****

**RECOMMENDED FORM**

**SYNDICATION FACILITY**

FOR THE AVOIDANCE OF DOUBT, THIS DOCUMENT IS A NON-BINDING, RECOMMENDED FORM AND IT IS INTENDED TO BE USED AS A STARTING POINT FOR NEGOTIATION ONLY. INDIVIDUAL PARTIES ARE FREE TO DEPART FROM ITS TERMS AND SHOULD ALWAYS SATISFY THEMSELVES OF THE REGULATORY IMPLICATIONS OF ITS USE AND ARE ADVISED TO SEEK PROFESSIONAL ADVICE, INCLUDING REGULATORY, TAX AND LEGAL ADVICE.

This template facility letter was commissioned by Energy 4 Impact, with support from UK aid, to enable crowdfunders to participate in secured, syndicated facilities. Impact investor, SunFunder, and crowd lending platform, Lendahand, were consulted during the creation of this template.

 **Funded by**



**Contributions from**



**FACILITY LETTER**

This Facility Letter is dated **[*INSERT*]** and made between:

1. **[*INSERT*]** a [limited liability company] organized under the laws of **[*INSERT*]** (the ***Commercial Lender***); and
2. **[*INSERT*]** a [limited liability company] organized under the laws of **[*INSERT*]** (**the *CrowdFunder***, together with the **Commercial Lender**, the ***Funders***); and
3. **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*]** (the ***Arranger)***
4. **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*]** (the ***Facility Agent*** );
5. **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*]** ( the ***Security Agent***)[[1]](#footnote-0);
6. **[*INSERT*]** a [limited liability company] organized under the laws of **[*INSERT*]** (the ***Borrower***).

**[**(d) **[*INSERT*]** a [limited liability company] organized under the laws of **[*INSERT*]** (the ***Guarantor****).*][[2]](#footnote-1)

**[**(e) **[*INSERT*]** a [limited liability company] organized under the laws of **[*INSERT*]** (the ***Downstream Borrower***).][[3]](#footnote-2)

1. **FACILITY LETTER**
	1. The Funders are pleased to offer the Borrower a facility described below (the ***Facility***). This offer is subject to the terms of this Facility Letter and the most recent version of the Facility terms and conditions which have been duly delivered to the Borrower (the ***Facility Terms and Conditions***). The Facility Terms and Conditions are incorporated into this Facility Letter and together with the Facility Letter, shall constitute the **Agreement**.
	2. Capitalised words used below shall have the meanings given to them in the Facility Terms and Conditions unless otherwise stated in this Facility Letter.
2. **DEFINITIONS AND CONSTRUCTION**
	1. **Definitions**

In this Facility Letter:

***Acceptable Accounting Standards***means generally accepted accounting principles in [insert jurisdiction based on the Group accounting policies], including IFRS.

***Advance*** means an advance of a Loan or Subscription Amount pursuant to a Note Issuance.

***Advance Request*** means an Advance request substantially in the form of Schedule 1 *(Form of Advance Request)*;

***Arranger*** means **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*]**

***Business Day*** means a day (other than a Saturday or Sunday) on which banks are open for general business in, [*insert capital of country where the Funders and the Borrower are located*].

***Borrower*** means **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*].**

***[Borrowing Parties*** means the Borrower and the Downstream Borrower***]***.

***Commercial Lender*** means **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*].**

***Crowdfunder*** means **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*].**

***Committed Facility Amount*** means **[*INSERT*]** being the aggregate of the Facility A Commitment and the Facility B Commitment.

***Default Rate*** means the rate that is equal to aggregate of the Interest Rate and **[*INSERT*]%**.

***Euro,*** ***€*** or ***EUR*** means the lawful currency of the member states of the European Union that have adopted and retained a common single currency through monetary union in accordance with European Union treaty law, as amended from time to time.

***Downstream Borrower*** means **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*].**

***Exposure*** means the Facility A Exposure or the Facility B Exposure.

***Facility A*** means the facility which shall be advanced by way of Loans.

***Facility Agent*** means **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*].**

***Facility A Commitment*** means an amount of **[*INSERT*]** the maximum amount which can be advanced to a Borrower as Loans pursuant to Facility A.

***Facility A Exposure*** means the aggregate of the Loans advanced under Facility A.

***Facility Agent*** means **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*]**

***Facility B*** means the facility which shall be advanced by way of Note Issuances.

***Facility B Commitment*** means the, maximum amount which can be advanced to a Borrower as Subscription Amounts pursuant to any Note Issuance under Facility B, being the lesser of:

* + - 1. an amount of **[*INSERT*]**; and
			2. the commitment amount set out in the Fully Funded Notice.

