

**DATED:**\_\_\_\_\_

**[INSERT PROJECT COMPANY NAME]  
as the Borrower**

**and**

**[INSERT LENDERS NAMES]  
as the Lenders**

## **FINANCE TERM SHEET**

Common terms agreement for the senior secured financing of  
a solar PV project





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The common terms applicable to all Senior Debt Facility Agreements will be set forth in the Common Terms Agreement, and will include: (a) the purpose of each Senior Debt Facility Agreement; (b) the Availability Period; (c) the repayment and prepayment terms; (d) Tax provisions; (e) undertakings, representations and warranties; and (f) Events of Default. Certain of these key terms are described below.

Capitalised terms shall have the meaning given to them in the power purchase agreement entered into between the Buyer and the Borrower (the PPA) unless otherwise defined herein.<sup>1</sup>

Where applicable and unless otherwise stated below, the provisions of the Common Terms Agreement and all related Senior Debt Facility Agreements will be based on the Senior Multicurrency Term and Revolving Facilities Agreement for Leveraged Acquisition Finance Transactions produced by the Loan Market Association.

## PART 1 - KEY INFORMATION TABLE

Subject	Clause	Key Information
<b>Acceptable Credit Rating<sup>2</sup></b>	39	[means a long-term unsecured and non-credit enhanced debt rating of at least [●] by a Standard & Poor's Rating Services, [●] by Moody's Investor Services Limited or [●] by Fitch Ratings Ltd (or an equivalent rating agency acceptable to the Lender) from at least two (2) of the aforementioned rating agencies]. <sup>3</sup>
<b>Acceptable Credit Support</b>	10	Will comprise a corporate guarantee or letter of credit granted or procured by each Sponsor, or an Affiliate <sup>4</sup> of the Sponsor. <sup>5</sup>
<b>Affiliate</b>	37	[insert Affiliate definition].
<b>Affiliate Contracting Threshold</b>	37	[●].
<b>Availability Period</b>	12	[insert agreed period].
<b>Benefit of Sustainability Credits</b>	<b>Error! Reference source not found.(u)</b>	Buyer <sup>6</sup> .
<b>Business Day</b>	38(a)	[insert definition].

<sup>1</sup> **User Note:** This Term Sheet has been prepared on the assumption that it will be used as part of the IRENA-TWI Open Solar Contracts Templates and therefore the terms of the PPA and other project agreements are well defined. To the extent that the IRENA-TWI Open Solar Contracts Templates are not used or are used but in an amended form, the Term Sheet and Finance Agreements will need to be revised accordingly. Where this Term Sheet is used in the context of a merchant project, references to the PPA (and defined terms therein) may need to instead make reference to the applicable grid code or equivalent.

<sup>2</sup> **User Note:** The term is also used in the definition of Permitted Investment.

<sup>3</sup> **User Note:** The definition to be considered on a project specific basis.

<sup>4</sup> **User Note:** Affiliate shall have the meaning given in the Key Information Table.

<sup>5</sup> **User Note:** Requirement for credit support in respect of unfunded Equity commitments to be negotiated on a deal by deal basis, depending on the credit strength of the Sponsors. Depending on Lender requirements, Sponsors may be required to provide a single LC as credit support, with liability for drawdowns to be agreed as between Sponsors.

<sup>6</sup> **User Note:** Unless otherwise agreed pursuant to Clause 9.4 of the PPA.

<b>Construction report reporting period</b>	<b>Error! Reference source not found.(f)</b>	<i>[weekly] [monthly] [quarterly].</i>
<b>Control</b>	20  35  38  Schedule 2	<i>[Insert definition]</i> <sup>7</sup> .
<b>Debt Service Coverage Ratio</b>	20  38	<i>[insert agreed ratio].</i>
<b>Debt Service Reserve Facility</b>	49	<i>[Applicable] [Not Applicable].</i>
<b>Direct Agreements</b>	22  25	In respect of:  (a) the PPA;  (b) the Implementation Agreement;  (c) the Grid Connection Agreement;  (d) the Supply Agreement;  (e) the Installation Agreement;  (f) the O&M Agreement;  (g) the Land Agreement or such other agreement securing the rights of the Borrower over the Site (if any);  (h) and such other Project Agreements as may be agreed by the Facility Agent and the Borrower.
<b>Dispute Resolution – Direct Agreements</b>	<b>Error! Reference source not found.(c)</b>	<i>[ICC arbitration in [insert seat of arbitration]<sup>8</sup>].</i>
<b>Dispute Resolution – Finance Agreements</b>	<b>Error! Reference source not found.44</b>	<i>[ICC arbitration in [insert seat of arbitration]<sup>9</sup> [non-exclusive jurisdiction of the courts of [insert jurisdiction]<sup>10</sup>]<sup>11</sup>.</i>

<sup>7</sup> **User Note:** Consider jurisdiction of incorporation of the Borrower and Shareholder(s).

<sup>8</sup> **User Note:** As per arbitration resolution clause of the Project Agreements, which must be replicated in the Finance Agreements.

<sup>9</sup> **User Note:** As per arbitration resolution clause of the Project Agreements, which must be replicated in the Finance Agreements.

<sup>10</sup> **User Note:** If elected, the choice of jurisdiction must coincide with the choice of governing Law.

<sup>11</sup> **User Note:** If the Project is located in a non-OECD countries, arbitration will typically be the preferred option.

<b>DSRA Funding Period</b>	27	<i>[insert period of months e.g. 6 or 12 months].</i>
<b>Final Maturity Date</b>	15	<i>[insert agreed date].</i>
<b>Financial Indebtedness</b>	37(d)	<p>[means any indebtedness for or in respect of:</p> <ul style="list-style-type: none"> <li>(a) moneys borrowed;</li> <li>(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;</li> <li>(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;</li> <li>(d) the amount of any liability in respect of any lease or hire purchase contract which would in accordance with [IFRS]<sup>12</sup>, be treated as a finance or capital lease;</li> <li>(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);</li> <li>(f) 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;</li> <li>(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and when calculating the value of any derivative transaction, only the marked to market value (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);</li> <li>(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and</li> <li>(i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.]</li> </ul>
<b>Governing Law of the Finance</b>	43	<i>[insert governing law].</i>

<sup>12</sup> **User Note:** Other accounting standards may be considered.

<b>Agreements</b>		
<b>Hedging Strategy</b>	46	[Applicable] [Not Applicable].
<b>[IFRS</b>	37 <sup>13</sup>	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.]
<b>Information Covenants – threshold amounts for reporting details of any damage or destruction to the Project assets or of any insurance claim</b>	35(d)	Damage or destruction to the Project assets - <i>[insert threshold amount in relevant currency]</i> .  Insurance claim - <i>[insert threshold amount in relevant currency]</i> .
<b>Initial Repayment Date</b>	16	Six [6] months after the Commercial Operation Date.
<b>Intercreditor Agreement</b>	47	[Applicable] [Not Applicable].
<b>Interest Period during the availability period of the Senior Debt</b>	17	[1/3/6] months.
<b>Interest Rate</b>	18	<i>[[Insert reference rate, if applicable] plus] [insert margin percentage in words] percent ([insert percentage in figures]%) [insert accrual period].</i>
<b>Legal Reservations<sup>14</sup></b>	(c), 33(o). 33(w), 36(c), 36(d)	<p>(a) [the principle that equitable remedies may be granted or refused at the discretion of a court;</p> <p>(b) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;</p> <p>(c) the time-barring of claims under applicable Law;</p> <p>(d) defences of set-off or counterclaim; and</p> <p>in relation to each of the above, similar principles, rights and defences under applicable Law.]</p>

<sup>13</sup> **User Note:** Used in the definition of Financial Indebtedness.

<sup>14</sup> **User Note:** The definition to be considered on a project specific basis.

<b>Lenders</b>	6	Commercial Banks - [YES][NO] ECAs - [YES][NO].  Multilateral agencies - [YES][NO].  [Shareholder senior loans - [YES][NO].  [specify any others].
<b>Lenders' Performance Standards</b>	36(g)	[insert any applicable international performance standards e.g. the Equator Principles and/or the IFC Performance Standards] <sup>15</sup> .
<b>Maintenance Reserve Account – required minimum balance</b>	45	[insert amount in relevant currency].
<b>Mandatory prepayment for insurance proceeds – threshold amount of proceeds of claims under physical loss or damage insurance policies for a single loss / related series of losses</b>	20	[insert amount in relevant currency].
<b>Mandatory prepayment for proceeds of sale or other disposal of assets – threshold amount of proceeds</b>	20	[insert amount in relevant currency].
<b>Monetary Materiality Threshold</b>	35(k)	[●].
<b>Operating report reporting period</b>	35(g)	[monthly] [quarterly] [annually].
<b>Permitted Indebtedness</b>	33(t) 37(d)	means any Financial Indebtedness: <sup>16</sup>  (a) arising under this Agreement;  (b) which is from third parties, provided that the aggregate amount of such Financial Indebtedness is no more than [●] at any time; or  (c) approved in writing by the Lenders.
<b>Permitted Investments</b>	25 26	(a) [certificates of deposit maturing within six (6) Months after the relevant date of calculation and issued by an Account Bank;  (b) any investment in marketable debt obligations, which have an Acceptable

<sup>15</sup> **User Note:** Compliance with any recognised industry performance standards relating to environmental, socio-economic and regulatory matters should be specified here (e.g. the Equator Principles and IFC Performance Standards). The Borrower (as Project Company) should pass down an equivalent undertaking to its contractors in the Supply, Installation and O&M Agreements.

