANK FOR**  ) **RECONSTRUCTION AND** )  
**DEVELOPMENT** )  
by )

**EXECUTED** for and on behalf of )  
**OVERSEAS PRIVATE INVESTMENT** ) **CORPORATION** )  
by )

**SIGNATURE PAGE**

**Intercreditor Agent**

**EXECUTED** for and on behalf of )  
**UNICREDIT BANK AG,** )  
a company constituted in Germany, )  
by )

and )  
being persons who, in accordance with the )  
laws of that territory, are duly authorised )  
to act on behalf of the company )

**Security Agent**

**EXECUTED** for and on behalf of )  
**UNICREDIT BANK AG,** )  
a company constituted in Germany, )  
by )

and )  
being persons who, in accordance with the )  
laws of that territory, are duly authorised )  
to act on behalf of the company )

1. Note to Borrower: To fill gaps. [↑](#footnote-ref-1)
2. Note to all: To be determined whether this concept is needed in light of the status of GE share transfer at the time of Kocaeli signing. [↑](#footnote-ref-2)
3. Note to all: To be determined whether this concept is needed in light of the status of GE share transfer at the time of Kocaeli signing. [↑](#footnote-ref-3)
4. Note to all: To be determined whether this concept is needed in light of the status of GE share transfer at the time of Kocaeli signing. [↑](#footnote-ref-4)
5. Clarification Note: If this statement cannot be made, the certificate should identify any Default that is outstanding and the steps, if any, being taken to remedy it. [↑](#footnote-ref-5)
6. Clarification Note: In case of a Compliance Certificate delivered in connection with Annual Financial Statements or Semi-Annual Financial Statements. [↑](#footnote-ref-6)
7. Clarification Note: To be kept in the joint EBRD and EDC Request. [↑](#footnote-ref-7)
8. Clarification Note: Right option to be picked at the time of serving of Request, depending on whether this is to OPIC only, or jointly to EBRD and EDC. [↑](#footnote-ref-8)
9. Clarification Note: To be deleted if Contingent Loan Facility is requested. [↑](#footnote-ref-9)
10. Clarification Note: To be deleted if Term Loan Facility is requested. [↑](#footnote-ref-10)
11. Clarification Note: The amounts for Term Loan included in the EBRD and EDC joint request to be *pro rata* with the amount for Term Loan under the earlier OPIC request. Borrower and Intercreditor Agent to confirm. [↑](#footnote-ref-11)
12. Clarification Note: To be included only in the OPIC Request. [↑](#footnote-ref-12)
13. Clarification Note: To be included only in the OPIC Request. [↑](#footnote-ref-13)
14. Clarification Note: To be included only in the EBRD and EDC Request. [↑](#footnote-ref-14)
15. Clarification Note: To be included only in the OPIC Request. [↑](#footnote-ref-15)
16. Clarification Note: To be included only in the OPIC Request. [↑](#footnote-ref-16)
17. Clarification Note: To be included only in the EBRD and EDC Request. [↑](#footnote-ref-17)
18. Clarification Note: Evidence of equity contribution to be in the form of a report from a sworn accountant. To be confirmed by the Sponsors. [↑](#footnote-ref-18)
19. Clarification Note: All non-USD payments should include the full IBAN number (International Bank Account Number). [↑](#footnote-ref-19)
20. Clarification Note: Name of Offshore Account Bank. [↑](#footnote-ref-20)
21. Clarification Note: All non-USD payments should include the full IBAN number (International Bank Account Number). [↑](#footnote-ref-21)
22. Note to all: BTY to confirm. [↑](#footnote-ref-22)
23. Clarification Note: Examples of significant incidents follow. Chemical and/or hydrocarbon materials spills; fire, explosion or unplanned releases, including during transportation; ecological damage/destruction; local population impact, complaint or protest; failure of emissions or effluent treatment; legal/administrative notice of violation; penalties, fines, or increase in pollution charges; negative media attention; chance cultural finds; labour unrest or disputes; local community concerns. [↑](#footnote-ref-23)
24. Clarification Note: Contractors performing core functions for the Company in the premises of the Company or in the name of the Company. [↑](#footnote-ref-24)