***Facility B Exposure*** means the aggregate amount of the Subscription Amounts advanced under the Notes which have been issued and remain outstanding.

***Finance Documents*** means the Agreement, the Notes Terms, the Transaction Security Documents and any other document that has been designated as a Finance Document by the Borrower and the Funders.

***Finance Party*** means a Funder, Facility Agent or the Security Agent.

***Fully Funded Notice*** means a written notice from the CrowdFunder, confirming amongst other things:

* 1. that the crowdfunding campaign to finance the Borrower has successfully closed on its platform; and
	2. the commitment amount of the Facility B Commitment. [[4]](#footnote-3)

***Funder*** means the Commercial Lender and the Crowdfunder.

***Funding Date*** means the date on which an Advance is made under the Facility.

***Group*** means the [Borrower / Guarantor] and any Subsidiaries.

***Group Company*** means any of the [Borrower / Guarantor and its Subsidiaries].

***Guarantor*** means **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*].**

***Hedging Agreement(s)*** means the hedging agreements dated **[*INSERT*]** between the Borrower and the Hedging Provider.

***Hedging Provider***means **[*INSERT*].**

***Interest Rate*** *means [INSERT].*

***Loan*** means a loan which is advanced under Facility A.

***Note*** means a note issued by the Borrower, pursuant to the terms of Schedule 5 *(Form of Note Terms and Conditions).[[5]](#footnote-4)*

***Note******Issuance***means a subscription and issuance of a note under Facility B.

***Note Terms*** means the Note Terms and Conditions substantially in the form of Schedule 5

***Maturity Date*** has the meaning given in Clause 3.5 *(Term).*

***Obligor*** means the Borrower, [the Guarantor], and [the Downstream Borrower].

***Permitted Region*** means **[*INSERT*].**

***Permitted Financial Indebtedness*** means:

* + - 1. any Financial Indebtedness set out in Schedule 2 (*List of Permitted Loans)*; or
			2. any Financial Indebtedness incurred with the prior written approval of the Lender.

***Permitted Security*** means the security set out in Schedule 3 *(List of Permitted Security)*.

***Project*** means **[*INSERT*].**

***Relevant Currency*** means:

* 1. in relation to Facility A [US$] / [EUR].; and
	2. in relation to Facility B [US$] / [EUR].

***Security Agent*** means **[*INSERT*]** a limited liability company organized under the laws of **[*INSERT*].**

***Subscription*** means a subscription for Notes.

***Subscription Amount*** means an amount advanced to the Borrower pursuant to Note Issuance under Facility B.

***Subsidiary*** means an entity in respect of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

***Website Access***means **[*INSERT*].**

***Transaction Security Document*** means **[*INSERT*].**

***US$***, $ or ***dollars***, the lawful currency of the United States of America.

* 1. Construction

In the Agreement:

* + - 1. a **Finance Party,** **Obligor** or any **party** 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;
			2. **assets** includes present and future properties, revenues and rights of every description;
			3. a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
			4. 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);
			5. **repayment** and **prepayment** refers to a repayment or prepayment of a Loan or a redemption of the Notes.
			6. 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;
			7. a provision of law is a reference to that provision as amended or re-enacted;
			8. Section, Clause and Schedule headings are for ease of reference only;
			9. 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 the Agreement; and
			10. 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.
1. **AMOUNT TERM AND DRAWDOWN**
	1. **Committed Facility**
		* 1. The Funders are pleased to offer the Borrower the Facility under the terms of this Facility Letter.
			2. **Facility A**

The Facility A shall be advanced by way of Loans, up to the Facility A Commitment.

* + - 1. **Facility B**

Facility B shall be advanced by way of Subscription of the Notes pursuant to the Note Terms. The aggregate Subscription Amount advanced under Facility B shall not exceed the Facility B Commitment.

* 1. **Purpose**

The Borrower shall apply all Advances under the Facility towards financing the Project in the Permitted Region.

* 1. **Currency**

The Facility will be provided in the Relevant Currency.