<sup>16</sup> **User Note:** As such term is defined in the Key Information Table.

		<p>Credit Rating<sup>17</sup> and not convertible or exchangeable to any other security;</p> <p>(c) commercial paper not convertible or exchangeable to any other security:</p> <p>(i) for which a recognised trading market exists; and</p> <p>(ii) which has an Acceptable Credit Rating, or if no rating is available in respect of the commercial paper, the issuer of which has in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;</p> <p>(d) any investment in money market funds which (A) have an Acceptable Credit Rating; (B) which invest substantially all their assets in securities of the types described in paragraphs (c)(i) to (c)(ii) above; and (C) can be turned into cash on not more than thirty (30) days' notice;</p> <p>(e) any investment in liquid mutual funds which have an Acceptable Credit Rating, as defined in the Key Information Table; or</p> <p>(f) any other debt security approved by the Facility Agent in writing; and</p> <p>in each case, to which the Borrower is alone beneficially entitled at that time and which is not issued or guaranteed by the Borrower or subject to any Security Interest (other than arising under the Security Documents) and only to the extent that after making any such investments, the Borrower (in its reasonable determination) has sufficient liquidity in the Project Accounts to meet its financial obligations as they fall due for payment.]</p>
<b>Repayment Schedule</b>	16	[Semi-annual] [Quarterly].
<b>Senior Debt to Equity Ratio</b>	32(c)	[insert agreed ratio].
<b>Site</b>	<p>7(b)</p> <p>23(g)</p> <p>25(h)</p> <p>36</p>	[insert Site details].

<sup>17</sup> **User Note:** As such term is defined in the Key Information Table.

<b>Tenor</b>	14	<i>[insert agreed number]</i> years.
<b>Working Capital Facility</b>	48	[Applicable] [Not Applicable].

## PART 2 – GENERAL CONDITIONS

### Parties

1. **Borrower** A special purpose limited liability company incorporated under the Laws of the Relevant Jurisdiction.<sup>18</sup>
2. **Shareholders** The shareholders of the Borrower (the **Shareholders**) will be parties to an equity support agreement (the **Equity Support Agreement**) which will regulate certain matters with respect to the investment of the Shareholders in the Borrower (and in particular their obligations to make contributions to the capital of the Borrower and the credit support for those obligations).<sup>19</sup>  
  
[The Shareholders are:]  
  
[●]<sup>20</sup>.
3. **Sponsors** The sponsors will be the direct or indirect shareholders of the Borrower with primary strategic and/or technical responsibility for the Project (the **Sponsors**). The Sponsors may be Shareholders.  
  
[The Sponsors are:]  
  
[●]<sup>21</sup>.
4. **Senior Creditors** The Borrower may draw on one or more of the following sources of Senior Debt:<sup>22</sup>
  - (a) loans from export credit agency (**ECA**) lenders (including commercial banks who are lending under guarantee or cover from ECAs);
  - (b) multilateral agency lenders;<sup>23</sup>
  - (c) uncovered commercial bank lenders; or
  - (d) [senior loans provided by any of the Shareholders],which will be incurred under a common terms agreement (the **Common Terms Agreement**), the terms of which are described in this term sheet and individual facility agreements which will supplement the common terms (the **Senior Debt Facility Agreements**). In addition, the Borrower will be permitted subject to applicable conditions, to issue senior secured notes either directly or through an affiliated special purpose vehicle (**SPV**) issuer, which may be issued in an international capital markets transaction pursuant to

<sup>18</sup> **User Note:** Borrower name to be identified here if incorporated.

<sup>19</sup> **User Note:** The Sponsors may also need to be a party to the Equity Support Agreement. However, an Equity Support Agreement may not be required if Equity is paid in upfront. Please refer to User Note 33.

<sup>20</sup> **User Note:** Shareholders of the Borrower to be listed here if known.

<sup>21</sup> **User Note:** Sponsors of the Borrower to be listed here if known.

<sup>22</sup> **User Note:** Indicative list of possible senior creditors provided. Actual lenders to be listed here if known.

<sup>23</sup> **User Note:** If a multilateral agency facility is provided, additional policy terms specific to that multilateral will need to be added, including convertibility provisions, prepayment and suspension events, broader Tax gross up and increased cost indemnities than is currently set out in this term sheet, Environmental and Social, Anti-Money Laundering, and Anti-Bribery and Corruption provisions and full flexibility to transfer commitments or loans. Further, bilateral agency lenders may be considered.

an indenture (the **Senior Notes**).<sup>24</sup>

The loans under the Senior Debt Facility Agreements, together with the Senior Notes will constitute the **Senior Debt** and the creditors under and in respect of the Senior Debt Facility Agreements, the Senior Notes and any Senior Hedging Documents will be the **Senior Creditors**. All Senior Debt will rank *pari passu* in right of payment and will share equally and *pro rata* in the Project collateral and any proceeds of enforcement.

5. **Administrative Parties**<sup>25</sup>

A security agent acceptable to the initial Senior Creditors and the Borrower (the **Security Agent**) will be appointed <sup>26</sup>to hold, administer and enforce all of the Security Interests on behalf of all Senior Creditors.<sup>27</sup>

The Lenders under each Senior Debt Facility Agreement will appoint an agent to act on their behalf (each a **Facility Agent** and together with the Intercreditor Agent and the Security Agent, the **Administrative Parties**).

6. **Lenders**

Each Administrative Party and each Senior Creditor<sup>28</sup>.

**The Project and Overall Financing**

7. **Project**

The **Project** will comprise:

- (a) the development, financing, design, procurement, Construction, Commissioning, installation, testing, Operation, Maintenance, insurance, and decommissioning of the Facility in accordance with the Implementation Agreement and the PPA;
- (b) the use by the Borrower of the Site (as defined in the Key Information Table) and related easement facilities and adjoining land in accordance with and as defined in the land agreement entered or to be entered into between the Borrower and the Landowner<sup>29</sup> (**Land Agreement**) or such other agreement securing the Borrower's rights over the Site;<sup>30</sup>
- (c) the selling of Energy delivered by the Facility in accordance with the PPA<sup>31</sup>; and

all activities incidental to any of the foregoing in accordance with the

<sup>24</sup> **User Note:** This Term Sheet does not set out the terms for the senior notes, or the conditions that would apply to the issuance of any such senior notes. It is contemplated that the Borrower may issue payment bonds, itself, or incur debt via a proceeds loan made by an affiliated SPV issuer, subject to regulatory, Tax and other applicable considerations. It should be noted that this is separate to the ability of the Lenders to assign their loans under the Senior Debt Facility Agreements as part of a portfolio securitisation, as described in Clause 39 (*Transfers*).

<sup>25</sup> **User Note:** To the extent that this is a syndicated loan, the Facility Agent and Security Agent shall be a Mandated Lead Arranger and at all times a Lender.

<sup>26</sup> **User Note:** The Security Agent will be appointed pursuant to an Intercreditor Agreement, if Applicable has been identified in the Key Information Table.

<sup>27</sup> **User Note:** Although we have referred in this Term Sheet to the Security Agent, certain jurisdictions may require a separate onshore security agent (for local Law security), with an offshore security agent holding all other security interests. We note that a number of jurisdictions do not recognise the concept of a trust, and therefore have provided for a security agent, rather than a security trustee.

<sup>28</sup> **User Note:** In the event that an ECA is a Senior Creditor, certain additional requirements / restrictions will need to be considered (for example: the timing for the perfection of security and the requirement that the ECA Guarantee is a Security Document).

<sup>29</sup> **User Note:** Landowner to be defined in the Land Agreement.

<sup>30</sup> **User Note:** Land rights to the Site will be specific to the Relevant Jurisdiction and the Project. This clause will need to be amended to reflect the applicable land rights enjoyed by the Borrower and consequential amendments made to the Project Agreements.

<sup>31</sup> **User Note:** Where this Term Sheet is used in the context of a merchant project, references to the PPA (and defined terms therein) may need to instead make reference to the applicable grid code or equivalent.

PPA and the Implementation Agreement.

8. **Senior Debt Facilities** One or more USD / EUR / *[insert local currency if used]* senior term loan facilities (the **Senior Debt Term Loan Facilities**) and one or more revolving credit facilities (the **Senior Debt Revolving Credit Facilities** and together with the Senior Debt Term Loan Facilities, the **Senior Debt Facilities**).
9. **Equity** Each Shareholder shall have the option to make available its share of equity contributions by means of (a) funds provided to the Borrower in the form of subordinated shareholder advances to the Borrower and (b) subscriptions for shares in the Borrower<sup>32</sup> (together **Equity**).
- The ratio of the aggregate principal amount outstanding under the Senior Debt to the aggregate amount of the Equity contributions made by Shareholders (the **Debt to Equity Ratio**) must not at any time be more than the ratio stated in the Key Information Table.<sup>33</sup>
10. **Acceptable Credit Support** Acceptable Credit Support (as defined in the Key Information Table) will be provided by each Sponsor on a several basis in proportion to its shareholding in the Borrower or Shareholder in respect of any Equity commitment that is unfunded as at Financial Close.