* 1. **Availability Period**

The Facility may only be utilised as follows:

* + - 1. Facility A shall be advanced in [insert number of Loans ] during the following period [ ](the ***Facility A*** ***Availability Period****)*:
			2. Facility B shall be advanced by way of [insert number] Note Issuances during the following period [ ](the ***Facility B Availability Period****)*:
	1. **Term**

The Borrower shall repay the outstanding aggregate Loans and redeem all the Notes in full on [*insert date*] (the ***Maturity Date***).[[6]](#footnote-5)

1. **CONDITIONS PRECEDENT TO EACH ADVANCE**
	1. **Conditions Precedent for all Advances**
	2. No Borrower may deliver an Advance Request unless the Facility Agent has received the following documents and other evidence in form and substance satisfactory to the Facility Agent:
		1. a copy of the constitutional documents of the Borrower.
		2. a copy of a resolution of the board of directors of the Borrower:
			1. approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the applicable Finance Documents;
			2. authorising a specified person or persons to execute the Finance Documents on its behalf; and
			3. authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Advance Request) to be signed and/or despatched by it under or in connection with the Finance Documents,
		3. a certificate of the Borrower signed by a director confirming that:
			1. borrowing and or guaranteeing the Committed Facility (as the case may be); or
			2. issuing the Notes,

would not cause any borrowing, guaranteeing or similar limit binding on the Borrower to be exceeded,

* + 1. completion of all know-your-customer checks or other similar checks required under any applicable law or regulation;
		2. all regulatory approvals and documentation required for the Advance have been completed;
		3. this Agreement duly executed by all original parties to it;
		4. the Transaction Security Documents in agreed form shall be duly executed, stamped, and registered, and all necessary formalities required to perfect the Security granted thereunder shall have been completed;
		5. no action or proceeding has been instituted or threatened by any governmental authority which seeks to enjoin, prohibit or invalidate the transactions contemplated by this Agreement or which could reasonably be expected to have a Material Adverse Effect;
		6. legal opinions in respect of (i) the enforceability of the Finance Documents; and (ii) on the capacity of the Borrower;
		7. [the Borrower has appointed a service of process agent in England];
		8. the Lender will have received such documents and certificates as it may reasonably request related to each Obligor’s organization, existence and good standing, the authorization of the transactions hereunder and any other legal matters related to the entry into and performance of this Agreement or the transactions contemplated thereunder, all in form and substance reasonably satisfactory to it;
		9. evidence that the Borrower has paid or will pay the Upfront Fee and the Finance Parties’ applicable transaction expenses;
		10. evidence that each Obligor have adopted an E&S Policy in form and substance satisfactory to the Facility Agent; and
		11. evidence that no Obligor is in violation of [**insert any exclusions lists or other policy requirements]** of the Facility Terms and Conditions.
	1. The Funders shall only be obliged to make an Advance to the Borrower if the representations set out in Clause 3 *(Representations)* of the Facility Terms and Conditions are true and correct in all material respects on both the date of the Advance Request and the Funding Date, no Default or Event of Default is outstanding and the Facility Agent has received the following documents, confirmations and evidence in form and substance satisfactory to it:
	2. **Conditions Precedent for Facility A**

The Funders shall only be obliged make a Loan to the Borrower under Facility A if:

* 1. the representations set out in Clause 3 *(Representations)* of the Facility Terms and Conditions are true and correct in all material respects on both the date of the Advance Request, and the Funding Date;
	2. no Default or Event of Default is outstanding; and
	3. the Facility Agent has received the following documents, confirmations and evidence in form and substance satisfactory to it:
		1. confirmation that the Exposure under Facility A and Facility B will be proportionate after the proposed Funding Date
		2. the CrowdFunder has delivered a Fully Funded Notice to the Borrower and the Facility Agent;
		3. **[insert any additional Conditions Precedent for Facility A]**.
	4. **Conditions Precedent for Facility B**

The Funders shall only be obliged to subscribe for any Notes under Facility B if:

* 1. the representations set out in Clause 3 *(Representations)* of the Facility Terms and Conditions are true and correct in all material respects on both the date of the Advance Request, and the Funding Date;
	2. no Default or Event of Default is outstanding;
	3. the Exposure under Facility A and Facility B will be proportionate after the proposed Funding Date;
	4. [the CrowdFunder has received all necessary documentation and confirmations required to comply with all regulatory requirements, including the prospectus exemption requirements];
	5. the CrowdFunder has delivered a Fully Funded Notice to the Borrower and the Facility Agent;
	6. [insert any additional CPs for Facility B]
1. **UTILIZATION**
	1. Requests for Advances shall be made by delivering an Advance Request to the Facility Agent:
		* 1. **[*INSERT*]**, Business Days preceding the proposed Funding Date with respect to a Note Issuance; and
			2. **[*INSERT*]**, Business Days preceding the proposed Funding Date with respect to a Loan; and
	2. The minimum amount for each Advance Request shall be **[*INSERT*]**, or if less, the amount of Committed Facility, and the maximum amount for each Advance Request shall be **[*INSERT*]**.
	3. The Borrower may only submit [one Advance Request in respect of a Loan and one Advance Request for a Note Issuance during each 3-month period].
	4. The Borrower shall **[**use its reasonable endeavours to**]** utilise Facility A and Facility B proportionately, however, if the Funders agree to waive any Facility A or Facility B Conditions Precedent with respect to any Advance and as a result, the Facility A Exposure and the Facility B Exposure are not proportionate, the Borrower shall ensure that next Advance(s) is/are utilised in such a way as to ensure that the Facility A Exposure and the Facility B Exposure are proportionate, after the following Advance(s).
	5. Subject to compliance with the applicable conditions precedent of this Clause 5, the Funders shall make each disbursement within **[*INSERT*]**, Business Days of receiving a valid Advance Request.
	6. Each Advance shall be made by wire transfer to the proceeds account specified in the applicable Advance Request.
2. **PAYMENTS**
	1. **Interest**
		* 1. **Interest Calculation**

Each Advance shall accrue interest on the outstanding principal amount of the Loan or the Note for each Interest Period at the Interest Rate. Interest and fees payable under the Agreement will be calculated on the basis of a 360 (three hundred and sixty) day year and the actual number of days elapsed in the period for which such interest or fees are payable.

For purposes of calculating and paying interest on any Advance:

* + - 1. the Interest Period means, for each Advance, a period of three months from and including the Funding Date or (if already made) the date from and including the preceding Quarter Date and shall end on but exclude the next Quarter Date (for avoidance of doubt, no adjustment for Business Days shall be applicable in determining the Interest Period);
			2. the Quarter Date means **[*INSERT*]**, **[*INSERT*]**, **[*INSERT*]**and **[*INSERT*]** of each calendar year;
			3. **Interest Payment**

Except as otherwise expressly provided herein, interest will be payable on each Quarter Date in arrears, save that if a Quarter Date shall fall on a day that is not a Business Day, such interest amount shall be payable on the next following Business Day.

* + - 1. **Default Interest**

If the Borrower fails to pay any amount payable by it hereunder on its due date, interest shall accrue, to the extent permitted by applicable law, on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate that is equal to the Default Rate.

* 1. **Repayments**

On the Maturity Date, the Borrower shall:

* + - 1. repay all Loans; and
			2. redeem all the outstanding Notes,

together with all other amounts outstanding in relation to the Finance Documents (including all unpaid fees, interest and costs) in full.

* 1. **Prepayment**
		+ 1. **Voluntary prepayment**

The Borrower may, at its option, make a prepayment to repay each Loan and redeem each Note (a **Prepayment**) on a Quarter Date, *provided* that:

the Notes are redeemed, and the Loans are repaid proportionately to ensure that each Funder’s Exposure under Facility A and Facility B is reduced proportionately;

it has given the Facility Agent **[*INSERT*]** days’ written notice;

the Prepayment is in a minimum amount of at least **[*INSERT*]**;

the Prepayment does not result in an Event of Default or Potential Event of Default;

the Borrower pays to the Facility Agent, for the benefit of each Funder, a prepayment fee equal to **[*INSERT*]** % of the amount prepaid; and

[the Borrower pays each Lender the break costs arising from unwinding any hedge pursuant to the terms of any Hedging Agreement].

* + - 1. **Mandatory prepayment – Insurance and asset disposals**

The Borrower shall apply towards repayment of an Advance, on the last day of the Interest Period occurring after the Facility Agent has notified the Borrower or, if earlier, the date specified by the Facility Agent in the notice:

all proceeds of any insurance claim in excess of US$100,000 (one hundred thousand dollars) (less reasonable expenses), unless the Facility Agent approves the Borrower’s reinstatement plans within 10 (ten) days of the acceptance of the claim by the insurer. If the Facility Agent approves the Borrower’s reinstatement plans, the Borrower shall ensure that the proceeds of the claim shall be kept in a separate account and applied to meet a third-party claim or in reinstatement of the relevant asset or otherwise in amelioration of the loss within, in each case, 6 months; and

the proceeds of any material asset sale or disposal, other than an asset sale or disposal in the ordinary course of trading or of assets in exchange for other assets comparable or superior as to type, value or quality.

Amounts pre-paid many not be re-borrowed.

On prepayment of part or all of an Advance in accordance with this Clause, the Committed Facility shall immediately be reduced by an amount equal to the amount of the Advance prepaid.

* 1. **Making of Payments**

Except as otherwise expressly provided in this Agreement, all payments (including prepayments) made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made on or prior to 5:00 P.M. [***INSERT RELEVANT JURISDICTION*** ] time on the due date thereof to the Funder at: [***provide* *Funder’s account information***].