#### Key Terms and Pricing – Term Loan Facilities

11. **Use of proceeds** The Borrower shall apply advances under any Senior Debt Term Loan Facility towards (a) either (or both) of (i) the payment or (ii) reimbursement of Project costs; (b) funding the DSRA and MRA (if applicable) up to the reserve amount(s) required at or prior to the Commercial Operation Date or Deemed Commercial Operation Date and for the purposes of this Term Sheet the **Commercial Operation Date**, if permitted under the terms of the relevant Senior Facility Agreement; (c) paying its Senior Debt Obligations (other than principal) in respect of the Senior Debt; and (d) the reimbursement of Equity that has been applied to meet Project costs, provided that the Debt to Equity Ratio is satisfied following such reimbursement.<sup>34</sup>
12. **Availability Period** Senior Debt Term Loan Facility will not be available until the date on which all the Finance Agreements have been signed and are in full force and effect and the conditions precedent specified in Clause 31 (*Conditions Precedent for Utilisation*) below have been satisfied or waived (**Financial Close**).
- Each Senior Debt Term Loan Facility will then be available subject to satisfaction of conditions precedent, to each utilisation described in Clause 32 (*Conditions Precedent for Utilisations*) below, from the date of Financial Close until the earliest to occur of (a) the date on which the aggregate commitments of the Senior Creditors under that Senior Debt Term Loan Facility are reduced to zero; (b) an agreed number of days after the Commercial Operation Date as set out in the Key Information Table; and (c) the Commercial Operation Longstop

<sup>32</sup> **User Note:** The parties may also agree to the inclusion of early generating revenues (EGRs) within the definition of Equity. Depending on the lender requirements in respect of Acceptable Credit Support, Sponsors may elect to retain EGRs in a reserve account for distribution at the Commercial Operation Date, subject to any MLA requirements.

<sup>33</sup> **User Note:** The Debt to Equity Ratio shall be based on the debt capacity of the Project as resulting from agreed coverage ratios and the Base Case Financial Model. This term sheet provides that the Shareholders will be required to fund Equity *pro rata* with Senior Debt drawdowns in accordance with the Debt to Equity Ratio, with credit for any Equity that is contributed prior to Financial Close. However, Lenders may require Shareholders to fund one hundred percent (100%) of Equity upfront depending on the credit strength of the Sponsors. Where equity bridge loans are used to fund Equity, these may be drawn first as a cheaper source of funding.

<sup>34</sup> **User Note:** The use of proceeds may need to be adapted if and to the extent that the Senior Debt proceeds are being applied to refinance an existing financing.

Date.<sup>35</sup>

- |     |                              |  |
|-----|------------------------------|--|
| 13. | <b>Pro Rata Utilisations</b> | All utilisations of Senior Debt will be made <i>pro rata</i> across all Senior Debt Term Loan Facilities, subject to certain agreed exceptions including with respect to tied ECA facilities and loans to fund financing costs.  |
| 14. | <b>Tenor</b>                 | The tenor of the Senior Debt shall be for the number of years from the Commercial Operation Date as set out in the Key Information Table.  |
| 15. | <b>Final Maturity Date</b>   | The final maturity date of the Senior Debt shall be the date set out in the Key Information Table.   |
| 16. | <b>Repayment Schedules</b>   | Principal and interest payments shall commence on the Initial Repayment Date as set out in the Key Information Table and shall be made periodically in accordance with the Repayment Schedule set out in the Key Information Table (each being a <b>Repayment Date</b> ). The scheduled repayments will be sculpted, based on the maintenance of a minimum DSCR on each Repayment Date (as defined in the Key Information Table) in accordance with a repayment schedule that will be prepared by the Borrower and agreed with the Senior Creditors. <sup>36</sup>   |
| 17. | <b>Interest Periods</b>      | During the Availability Period of the Senior Debt, the interest periods shall be the number of months set out in the Key Information Table and six (6) months thereafter.  |
| 18. | <b>Interest Rate</b>         | <p>Either (a) the aggregate of the applicable reference rate and a margin or (b) a fixed rate of interest with a period of accrual as specified in the Key Information Table.</p> <p>If the Borrower fails to make a payment when due and payable to the Senior Creditors on or before its due date, the Borrower shall pay an additional margin of [two percent (2%)] over and above the applicable interest rate that otherwise would be in effect on the full principal amount plus accrued interest outstanding at that time, for the period during which the payment is overdue.</p>  |
| 19. | <b>Fees</b>                  | As specified in the applicable Senior Debt Facility Agreement and separate fee letters dealing with agency arrangements to be entered into between the Borrower and the relevant Lenders.  |
| 20. | <b>Mandatory Prepayments</b> | <p>In addition to any specific mandatory prepayment requirements that may be required under the terms of the Senior Debt Facility Agreement, the Borrower will be required to make mandatory prepayments of the Senior Debt in certain circumstances, including where it becomes illegal for a Senior Creditor to continue its participation in the financing.</p> <p>Where there is a change of Control (as defined in the Key Information Table) of the Borrower that is not permitted by the Finance Agreements, a mandatory prepayment of all the participations of the Senior Creditors then outstanding except to the extent that a requisite majority of Senior Creditors agree to waive such requirement, will be required. Any Senior Creditor that does not consent to such waiver shall be entitled to a mandatory prepayment of its then outstanding</p> |

<sup>35</sup> **User Note:** If ECAs are participating in the Senior Debt Term Loan Facility, any availability period will need to comply with applicable OECD guidelines.

<sup>36</sup> **User Note:** If ECAs are participating in the Senior Debt Term Loan Facility, any repayment schedule will need to comply with applicable OECD guidelines.

participation.

In addition, the following amounts shall be applied in prepayment of the Senior Debt and to the extent necessary, to pay any termination amounts under the Senior Hedging Documents, if any, arising as a result of such prepayment of the Senior Debt:

- (a) net proceeds of claims under physical loss or damage insurance policies <sup>37</sup>in excess of the agreed threshold as set out in the Key Information Table for a single loss / related series of losses; provided that such prepayment will not be required if the ratio of cash available for debt service is equal to or greater than the required ratio set out in the Key Information Table (the **Debt Service Coverage Ratio** or **DSCR**). If the aggregate amount of such proceeds is less than the agreed threshold or the DSCR has been met, such funds may be used by the Borrower towards reinstatement or to reimburse Shareholders for any equity contributions made to, or funds otherwise paid on behalf of the Borrower towards the relevant physical loss or damage or subject to the distribution conditions described below, applied by the Borrower as a distribution;
- (b) net proceeds of compensation received by the Borrower in connection with the nationalisation or expropriation of a Project asset, the modification or extinguishment of rights relating to Project assets or the revocation or refusal of any applicable Authorisation;
- (c) net proceeds of sale or other disposal of assets exceeding the agreed annual threshold amount as set out in the Key Information table and permitted by the Finance Agreements;
- (d) all termination amounts payable to the Borrower [or the Shareholders] under the PPA and the Implementation Agreement (up to the aggregate of all amounts then owed to the Lenders in respect of the Senior Debt Facilities and under the Senior Hedging Agreements, if any); and
- (e) all liquidated and unliquidated damages received by the Borrower under the Supply Agreement and the Installation Agreement, in each case to the extent not required to be applied for the payment of liabilities under the PPA or towards Project costs or Senior Debt service.

The prepaid amount will be applied in reduction of scheduled instalments under the Senior Debt on a *pro rata* basis.<sup>38</sup> Amounts prepaid in respect of the Senior Debt will not be available for redrawing.

## 21. Voluntary Prepayments and Cancellations

Voluntary prepayments and cancellations will be permitted without premium or penalty, subject to (a) an agreed minimum amount and (b) payment of applicable break costs.

Voluntary prepayments or cancellations may not be made before the

<sup>37</sup> **User Note:** For the avoidance of doubt, excluding any insurance proceeds received for business interruption, third-party liability or any other insurance that covers loss of revenue. Mandatory prepayment shall be subject to (i) the Project not being capable of being reinstated with the insurance proceeds (in accordance with the recommendation of the Lenders' Technical Adviser) and (ii) upon being reinstated, the financial ratios are not capable of being brought back to the ratios prior to the occurrence of the insured risk.

<sup>38</sup> **User Note:** If the Finance Agreements provide for a cash-sweep, which is not contemplated in this Term Sheet but may be agreed by the parties, then any such prepayment must be made first to reduce the maturity up to the target maturity date, then *pro rata*.

Commercial Operation Date unless the Intercreditor Agent receives a certificate (confirmed by the independent technical consultant of the Lenders) from the Borrower confirming that there will not be a funding shortfall following such prepayment or cancellation. The cancellation must not have a material adverse effect on the ability of the Borrower to fund the remaining expenditure required to achieve the Commercial Operation Date by the Commercial Operation Longstop Date.

The amount prepaid or cancelled by the Borrower will be applied in reduction of scheduled instalments under the Senior Debt on a *pro rata* basis. Amounts prepaid or cancelled in respect of the Senior Debt will not be available for redrawing.

## Other Terms and Conditions

### 22. Finance Agreements

The Finance Agreements will comprise:

- (a) Senior Facility Agreements;
- (b) the Common Terms Agreement;<sup>39</sup>
- (c) [the Intercreditor Agreement<sup>40</sup>];
- (d) the Accounts Agreement;
- (e) the Equity Support Agreement;
- (f) each Security Document;
- (g) each Senior Hedging Agreement, if any;
- (h) each Direct Agreement as listed in the Key Information Table;
- (i) any fee letters; and
- (j) any other document designated as such by the Intercreditor Agent and the Borrower.

### 23. Project Agreements

The Project Agreements will comprise:

- (a) the PPA and any related Buyer payment guarantee and credit support;
- (b) the implementation agreement for the Project between the Borrower and the Government (the **Implementation Agreement**) and any related Government guarantee provided in respect of the Project;
- (c) the interconnection agreement for the connection of the Facility to the Grid between the Borrower and the Network Operator<sup>41</sup> (the **Grid Connection Agreement**);
- (d) the engineering and procurement contract (the **Supply**

<sup>39</sup> **User Note:** A Common Terms Agreement is not always required (subject to the complexity of the transaction and the number of lenders).

<sup>40</sup> **User Note:** If identified as Applicable in the Key Information Table. Further, to include subordination provisions in relation to applicable Equity contributions.

<sup>41</sup> **User Note:** In certain jurisdictions the Network Operator may be the Buyer.

**Agreement**) or any replacement thereof for the design and engineering of the Facility and the supply of the key equipment forming the PV System (as defined in the Supply Agreement) to be used in the Facility between the Borrower and a supply contractor (the **Supplier**) and any related manufacturer warranty, parent company guarantee, performance bonds and other performance security;

- (e) the installation agreement for the installation, commissioning and testing of the Facility and the completion of the balance of plant for the Project (the **Installation Agreement**) or any replacement thereof between the Borrower and an installation contractor (the **Installation Contractor**) and any related manufacturer warranty, parent company guarantee, performance bonds and other performance security;
- (f) the operation and maintenance agreement (the **O&M Agreement**) or any replacement thereof between the Borrower and an operation and maintenance contractor (the **O&M Contractor**) with respect to the operation and maintenance of the Facility and any related manufacturer warranty, parent company guarantee, performance bonds and other performance security;
- (g) the Land Agreement or other agreement securing the land rights of the Borrower in respect of the Site (if any);
- (h) the technical and management services agreement (if any); and
- (i) any other document designated as such by the Facility Agent and the Borrower.

## 24. Major Project Participants

The Major Project Participants shall comprise:

- (a) the Supplier and the Installation Contractor and any parent company of each of the Supplier and the Installation Contractor providing a parent company guarantee, until the later of the date (a) upon which the final warranty period under the Supply Agreement or the Installation Agreement as applicable expires; or (b) upon which the Supplier or the Installation Contractor or any parent company of each of the Supplier and the Installation Contractor providing a parent company guarantee has no further actual or contingent liabilities under such contract or guarantee);
- (b) from the Commercial Operation Date, the O&M Contractor and any parent company of the O&M Contractor providing a parent company guarantee until the date on which the O&M Contractor or the parent company of the O&M Contractor providing a parent company guarantee has no further actual or contingent liabilities under such contract or guarantee;
- (c) and any other party which is designated as such by the Borrower and the Facility Agent.<sup>42</sup>

The Borrower shall be entitled, with the prior written consent of the

<sup>42</sup> **User Note:** The inclusion of the Supplier and the Installation Contractor as Major Project Participants has been proposed on the basis that there is not a single EPC contract or interface agreement (and related guarantee).

Facility Agent, to replace Major Project Participants.

25. **Security Documents**<sup>43</sup>

The security<sup>44</sup> for the Lenders will include security interests with respect to the rights, title and interest of the Borrower (or the Shareholders, as applicable) in the following collateral (subject in each case to appropriate modification taking into consideration the specific features or requirements of the Project and what is practicable in the jurisdiction of the Project and the security providers, taking account of cost considerations):

- (a) the Project Accounts and Permitted Investments (as such term is defined in the Key Information Table), other than any distributions account;
- (b) (i) the Project Agreements and (ii) applicable Authorisations (to the extent capable of assignment and subject to receipt of consent to the granting of security);
- (c) the shares in the Borrower;
- (d) the Shareholder loans to the Borrower, if any;
- (e) the Senior Hedging Agreements, if any;
- (f) the insurance policies (other than insurances voluntarily taken out by the Borrower and third-party liability insurances);
- (g) the Facility; and
- (h) the Site

(as defined in the Key Information Table), the documents creating such security interests and any other security interests that are required on a deal-by-deal basis, being together the **Security Documents**. With respect to future assets of the types described above that do not exist or are not held by the relevant grantor as at the date on which such initial Security Documents are executed and in respect of which it is not possible to grant valid security under the Laws of the applicable jurisdiction at such time, the relevant grantor shall execute supplemental Security Documents from time to time on a reasonable basis to be agreed, taking account of any applicable legal restrictions, the associated costs of such supplemental Security Documents and the value of the assets to be the subject of such Security Interests.

The security package described above is for the benefit pro rata and without distinction of all Senior Creditors without any preference by reason of date of incurrence, currency of payment or otherwise.

With respect to the Project Agreements specified in the Key Information Table, the Senior Creditors will require that the counterparties enter into direct agreements with the Security Agent and the Borrower that subject to applicable Law, comply with the principles set out in Schedule 2 to this Term Sheet (the **Direct Agreements**).

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<sup>43</sup> **User Note:** The Intercreditor Agreement will (if identified as Applicable in the Key Information Table) will set out the terms relating to (a) the appointment of the Security Agent on behalf of the Senior Creditors and (b) the creation of a common security package to be held by the Security Agent.

<sup>44</sup> **User Note:** Where the laws of the Relevant Jurisdiction render it necessary, a separate common security agreement may be required.

The Senior Creditors may also require that the counterparties to the Project Agreements enter into acknowledgements of security with the Security Agent, subject to exceptions to be agreed between the Borrower and the Senior Creditors.

26. **Project Accounts**

The Borrower will be permitted to open and maintain certain onshore and offshore bank accounts for specified purposes (the **Project Accounts**) in accordance with the terms of the Finance Agreements.

All of the Project Accounts will be maintained at the same financial institution if possible, taking account of licensing requirements.

All Project funds will be held in the Project Accounts and while so held, may only be invested in Permitted Investments, as such term is defined in the Key Information Table. Prior to the declaration of an Event of Default, the Borrower will direct the management of the Project Accounts in accordance with the cash waterfall at Schedule 1 to this Term Sheet. All references to funds and balances in Project Accounts will include Permitted Investments made with the proceeds thereof.

The Finance Agreements will impose certain restrictions on the ability of the Borrower to transfer funds from offshore accounts into onshore accounts. Such restrictions may be expected to include a limit on the aggregate amount of money that the Borrower may hold in onshore accounts from time to time, by reference to an agreed number of days of estimated future Project operating expenses that are payable in the jurisdiction of the Project and taking into account any currency convertibility issues.

27. **DSRA**

The Borrower shall ensure that from the Commercial Operation Date until the Final Maturity Date, the debt service reserve account (**DSRA**) is funded in an amount equal to Debt Service for the DSRA Funding Period in respect of the Senior Debt<sup>45</sup>. The Borrower will have the option of funding the DSRA using cash or by way of letters of credit (on a non-replenishable basis), subject in the case of letters of credit to the satisfaction of the Acceptable Credit Support criteria (as defined in the Key Information Table).

28. **Shareholder Distributions**

The Borrower may not make distributions if:

- (a) the Commercial Operations Date has not occurred;
- (b) a **Default** (being any Event of Default or any event or circumstance to be specified in the Events of Default clause which would upon the giving of notice, the expiry of a grace period, the making of any determination, the fulfilment of any other condition or any combination of the foregoing constitute an Event of Default) has occurred and is continuing or would occur as a consequence of that distribution;
- (c) the DSRA, and MRA (if applicable) have not been funded to the respective required amounts;
- (d) the first Repayment Date has not occurred or all amounts due on such date in respect of the Senior Debt have not been paid; or

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<sup>45</sup> **User Note:** Borrower could consider whether it may be more economic to insure debt service repayments rather than using a DSRA.