1. **FEES AND EXPENSES**
	1. **Upfront Fees**
		* 1. The Borrower shall pay the Arranger an upfront fee in an amount equal to [***INSERT***]% of the Committed Facility Amount (the “**Upfront Fee**”).
			2. The Funder may deduct the Upfront Fee, as well as any other applicable fees, from the first Advance disbursed.
	2. **Commitment Fee**

The Borrower shall pay to the Funders a commitment fee equal to **[*INSERT*]**% of the Committed Facility Amount, less (a) the Exposure; and (b) any portion of the Committed Facility Amount which has been cancelled (the “**Commitment Fee**”).

* 1. **Transaction Expenses**

The Borrower shall promptly, and in any event within 5 (five) Business Days of demand, pay (or reimburse) to each Finance Party, all fees, costs, and expenses (including, but not limited to, legal fees) incurred by any of them on or prior to the date of this Agreement in connection with the structuring, negotiation, preparation, printing, execution and perfection of this Facility Letter and any other Finance Documents, if such fees are not deducted from the first Advance.

* 1. **Enforcement and Preservation Costs**

The Borrower shall, within 5 (five) Business Days of demand, pay to each Finance Party, the aggregate amount of all fees, costs and expenses (including legal fees) incurred by each such party in connection with the enforcement of, or the preservation of any rights under, any Finance Documents and the security interests created pursuant to the Transaction Security Documents.

1. **FINANCIAL COVENANTS**
	1. **Cash Reserve**
		* 1. The Borrower shall maintain a Cash Reserve of at least **[*INSERT*]%** of the Outstanding Debt.
			2. The Borrower shall maintain a minimum reserve in the Loan Account of no less than **[*INSERT*]** (the ***Minimum Loan Account Balance***).

For purposes of determining compliance with this covenant:

***Cash Reserve*** means cash denominated in any currency (and converted to the Relevant Currency at the then prevailing exchange rate) in hand or at a bank and (in the latter case) credited to any other bank account of the Borrower which is not subject to any security (other than pursuant to the Transaction Security Documents) and, in each case, to which the Borrower alone is beneficially entitled and for so long as:

* + - 1. that cash is repayable on demand or within 30 (thirty) days after the relevant date of calculation; and
			2. repayment of that cash is not contingent on the prior discharge of any other indebtedness of the Borrower or of any other person whatsoever or on the satisfaction of any other condition other than notice or demand therefor; and
			3. the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Facility.

***Loan Account*** means **[*INSERT*]**

***Outstanding Debt*** means the aggregate principal amount of Exposure outstanding under the Facility.

* 1. **Current Ratio**
		+ 1. The Borrower shall maintain a Current Ratio of **[*INSERT*]**.
			2. For purposes of determining compliance with this covenant:

***Current Ratio*** means the ratio of the Borrower’s Current Assets against the value of its Current Liabilities.

***Current Assets*** means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of the Borrower, including prepayments in relation to operating items and sundry debtors maturing within 12 months from the date of computation but **excluding** amounts in respect of:

* 1. receivables in relation to Taxes;
	2. exceptional items and other non-operating items;
	3. insurance claims;
	4. any amounts owed by any affiliate to the Borrower, other than amounts payable by the Downstream Borrower to the Borrower in relation to trade receivables and shareholder loans.

***Current Liabilities*** means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of the Borrower, falling due within twelve months from the date of computation but **excluding** amounts in respect of:

* 1. liabilities in respect of Taxes;
	2. exceptional items and other non-operating items;
	3. insurance claims;
	4. any amounts owed by any affiliate of the Borrower to the Borrower; and
	5. liabilities in relation to dividends declared but not paid by the Borrower.
	6. **Debt to Equity Ratio**
	7. The Borrower shall maintain a Debt to Equity Ratio of **[*INSERT*]**
	8. For purposes of determining compliance with this covenant:
		1. ***Debt to Equity Ratio*** means the ratio of the Debt to Equity, expressed as a percentage.
		2. ***Debt*** means at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of any indebtedness of the Borrower for or in respect of:
			1. moneys borrowed and debit balances at banks or other financial institutions;
			2. any acceptances under any acceptance credit or bill discount facility (or dematerialised equivalent);
			3. any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
			4. any finance lease;
			5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
			6. any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing; and
			7. (without double counting) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (f) above.
		3. ***Equity*** means the total equity of the Borrower including shareholders’ equity, reserves, retained earnings or losses and the cumulated net income or losses for the year.
	9. **Ratio of Past Due Accounts Receivable**
		+ 1. The Borrower shall maintain a Ratio of Past Due Accounts Receivable of **[*INSERT*]**.
			2. For purposes of determining compliance with this covenant:

***Partner Business*** shall mean the sale of portable and solar home systems by the Borrower to a partner, as opposed to an end client.

***Ratio of Past Due Accounts Receivable*** shall mean as of the last day of any financial quarter, the ratio of:

accounts receivables related to the Partner Business of the Group that are more than 90 (ninety) days past due as of such date plus the write-offs related to the Partner Business over the past 12 (twelve) months; to

the Revenues of the Partner Business of the Group for the past 12 (twelve) months ended on such date

***Revenues***means any Group revenues as determined in accordance with the Acceptable Accounting Standards.

* 1. **Borrowing Base Facility to Outstanding Debt**
	2. The Borrower shall ensure that the ratio of the Borrowing Base Amounts to the Outstanding Debt, shall be greater than or equal to **[*INSERT*]**.
	3. For purposes of determining compliance with this covenant:
		1. ***Borrowing Base Amount*** means **[*INSERT*]**.
		2. ***Outstanding Debt*** has the meaning set forth above.

***Solvency Ratio*** shall mean, at any date, the ratio of:

* + - 1. Equity of the Guarantor as of such date; to
			2. Total Assets
	1. **Debt Service Coverage Ratio**
		+ 1. The Borrower shall maintain a Debt Service Coverage Ratio of **[*INSERT*]**.
			2. For purposes of determining compliance with this covenant:

***Debt Service Coverage Ratio*** means the ratio of:

EBITDA and the Cash Reserve, to

the sum of:

the aggregate cash interest expense of the Group, and

the scheduled principal payments of all Group Companies with respect to all Financial Indebtedness (including capital leases) that were paid or were due and payable by any Group Company during the period.

***Cash Reserve*** means cash denominated in any currency (and converted to the Relevant Currency at the then prevailing exchange rate) in hand or at a bank and (in the latter case) credited to any other bank account of the Borrower which is not subject to any security (other than pursuant to the Transaction Security Document) and, in each case, to which the Borrower alone is beneficially entitled and for so long as:

that cash is repayable on demand or within 30 (thirty) days after the relevant date of calculation; and

repayment of that cash is not contingent on the prior discharge of any other indebtedness of the Borrower or of any other person whatsoever or on the satisfaction of any other condition other than notice or demand therefor; and

the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Facility.

* 1. **Collateral Coverage Ratio**
		+ 1. The Borrower shall maintain a Collateral Coverage Ratio of **[*INSERT*]**.
			2. For purposes of determining compliance with this covenant:

***Collateral Coverage Ratio*** shall mean the ratio, as of any such date of determination, of:

the aggregate receivables of the [Group], plus unrestricted cash held in an account of any [Group] Company, plus the book value of all inventory owned by that [Group Company]; to

the total amount of all Financial Indebtedness then outstanding and owed to the creditors that individually or collectively hold security that secures such Financial Indebtedness.

* 1. **Covenant Testing and Compliance**

The foregoing financial covenants shall be tested the last Business Day of each month (each, a ***Testing Date***).

The Borrower shall deliver to the Facility Agent:

* + - 1. a compliance certificate in the form of Schedule 4 *(Form of Compliance Certificate)* setting out each financial ratio pursuant to Clause 9 *(Financial Covenants)*, including the calculation basis (in reasonable detail) of such compliance, by no later than the date falling 30 (thirty) Business Days after each Testing Date; and
			2. a copy of any financial statements, quarterly reports, impact reports, compliance certificates and other information provided to the Funders under Clause 8.9(a) *(Financial Reporting)* and Clause 8.9(b) (*Impact Metrics and Industry Standards*) of the Facility Terms and Conditions.
	1. **Reporting**
		+ - 1. Financial Reporting

So long as any Exposure is outstanding, the Borrower will deliver, or inform Facility Agent of, the following, in relation to any Obligor and the Project:

its balance sheet, management team changes, expansion plans and technology-pricing changes on or before the date falling 30 (thirty) days after the end of each quarter;

a monthly report setting out its income statement, receivables and payable ageing report, cash-flow update within 30 (thirty) days, on or before the date falling 30 (thirty) days after the end of each month; and

its consolidated, audited financial statements within 120 (one hundred and twenty) days of its year-end.

* + - * 1. **Impact Metrics and Industry Standards**

The Borrower:

will provide the Facility Agent with reports in form and substance satisfactory to the Facility Agent, on or before the date falling 30 (thirty) days after the end of each quarter on the social, environmental and economic benefits realized by the Project due to using the solar technology, including:

access to quality, clean and affordable energy: people reached with energy access and systems deployed;

environmental improvement: CO2 emissions and recycling activity;

increased use of renewable energy: capacity, generation and consumption;

socioeconomic impacts: jobs created, and where relevant, income-generating activities, income generated and for agribusiness only, yield and farmers impacted; and

customer/end-user breakdown: percent breakdown of end-user beneficiaries by households, businesses, other institutions, rural and low-income;

[shall ensure that each Obligor shall commit to the Global Off-Grid Lighting Association’s (GOGLA) Consumer Protection Code][[7]](#footnote-6);

confirms that it and each Obligor

has received and shall comply with the ESG and Impact Policy; and

shall adopt, implement and comply with the E&S Policy.