- (e) any required mandatory prepayment of Senior Debt in respect of a share of net available revenue has not been made.
29. **Shareholders Transfers** Shareholder transfer restrictions shall be as follows:
- [insert as required]*.<sup>46</sup>
30. **Financial Model** The Borrower will maintain, run and regularly update a financial model (the **Financial Model**) in accordance with certain specified formulae and methodologies for calculating ratios to be set forth in the Common Terms Agreement. The Borrower shall share the original and all material updates to the Financial Model with the Senior Creditors at the request of the Senior Creditors.
31. **Conditions Precedent for Utilisation**
- The first disbursement by the Senior Creditors of a utilisation under the Senior Facility Agreements will be subject to the satisfaction or waiver of certain conditions precedent that will be common to each utilisation as described below and to certain additional conditions precedent including (without limitation)<sup>47</sup> the following, in each case in the form and substance satisfactory to the Senior Creditors as well as any relevant individual conditions set forth under the relevant Senior Facility Agreements:<sup>48</sup>
- (a) originals of duly executed Finance Agreements and certified copies of all Project Agreements;
  - (b) evidence that security created under each Security Document has been perfected;<sup>49</sup>
  - (c) copies of all Authorisations then required;
  - (d) evidence that each condition precedent to the occurrence of the Effective Date under (and as defined in) each Project Agreement has been satisfied (save for the satisfaction of any condition that the Finance Agreements must be in full force and effect or that Financial Close has occurred);
  - (e) certified copies of the constitutional documents, resolutions (to the extent necessary), incumbency certificates, Tax certificates and evidence of authority of the Borrower, the Shareholders, the Sponsors and the Major Project Participants and certificates of the related director;
  - (f) copies of relevant registry extracts for the Borrower, the Shareholders, the Sponsors and the other Major Project Participants;
  - (g) a report in relation to the Project (including the irradiation data) and the Project Agreements from the independent technical

<sup>46</sup> **User Note:** Share transfer restrictions to be negotiated on a project by project basis. Such restrictions may include different "minimum hold" requirements during the construction period and the operational period, which will prevent the Shareholders from transferring their shares in the Borrower below a certain agreed level without the consent of the requisite majority of the Senior Creditors, and may apply credit tests with respect to pre-completion transfers. The change of Control/ transfer restrictions must provide the Sponsors with enough flexibility to trade solar PV assets, and aggregate portfolios of such assets to increase efficiencies in the solar energy market.

<sup>47</sup> **User Note:** Project specific CPs such as central bank filings, ECA documentation, letter authorising communications with the auditors; etc. to be considered for inclusion in this list.

<sup>48</sup> **User Note:** Depending on the chosen Governing Law for the Finance Agreements and Project Agreements, the Borrower may also be required to evidence the appointment of a process agent registered in the jurisdiction of the chosen Governing Law.

<sup>49</sup> **User Note:** Subject to local Law requirements, perfection steps may be treated as post-closing conditions subsequent.

consultant of the Lenders;

- (h) a legal and tax due diligence report;
- (i) a report from the independent insurance consultant of the Lenders;
- (j) a report in relation to the Project from the independent environmental and social consultant of the Lenders;
- (k) the environmental social management plan and environmental impact assessment of the Project;<sup>50</sup>
- (l) a copy of a cashflow forecast for the Project (the Base Case **Financial Model**) produced by the Financial Model (in computer legible form) and an electronic version of the Financial Model;
- (m) a copy of the report prepared by the model auditor in relation to the Base Case Financial Model;<sup>51</sup>
- (n) a copy of an initial Construction budget based on the same assumptions as the Base Case Financial Model;
- (o) confirmation that all of the Project Accounts (to the extent then required) have been opened with the Account Banks;
- (p) the Hedging Strategy shall have been agreed and to the extent required thereby, implemented;
- (q) copies of the most recent audited financial statements of the Borrower, the Shareholders, the Sponsors, the Buyer, the Supplier, the Installation Contractor, the O&M Contractor and any parent company providing a guarantee in respect of the Supplier, the Installation Contractor or the O&M Contractor, as applicable;
- (r) the appointment of an internationally recognised auditor by the Borrower;
- (s) all insurances and reinsurances required pursuant to the Finance Agreements at the time of first utilisation are in full force and effect and copies of cover notes of such insurances and reinsurances;
- (t) an undertaking from the insurance broker of the Borrower in customary form;
- (u) copies of each insurance and reinsurance policy referred to in paragraph(s) above demonstrating that the relevant endorsements as required by the Senior Creditors in the agreed form;
- (v) a certificate or receipt showing that the fees and expenses of the Lenders due at first utilisation have been paid by or on first

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<sup>50</sup> **User Note:** Required scope of external reports to be considered on a case by case basis, including specific Lender requirements regarding Equator Principles / World Bank standards/ IFC Performance Standards.

<sup>51</sup> **User Note:** Requirement for model audit to be considered on a case by case basis, and may not be required if one of the lending banks is acting as a modelling bank.

utilisation;

- (w) (i) enforceability and capacity legal opinions in relation to the Finance Agreements and (ii) enforceability and capacity legal opinions in relation to the Project Agreements;
- (x) copies of engagement letters for the independent insurance consultant of the Lenders, the independent legal counsel of the Lenders, the independent technical consultant of the Lenders and the independent environmental and social consultant of the Lenders; and
- (y) information requested by or on behalf of the Senior Creditors before the signing of the Senior Debt Facility Agreements to enable the Senior Creditors to carry out applicable know your customer requirements or to comply with any anti-money laundering legislation, regulations, procedures or rules applicable to them.

32. **Conditions Precedent for Utilisations**

The conditions precedent to be satisfied (or waived) before any utilisation may be made under the Senior Debt will include:

- (a) no Default is continuing or would result from the utilisation;
- (b) the Repeating Representations of the Borrower in the Clause 33 (*Representations and Warranties of the Borrower*) are true in all material respects; and
- (c) the Borrower taking into account the proposed utilisation, is in compliance with the Senior Debt to Equity Ratio as set out in the Key Information Table.

33. **Representations and Warranties of the Borrower**

The representations and warranties to be made by the Borrower will be:<sup>52</sup>

- (a) due incorporation, power and authority to conduct its business, execute, deliver and perform the Finance Agreements and Project Agreements (the **Transaction Agreements**) and the power to own its assets;
- (b) due execution and delivery of the Transaction Agreements by it;
- (c) legal, valid, binding and enforceable status of its obligations under the Transaction Agreements subject to customary Legal Reservations (as defined in the Key Information Table);
- (d) an Event of Default has not occurred and is not continuing;
- (e) the Project assets (including land rights) are free from any security interests (save as permitted by the Finance Agreements) and the Borrower has title to the Project assets (including land rights) required to implement the Project in accordance with the Transaction Agreements;
- (f) it is not party to any agreements under which it has material

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<sup>52</sup> **User Note:** The Parties to negotiate knowledge, materiality and/or material adverse effects, qualifiers on a project specific basis.

rights or obligations other than the Transaction Agreements;

- (g) it is in compliance with all applicable Laws (including applicable Environmental Law and applicable Authorisations);
- (h) other than the filing and registration of the Security Documents with the relevant authorities, it is not necessary to file or record any of the Transaction Agreements with any court or other Authority in the Relevant Jurisdiction;
- (i) there is no actual or pending litigation, arbitration, administrative proceedings or investigation against the Borrower which if determined against the Borrower, would have a Material Adverse Effect;
- (j) it has filed all requisite Tax returns and paid all its Taxes (as defined in the relevant Finance Agreement) (other than those which it is contesting in good faith and for which adequate reserves have been provided for in the accounts);
- (k) payments under the Finance Agreements are not subject to any deductions for or on account of Tax;
- (l) its execution, exercise of rights and performance of obligations under the Transaction Agreements do not conflict with its agreements, constitutional documents, any Laws or Authorisations, result in the creation of any security interest over its revenues or assets save as permitted by the Transaction Agreements or in the case of the Finance Agreements, result in any other person being entitled to terminate the Project Agreements or any other material arrangement of the Borrower;
- (m) all Authorisations listed in the Senior Debt Facility Agreements required at the date of the representation have been obtained or made and complied with and have not been revoked, cancelled or modified or amended in any adverse manner and (to the extent such Authorisations are not yet required to be obtained) the Borrower is not aware of anything which would prevent them being obtained;
- (n) it owns (or has the right to use) all intellectual property rights (as may be more particularly defined in the relevant Project Agreement) which it requires to carry out the Project;
- (o) subject to Legal Reservations (as defined in the Key Information Table), the Security Documents to which it is a party are effective to create the security with the priority as stated in the Security Documents;
- (p) the claims of the Lenders under the Finance Agreements rank at least *pari passu* with other unsecured and unsubordinated claims save those which are mandatorily preferred by Law;
- (q) insolvency/winding-up proceedings in respect of the Borrower, the Shareholders or the Sponsors have not been started;
- (r) there are no Disputes (as defined in the relevant Project Agreement) under or in relation to or material breaches of any of the Project Agreements by any party;