* + - 1. **Notification of Change of Control**

The Borrower shall promptly notify the Lender if:

there is a Change of Control in relation to any Obligor, or

the Borrower becomes aware of circumstances that may result in a Change of Control in relation to any Obligor.

1. **SPECIAL CONDITIONS**

*[Insert additional conditions for the particular Facility]*

1. **MISCELLANEOUS**
	1. **Governing Law and Jurisdiction**

This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with [English law], without giving effect to principles of conflicts of law. Each of the Parties consents to the [exclusive] jurisdiction and venue of the [courts of England].

* 1. **Counterparts**

This Agreement may be executed by one or more of the Parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile transmission or other electronic means will be as effective as delivery of a manually executed counterpart hereof.

* 1. **No Limitation on Remedies**

No failure to exercise, nor any delay in exercising, on the part of a Finance Party, any right or remedy herein shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of a Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies provided by law.

* 1. **English Language**

This Agreement and all documents to be furnished or communications made in connection herewith shall be in English or, if in another language, shall be accompanied by a certified translation into English, which translation shall govern between the Parties. In the event that this Agreement is translated into any language other than English, the English version of this Agreement will control in all instances.

* 1. **Complete Agreement**

This Agreement is intended by the Parties to be a complete and final expression of their agreement.

* 1. **Third party Rights**

This Agreement is made solely and specifically between the Parties for the benefit of the Parties. This Agreement is not intended to be for the benefit of and shall not be enforceable by any other person.

* 1. **Notices**

Any notice, document or other communication required to be given or served under and/or in connection with this Agreement shall be in writing in English, and shall be deemed to have been properly given or served if delivered to the addresses indicated below, whether through physical or electronic means, provided that either Party may change its address by giving the other Party notice of such change in writing or may, in writing, appoint an advocate to whom notices shall be served. Any communication or document which becomes effective, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

**Address of Service for the Facility Agent and Security Agent [*insert*]**.

**[*insert*]**.

Attn: [. ]

Email:[ ]

**Address of Service for the Commercial Lender [*insert*]**.

**[*insert*]**.

Attn: [. ]

Email:[ ]

**Address of Service for the CrowdFunder [*insert*]**.

**[*insert*]**.

Attn: [. ]

Email:[ ]

**Address of Service for Obligors[[8]](#footnote-7)**

**[*insert*]**.

Attn: [. ]

Email:[ ]

WITNESS WHEREOF, this Agreement has been entered into on the date stated at the beginning of this Agreement.

|  |  |
| --- | --- |
| **BORROWER:**  |  |
| By: Name: Title:  | By: Name: Title: |

|  |
| --- |
|  |
| **COMMERCIAL LENDER**  |
|  |
| By: Name: Title:  |

|  |  |
| --- | --- |
| **CROWDFUNDER**  |  |
|  |  |
| By: Name: Title:  |  |

|  |
| --- |
| **SECURITY AGENT**  |
|  |
| By: Name: Title:  |

**SCHEDULE 1**

**FORM OF ADVANCE REQUEST**

To: **[*INSERT*] as Facility Agent**

From: [ ]

Date: [          ]

[ ]  **Facility Letter date [*INSERT*]**

1. We refer to the Facility Letter. Terms defined in the Facility Letter have the same meaning in this Advance Request unless given a different meaning in this Advance Request.
2. We wish to draw an Advance on the following terms:
	* + 1. **Proposed Advance Funding Date: [*INSERT*]** (or, if that is not a Business Day, the next Business Day);
			2. **Currency of Advance:** US Dollars; and
			3. **Amount:** [            ] or, if less, the Available Facility.
3. We confirm that each condition precedent under the Facility Letter which is required to be satisfied on the date of this Advance Request is satisfied.
4. The proceeds of this Advance should be credited to the Proceeds Account (as defined below)
5. This Advance Request is irrevocable.