- (s) the Borrower does not have any immunity from suit or attachment;
- (t) the Borrower does not have any undisclosed financial indebtedness other than Permitted Indebtedness (as defined in the Key Information Table) or other material obligations other than as contemplated by the Transaction Agreements;
- (u) the Borrower does not have any business other than the Project and does not have any Subsidiaries (as defined in the relevant Finance Agreement);<sup>53</sup>
- (v) the Borrower, and to the best of its knowledge neither itself nor any of its officers, employees, agents, subcontractors or any other persons who perform services for or on behalf of it in connection with the Project: (i) has engaged in any Corrupt Practice; (ii) has been convicted of any Corrupt Practice; or (iii) is under any governmental or internal investigation for any alleged Corrupt Practice, where **Corrupt Practice** means any act or omission prohibited by any laws intended to prevent bribery or other forms of corruption and any act or omission prohibited by any policies and guidelines referred to in paragraph (m)(ii) of Clause 37 (*Negative Covenants of the Borrower*) in connection with the Project;
- (w) subject to Legal Reservations (as defined in the Key Information Table), the governing law of the Transaction Agreements (where applicable) is a valid choice and will be recognised in the Relevant Jurisdiction (as defined in the relevant Finance Agreement) and any judgment obtained under such governing law in relation to a Transaction Agreements will be recognised and enforced in the Relevant Jurisdiction;
- (x) all insurances and reinsurances required to be taken out by the Transaction Agreements at the relevant time are in full force and effect and nothing has been done or omitted to be done by the Borrower which would render any of the insurances or reinsurances unenforceable, suspended, void or voidable; and
- (y) all information, including documents, reports or other written information pertaining to the Borrower or the Project that has been given to the Lenders was as of the date that the relevant document, report or information was delivered or (as the case may be) as at the date the information is expressed to be given, true and accurate in all material respects and does not contain any information which was misleading in any material respect nor omit any information, the omission of which makes the information contained in it misleading in any material respect as at the date it was given, other than as disclosed in writing to the Lenders prior to the date on which the representation is deemed to be made,

and each such representation, except those set out in paragraphs (m), (q) and (z) shall be repeated on the date of each utilisation request, each utilisation date and each interest payment date (the **Repeating Representations**).<sup>54</sup>

In this Term Sheet, **Material Adverse Effect** means a material

<sup>53</sup> **User Note:** Provisions in relation to sanctions to be considered and incorporated on a project specific basis.

<sup>54</sup> **User Note:** The scope of the Repeating Representation will be agreed on a project specific basis.

adverse effect on:

- (a) the enforceability, legality, binding nature of any Transaction Agreement, the effectiveness of ranking of any Security granted or purported to be granted pursuant to any Security Document or the rights or remedies of or ranking of payments due to any secured creditor under any Finance Agreements;
- (b) the financial conditions, assets or business of the Borrower;
- (c) the ability of each of the Borrower, the Shareholder and/or the Sponsors to perform and comply with its respective obligations under any of the Finance Agreements to which it is a party; or
- (d) the ability of the Borrower to perform or comply with any of its material obligations under any of the Project Agreements to which it is a party.

**34. Insurance**

The Borrower will agree with the independent insurance consultant of the Lenders, an insurance plan to keep all Project assets of an insurable character insured with such coverage and in such form and amounts as are customarily provided for project facilities of this type and scale and in compliance with the Project Agreements, taking into account the commercial availability and cost of insurance, the other financial resources available to the Project in the event of casualty or loss, and the amount of Senior Debt outstanding.

All insurances will (if permitted by Law) include waiver of rights of subrogation and non-vitiation provisions and name the relevant Security Agent as loss payee, except for third-party liability insurance and the relevant Security Agent shall be named as co-insured in the relevant policies. An Event of Default must not occur if any of the required insurances cease to be available on commercially reasonable terms and such non-availability is not due to breach by the Borrower of its insurance obligations.

**35. Information Covenants of the Borrower<sup>55</sup>**

The following list shall comprise the information covenants of the Borrower:

- (a) provide the Senior Creditors with copies of (i) all amendments and modifications to the Project Agreements; (ii) information relating to material breaches, Disputes or notices of termination under any Project Agreement (including a copy of such notices themselves, if any); (iii) all amendments to the insurances, reinsurances and Authorisations and all new insurances, reinsurances and Authorisations; and (iv) all notices given or received under the Project Agreements, insurances, reinsurances and Authorisations, in each case where such notice relates to anything that may lead to suspension, adverse amendment, termination or non- renewal of any of them;
- (b) copies of notice or communication from a regulatory body, court or other authorised organisation prohibiting, suspending or varying all or any material part or process carried out by any Major Project Participant in relation to the Project;

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<sup>55</sup> **User Note:** Lender specific requirements (e.g., in respect of E&S, sanctions, anti-corruption or prohibited practices) to be considered for inclusion on a case by case basis. Where appropriate, the parties may agree to include additional covenants relating to model updates, ratio reporting and approval of budgets.

- (c) notice and details of any Force Majeure or Material Adverse Effect Event;
- (d) details of any damage or destruction to the Project assets including the Facility, with a value in excess of the monetary threshold set out in the Key Information Table or of any insurance claim with a value in excess of the monetary threshold set out in the Key Information Table;
- (e) copies of documents, notices and reports dispatched to its Shareholders;
- (f) until the Commercial Operation Date, deliver to the Intercreditor Agent a Construction report (form and substance of which is to be agreed) according to the reporting period frequency specified in the Key Information Table;
- (g) from the Commercial Operation Date, deliver to the Intercreditor Agent an operating report (form and substance of which is to be agreed) according to the reporting period frequency specified in the Key Information Table;
- (h) deliver to the Intercreditor Agent copies of the audited annual financial statements of the Borrower, the Shareholder and the Sponsor and in relation to the Borrower, unaudited quarterly financial statements;
- (i) provide information requested by the Facility Agent on behalf of the Senior Creditors to comply with applicable know your customer and/or anti-money laundering regulations;
- (j) provide to the extent reasonable, any information requested on behalf of the Senior Creditors that relates to the Project or any Transaction Agreement; and
- (k) customary information undertakings in relation to litigation, arbitration, administrative proceedings or investigation (which are current, threatened or pending and (i) with a value in excess of the Monetary Materiality Threshold or its equivalent; or (ii) which could reasonably be expected to have a Material Adverse Effect), material losses, Disputes, change of Control (as defined in the Key Information Table), Change in Law (as defined in the Implementation Agreement) and Events of Default.

### 36. **Affirmative Covenants of the Borrower<sup>56</sup>**

The following list shall comprise the affirmative covenants of the Borrower:

- (a) procure that the Project is constructed, operated and maintained in accordance with the Transaction Agreements, all applicable Laws (including applicable Environmental Law) and Authorisations;
- (b) maintain its existence and power and authority to conduct

<sup>56</sup> **User Note:** Lender specific requirements (in respect of E&S, sanction, anti-corruption or prohibited practices) to be included on a case by case basis. In addition, project specific covenants (e.g. central bank reporting requirements) to be included as required.

business;

- (c) comply with its obligations under each Project Agreement and maintain material rights under the Project Agreements and (subject to Legal Reservations, as defined in the Key Information Table) keep the Project Agreements in full force and effect;
- (d) subject to Legal Reservations (as defined in the Key Information Table), create, register and otherwise perfect and maintain the security intended to be created in favour of the secured creditors under the Security Documents;
- (e) ensure the claims of the secured creditors under the Finance Agreements rank at least *pari passu* with other unsubordinated and unsecured claims, save those which are mandatorily preferred by Law and maintain the ranking of security created by the Security Documents as set out therein;
- (f) apply the proceeds of the Senior Debt for Permitted Purposes only (as defined in the relevant Finance Agreement);
- (g) comply with applicable Laws, including Environmental Law and with the Lenders' Performance Standards as set out in the Key Information Table;
- (h) obtain and maintain all Authorisations required to implement the Project in accordance with the Transaction Agreements;
- (i) pay Taxes and file Tax returns (other than those which it is contesting in good faith and where the adequate reserves for those have been made in the accounts);
- (j) apply all Tax credits, losses, reliefs and allowances in the manner provided for in the Base Case Financial Model;
- (k) obtain and maintain all licences in connection with the intellectual property rights necessary for the Project;
- (l) maintain good title to the Site (as defined in the Key Information Table) and access to the Site and benefit of all rights to land necessary to implement the Project;
- (m) provide Senior Creditors and their representatives with access to the Site (as defined in the Key Information Table) upon reasonable prior notice and subject to applicable Site (i) security and (ii) health and safety, requirements;
- (n) maintain acceptable accounting systems and records and books of account in keeping with applicable accounting standards and provide Senior Creditors and their representatives with access to such systems, records and books upon reasonable prior notice;
- (o) give the Intercreditor Agent, its representatives and the independent technical consultant of the Lenders reasonable notice of completion tests and allow attendance at such tests and inspection of the results of such tests by the independent technical consultant of the Lenders;

- (p) (i) comply with the agreed insurance and reinsurance related obligations; (ii) ensure that insurance and reinsurance premia are paid in full when due; (iii) ensure that a fair representation of the risk has been provided in relation to the risks insured; and (iv) ensure that nothing will be done or has been done that would reduce liability, reduce coverage or avoid liability under any of the insurances or reinsurances;
- (q) appoint and maintain international auditors;
- (r) open and maintain the Project Accounts and administer payments and investments in accordance with the Accounts Agreement;
- (s) effect and maintain the Hedging Strategy (if applicable);
- (t) defend material claims or minimise losses where there is no defence;; and
- (u) if identified as for the benefit of the Buyer in the Key Information Table, obtain Sustainability Credits relating to the Project.<sup>57</sup>

**37. Negative Covenants of the Borrower**

The following list shall comprise the negative covenants of the Borrower:

- (a) negative pledge with respect to all the present and future assets and revenues of the Borrower;
- (b) amend or waive any material provision of, or terminate, assign, suspend or transfer any Project Agreement or Authorisation, except where (i) such amendment or waiver is of administrative nature or (ii) the Intercreditor Agent directs the Borrower to do so pursuant to exercise of its rights under the Finance Agreements;
- (c) not allow any variation to any Project Agreement, except where such variation will not (i) result in a funding shortfall; (ii) result in a likely delay to the achievement of the Commercial Operation Date; or (iii) materially alter the nature of the Project, the manner in which it operates or its risk profile;
- (d) create or permit to subsist any Financial Indebtedness (as defined in the Key Information Table), except shareholder subordinated debt in accordance with the Equity Support Agreement or Permitted Indebtedness (as defined in the Key Information Table);
- (e) create or permit to subsist any loans or guarantees, other than as permitted under the Finance Agreements;
- (f) alter any rights attaching to its shares or amend its constitutional documents, except if such amendment is of administrative effect;
- (g) dispose of assets or assign contractual rights except as permitted or required pursuant to the Finance Agreements in the ordinary course of business or to the extent obsolete or if

<sup>57</sup> **User Note:** Additional provisions around registration for such credits, their submission, etc. to be included depending on the specific regime of the Project country.

the assets are subject to replacement;

- (h) acquire any assets other than (i) in accordance with the relevant Construction budget or operating budget; (ii) in order to repair or replace lost or damaged assets; or (iii) to the extent such capital assets are required to be purchased as a result of an unforeseen event and do not exceed an agreed indexed amount per rolling one-year period;
- (i) take any action or omit to take any action, which would lead to the winding-up of the Borrower;
- (j) change its business or its Tax residence;
- (k) consolidate or merge with any other person or enter into any amalgamation, merger, demerger, reconstruction, joint venture, partnership, profit sharing or analogous arrangement or have any subsidiary or any interest in any other person other than as a Permitted Investment, as such term is defined in the Key Information Table;
- (l) waive or settle a claim where the amount of such claim exceeds or is reasonably likely to exceed an agreed indexed amount, net of any insurance deductibles;
- (m) will and will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with the Project will (i) not breach or could cause the other party to breach any applicable Laws intended to prevent bribery or other forms of corruption<sup>58</sup>; (ii) comply with any policies and guidelines for the prevention of bribery and other forms of corruption adopted by the Borrower prior to the effective date of the Common Agreement including policies and guidelines imposed on the other party by the Shareholders and/or the Lenders and any later amendments as may be reasonably required by the Lenders from time to time; (iii) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with this Agreement and the steps it takes to comply with this Clause 37 (Negative Covenants of the Borrower) and permit the other party to inspect those records as reasonably required; and (iv) promptly notify the other party of (A) any governmental investigation relating to an alleged breach of any Laws referred to in (i) above; and (B) any governmental or internal investigation relating to an alleged breach of any policies and guidelines referred to in (ii) above in connection with the Project;
- (n) in any proceedings in relation to any Finance Agreement, claim for itself or any of its assets immunity from execution, attachment or other similar legal process;
- (o) enter into hedging other than in accordance with the Hedging Strategy;
- (p) enter into material contracts or assume other material obligations other than as contemplated by the Finance

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<sup>58</sup> **User Note:** Relevant legislation would typically include anti-corruption statutes of home jurisdictions of the Lenders and may include the UK Bribery Act, the US Foreign Corrupt Practises Act etc.

#### Agreements;

- (q) other than the Transaction Agreements, conclude any contracts with Affiliates<sup>59</sup> above the Affiliate Contracting Threshold;
- (r) not open bank accounts other than the Project Accounts;
- (s) not dispose of Tax losses, credits, reliefs of allowances other than as set out in the Base Case Financial Model;
- (t) not change the financial year; and
- (u) not issue any shares or options except in relation to the Equity contributions by the Shareholders or any transfers permitted under the Finance Agreements.

#### 38. Events of Default<sup>60</sup>

The following list of events shall define the Events of Default:

- (a) payment default under any Finance Agreements (other than by a secured creditor) by a Borrower or a Shareholder (a Relevant Party), except where caused by (i) administrative or technical error of an account bank or (ii) disruption event and is remedied not later than three (3) Business Days (as defined in the Key Information Table) following its occurrence;
- (b) misrepresentation by any Relevant Party under the Finance Agreements (other than in relation to matters separately addressed pursuant to a specific Event of Default) unless circumstances giving rise to such misrepresentation are capable of remedy and are remedied not later than twenty (20) Business Days from the Intercreditor Agent giving notice of misrepresentation or the Relevant Party becoming aware of it;
- (c) breach of any of the transfer restrictions set out in the Finance Agreements;
- (d) breach of any other obligation by any Relevant Party under any Finance Agreement (other than in relation to matters separately addressed pursuant to a specific Event of Default), subject to (i) cure not later than twenty (20) Business Days from such breach occurring (except for breaches relating to negative pledge, security, no disposal, indebtedness, change of Control (as defined in the Key Information Table), distributions and subordination undertakings);
- (e) breach of a material obligation under a Project Agreement by the Borrower, subject to cure not later than twenty (20) Business Days from such breach occurring;
- (f) insolvency proceedings, creditors process, insolvency, winding-up or the appointment of any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager or receiver

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<sup>59</sup> **User Note:** The Parties can consider incorporating a materiality threshold so that the Borrower may contract with Affiliates, **provided that** such contracts do not exceed a certain monetary threshold (individually and in aggregate).

<sup>60</sup> **User Note:** Applicable cure periods must follow convention for power projects in the Relevant Jurisdiction (particularly given that the standard 20-Business Day period provided for in the LMA documentation is not followed in many jurisdictions) and must align with those agreed in the Project Agreements. Lender specific requirements (e.g., in respect of E&S, sanctions, anti-corruption or prohibited practices) and project specific events of default (e.g. in respect of foreign exchange controls or host government support), to be considered on a case by case basis.

or any similar event in relation to the Borrower or any Major Project Participant (whilst such Major Project Participant has outstanding obligations or liabilities under the Project Agreements or Finance Agreements), except where such action is contested in good faith and with appropriate measures and is frivolous and vexatious and is discharged not later than twenty (20) Business Days following such occurrence (or in case of the Supplier, Installation Contractor or the O&M Contractor an appropriate substitution or remedial plan is provided satisfactory to the Intercreditor Agent not later than twenty (20) Business Days following such occurrence and such plan is complied with)<sup>61</sup>;

- (g) any security interest under the Security Documents ceases to be perfected or to exist or fails to be maintained with the priority created under the Security Documents and on the terms set out in the Security Documents;
- (h) (i) a final judgment is entered against the Borrower in its jurisdiction of incorporation in an amount in excess of an agreed indexed amount or (ii) an injunction is entered against the Borrower requiring abandonment of the Project;
- (i) it becomes unlawful for the Borrower to perform any obligation under any Transaction Agreement or invalidity, illegality or unenforceability or termination arises with respect to a Transaction Agreement and in case of the Project Agreements and such invalidity is not cured within twenty (20) Business Days following its occurrence;
- (j) an Expropriation has occurred;
- (k) the Commercial Operation Date has not occurred on or before the Commercial Operation Longstop Date, subject to any extension of time granted pursuant to the PPA;
- (l) any Authorisation is revoked, not renewed, not obtained when required or materially adversely amended, except where such Authorisation is not required any longer for implementation of the Project;
- (m) insurance or reinsurance is voided or ceases to be in full force or effect or liability under it is reduced, except where such policy is replaced;
- (n) Abandonment of the Project by the Borrower or one of its Contractors;
- (o) the whole or a material part of the Project is destroyed and the Project is not reinstated in accordance with the Finance Agreements;
- (p) breach of the Debt Service Coverage Ratio, as stated in the Key Information Table;
- (q) Prolonged Force Majeure Event or Material Adverse Effect; and

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<sup>61</sup> **User Note:** Please consider the permitted period to discharge vexatious insolvency proceedings. In some jurisdictions the reality is that it will take much longer than 20 Business Days.

- (r) immunity from suit, attachment or similar legal process of the Borrower or any Major Project Participant.

39. **Transfers**

The consent of the Borrower is required for any assignment or transfer unless the assignment or transfer (i) is to a permitted lender (including another Senior Lender or an Affiliate, as defined in the Key Information Table, or related fund of the assignor / transferor and any other bank or financial institution with an Acceptable Credit Rating, as defined in the Key Information Table; (ii) is to a special purpose vehicle for purposes of a securitisation; (iii) takes effect after the end of the Availability Period; or (iv) takes effect while an Event of Default is continuing. If required, such consent will not be unreasonably withheld or delayed, provided that transfer to a competitor of the Sponsors is not to be permitted in any circumstances.

The Borrower will not be required to make payments in respect of increased costs or Taxes arising after an assignment or transfer which would not have applied to the assignor / transferor and relating to circumstances existing as at the date of the assignment / transfer.

40. **Tax**

**Tax** or **Taxes** means any form of taxation, levy, duty, charge, withholding, contribution or impost of whatever nature (including any related fine, penalty, surcharge or interest) imposed, collected or assessed by or payable to an Authority.

Except as set out below, all payments to be made by the Borrower with respect to the Senior Debt will be made without deduction for or on account of any withholding Taxes, save as required by applicable Law. The Borrower will pay such additional amounts as will ensure that the relevant payee receives the full amount that it would have received had such withholding not been required.<sup>62</sup>

Risk associated with Foreign Account Tax Compliance Act (**FATCA**)-related deductions shall be borne by the Senior Lenders.

41. **Increased Costs**

The Finance Agreements to include then-current LMA-form provisions in respect of increased costs, except that Lenders shall be entitled to increased costs (provided that such claim for increased costs is made within a period of six (6) months from when such claim arose) in respect of the implementation or application of or compliance with Basel III or CRD IV or any law or regulation which implements or applies Basel III or CRD IV, except to the extent that a Lender was or reasonably should have been aware of the increased costs on the date which it became a Lender. However, the Lenders shall not be entitled to any increased costs arising from a change in law or regulation which is attributable to breach by the applicable Lender of such law or regulation.

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<sup>62</sup> **User Note:** A tax gross-up provision may be considered by the Parties. By way of example:

- (a) The Borrower must make all payments to be made by it under the Finance Agreement without any Tax deduction, unless a Tax deduction is required by law;
- (b) The Borrower or a Lender shall promptly upon becoming aware that the Borrower must make a Tax deduction (or that there is a change in the rate or the basis of a Tax deduction), notify the Facility Agent. If the Facility Agent receives such notification, it must notify the Borrower and the affected Lenders promptly;
- (c) If a Tax deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower must 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;
- (d) If the Borrower is required to make a Tax deduction, the Borrower must 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, within thirty (30) days of making either a Tax deduction or any payment required in connection with that Tax deduction, the Borrower must deliver to the Facility Agent (and the Facility Agent shall deliver the same to the relevant Lender) evidence reasonably satisfactory to that Lender that the Tax deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.

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| 42. | <b>Other terms</b>        | The Finance Agreements to include (i) then-current LMA-form provisions in respect of market disruption; and (ii) adverse change provisions.   |
| 43. | <b>Governing Law</b>      | <p>The Finance Agreements (other than the Security Documents and the Direct Agreements) will be governed by the law indicated in the Key Information Table.<sup>63</sup></p> <p>Each Security Document will be governed by the Law of the country where the collateral is located or in case of receivables, the Law applicable to the relevant receivable.</p> <p>Each Direct Agreement will be governed by the Law applicable to the underlying contract.</p>   |
| 44. | <b>Dispute resolution</b> | <p>(a) The Finance Agreements (other than the Security Documents and the Direct Agreements) will provide for the dispute resolution process indicated in the Key Information Table.</p> <p>(b) The Security Documents will provide for non-exclusive jurisdiction of the courts of country of the governing Law.<sup>64</sup></p> <p>(c) The Direct Agreements will provide for the dispute resolution process set out in the Key Information Table.</p> <p>(d) Disputes on changes to the assumptions of the Base Case Financial Model to be decided through expert determination.</p> |

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<sup>63</sup> **User Note:** In line with market practice, international commercial banks and development finance institutions will typically require the Finance Agreements to be governed by a tried and tested law such as English Law, New York Law or sometimes the law of the jurisdiction where the original Lenders are located.

<sup>64</sup> **User Note:** Note that this follows the position as stated in Clause 43 (*Governing Law*) that the governing law of each Security Document will be the law of the country where the collateral is located or in case of receivables, the law applicable to the relevant receivable.

## Schedule 1 - Cash Waterfall

The cash waterfall for the Project will be as follows:<sup>65</sup>

1. [Taxes of the Project Company;
2. other Project costs including operational expenditure;
3. Senior Creditor costs, charges, fees and expenses due under the Finance Agreements;
4. Senior Debt service, including amounts payable by the Borrower under the Senior Hedging Agreements, if any;
5. mandatory prepayments amounts;
6. Senior Debt Service Reserve and Maintenance Reserve Account (if applicable) amounts; and
7. distributions, subject to the applicable distribution conditions.]

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<sup>65</sup> **User Note:** We would expect the cash waterfall to be subject to negotiation between the Borrower and the Senior Creditors taking account of the structure of the Project as well as legal and regulatory requirements; and will be settled on a case by case basis. The list above is a high-level indicative example and is provided for illustrative purposes only.

## **Schedule 2 - Direct Agreement Principles**

The following principles are to be reflected in each Direct Agreement:

1. Each Direct Agreement to be entered into between the Borrower, the Security Agent and the applicable commercial counterparty.
2. Each Direct Agreement will include the following key terms as well as other terms that may reasonably be required by the Lenders by reference to applicable market practice for the relevant Project Agreement and applicable Law:
  - (a) An acknowledgement of and consent to the creation of security with respect to the underlying contract rights of the Borrower;
  - (b) Payment instructions to a designated account of the Borrower;
  - (c) Controls on the ability of the counterparty to terminate the underlying contract including cure rights for the Security Agent and disapplication of any consent rights of the counterparty regarding a future change of Control (as defined in the Key Information Table) in the Borrower as a result of a Lender enforcement;
  - (d) Step-in rights for the Security Agent if appropriate and subject to appropriate restrictions including in respect of the identity of any step-in party;
  - (e) Substitution / novation rights for the Security Agent if appropriate and subject to appropriate restrictions including in respect of the identity of any substitute party;
  - (f) Provisions for the receipt of material notices by the Security Agent;
  - (g) Key representations and warranties relating to capacity and enforceability;
  - (h) The Direct Agreement must not impose any additional liabilities on the applicable commercial counterparty.

### Schedule 3 - Additional Term Sheet Provisions

45. **Maintenance Reserve Account**
- If identified as Applicable in the Key Information Table, the Borrower shall ensure that from the Commercial Operation Date until the Final Maturity Date, the maintenance reserve account (**MRA**) is funded in an amount equal to the agreed threshold set out in the Key Information Table by way of letters of credit or (at the option of the Borrower) cash.<sup>66</sup>
46. **Hedging Strategy**
- If identified as Applicable in the Key Information Table, the applicable hedging strategy shall be as set-out in a hedging strategy letter to be appended as a Schedule to the Common Terms Agreement.
- The hedging strategy will be based on the LMA form, adapted as required on a case-by-case basis to describe (a) any required hedging strategy and (b) the scope of any permitted hedging in accordance with the requirement of the Project financing.
- Currency hedging may be required to address a currency mismatch between Project revenues and:
- (a) Project costs including operational expenditure;
  - (b) Senior Debt service obligations.
- The Borrower will not be permitted to enter into hedging agreements for speculative purposes. The permitted hedging arrangements entered into with acceptable hedge providers in accordance with the terms of the Common Terms Agreement are referred to in this Term Sheet as the **Senior Hedging Documents**.
47. **Intercreditor Agreement**
- If identified as Applicable in the Key Information Table, the Intercreditor Agreement will set out customary provisions relating to (a) the appointment of the Intercreditor Agent and (b) voting amongst the Senior Creditors.
- The Intercreditor Agreement shall provide that the Senior Hedging Documents (if applicable) shall rank *pari passu* in right of payment and security.
48. **Working Capital Facility**
- If identified as Applicable in the Key Information Table, the Borrower shall enter into a Senior Debt Revolving Credit Facility under which advances will be applied towards either (or both):
- (a) VAT/ Sales Tax; or
  - (b) other working capital requirements.
- The Working Capital Facility will be available from the date of Financial Close until the earlier to occur of (i) the date on which the aggregate commitments of the Senior Creditors under such Senior Debt Revolving Credit Facility are cancelled in full and (ii)

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<sup>66</sup> **User Note:** The inclusion of a Maintenance Reserve Account will be informed by whether the parties to the O&M Agreement selection Option B with respect to clauses 3.10 and 3.11 thereof.

the date falling on an agreed number of days before the Final Maturity Date.

The interest rate applicable to the Working Capital Facility will be agreed as between the parties and may differ from the Senior Debt Term Loan Facilities. The interest payment provisions will be as per the Senior Debt Term Loan Facilities.

Prepayment provisions applicable to the Working Capital Facility will be as per the Senior Debt Term Loan Facility, provided that the terms of the Senior Debt Revolving Credit Facility may not provide for automatic cancellation as in the Senior Debt Term Loan Facility, depending on working capital requirements.

49. **Debt Service Reserve Facility**

If identified as Applicable in the Key Information Table, the Borrower shall enter into a Senior Debt Revolving Credit Facility under which advances will be applied towards servicing of the Senior Debt where there is a shortfall in respect of such payment amounts.

The Debt Service Reserve Facility will be available from the date of Financial Close until the earlier to occur of (a) the date on which the aggregate commitments of the Senior Creditors under such Senior Debt Revolving Credit Facility are cancelled in full and (b) the date falling on an agreed number of days before the Final Maturity Date.<sup>67</sup>

Prepayment provisions applicable to the Debt Service Reserve Facility will be as per the Senior Debt Term Loan Facility.<sup>68</sup>

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<sup>67</sup> **User Note:** This period may be lengthy if there are one or more early generation periods. If the term of the PPA provides for a 'tail' after the Final Maturity Date as contemplated in the form of PPA, Lenders may allow for the DSRF to be available through to the Final Maturity Date.

<sup>68</sup> **User Note:** A debt service reserve facility (DSRF) may be included in addition to a DSRA or with a requirement for the reserve facility to be drawn down into a DSRA towards the back-end of the term loan debt, when panel degradation may adversely affect Project revenues. This would be subject to meeting forward-looking DSCRs.