**“Proceeds Account”** means

|  |  |
| --- | --- |
| **Name of Bank** |  |
| **Account Name** |  |
| **Account Number** |  |
| **Bank Address** |  |
| **Sort Code** |  |
| **SWIFT Code** |  |

**By:**

**For and behalf of** [ ]

**SCHEDULE 2**

**LIST OF PERMITTED LOANS**

**[*INSERT*]**

**SCHEDULE 3**

**LIST OF PERMITTED SECURITY**

**[*INSERT*]**

**SCHEDULE 4**

**FORM OF COMPLIANCE CERTIFICATE**

From: [NAME OF BORROWER]

[ADDRESS]

To: [NAME OF FACILITY AGENT]

[ADDRESS]

Date: [DATE]

Dear Sirs and Madams,

**[NAME OF BORROWER]**

 **$[AMOUNT] Facility Agreement dated [DATE] between [PARTIES] (Facility Letter)**

**1.**  We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Facility Letter have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

**2.**  We certify that the financial statements of the Borrower as at [DATE] [enclosed with this Compliance Certificate] **OR** [published at the Designated Website] give a true and fair view of its financial condition as at that date.

**3.**  We confirm that, as demonstrated by the enclosed computations, the Borrower is in compliance with the following financial covenants set out in Clause [ ] of the Facility Letter:

|  |  |  |
| --- | --- | --- |
| **Financial Covenant**  | **Ratio** | **Calculation** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

**4.**  We confirm that [no Event of Default is continuing **OR** the Borrower is in default pursuant to [NUMBER] of [Schedule 1](#2bn6wsx) and has [EXPLAIN STEPS TAKEN TO REMEDY DEFAULT]].

Signed by [NAME OF DIRECTOR].......................

For and on behalf of [NAME OF BORROWER]Director

[Signed by [NAME OF DIRECTOR]].......................

[For and on behalf of [NAME OF BORROWER][Director]

# SCHEDULE 5

# FORM OF NOTE TERMS AND CONDITIONS

**NOTE TERMS**

**issue of**

**US$[ ] Senior Secured [ ]% Notes due [ ]**

### This document (the “Note Terms”) constitutes the Note Terms relating to the issue US$[ ] Senior Secured 10% Notes due [ ] (the “Notes”) by [ ] (the “Issuer”) pursuant to the Facility Agreement, dated on or about [ ], entered into between [ ] (the “Funders”), as amended, novated and/or substituted from time to time in accordance with its terms (the “Facility Agreement”).

The Notes are issued on, and subject to, the terms of the Facility Agreement (as amended and/or supplemented from time to time)

|  |  |
| --- | --- |
| **A.**  | **DESCRIPTION OF THE NOTES** |
| 1. | Issuer | [ ] |
| 2. | Specified Office of the Issuer | [ ] |
| 3. | Form | Each Note is digitally generated and held with **[*INSERT*] /** [ issued in registered certificated form and will be represented by a Certificate]. |
| 4. | Type | Fixed Rate Notes |
| 5. | Status | Senior |
| 6. | Security | Secured |
| 8. | Issue Date | [ ] |
| 9. | Issue Price |  |
| 11. | Redemption basis | Redemption at par (see Condition [9] and Item C below) |
| 12. | aggregate Principal Amount of the Notes | [ ] |
| 14. | Specified Currency | US$ |
| 15 | Certificates | The form of Notes certificate is set out below as Annexure A |
| **B.** | **INTEREST RATE PROVISIONS** |
| 1. | Interest Rate | The Notes will bear interest at a rate of [ ]% per annum |
| 3. | Interest Commencement Date | Issue Date |
| 4. | Interest Payment Date(s) |  |
| 5. | first Interest Payment Date |  |
| 6. | Interest Periods | The first Interest Period shall commence on (and include) the Interest Commencement Date and end on (but exclude) the first Interest Payment Date. Thereafter, each successive Interest Period shall commence on (and include) the immediately preceding Interest Payment Date and end on (but exclude) the immediately following Interest Payment Date; provided that the final Interest Period shall end on (but exclude) the Redemption Date.  |
| 14. | Day Count Fraction | Actual/360 |
| 15. | Default Rate | [ ]% above the Interest Rate |
| **C.** | **REDEMPTION** |
| 1. | ***Redemption at maturity:*** |  |
| (a) | Maturity Date | [ ]  |
| (b) | Final Redemption Amount | The Outstanding Principal Amount of each Note plus accrued interest (if any) to the Maturity Date. |
| **E.** | **AGENTS AND SPECIFIED OFFICES** |
| 2. | Specified Office of the Calculation Agent |  |
| 4. | Specified Office of the Transfer Agent |  |
| **G.** | **GENERAL** |
| 1. | Distribution of the Notes | Private placement |
| 2. | Selling restrictions | **[*insert*]**. |
| 4. | Listing | The Notes are not listed on any exchange. |
| 5. | Applicable Terms | The Notes are issued on, and subject to, theTerms and Conditions as completed by the Final Terms. |
| 6. | Governing law  | The Notes and the Applicable Terms are governed by and shall be construed in accordance with the laws of England and Wales  |
| 7. | Business Centre | [ ] |
| 8. | Other banking jurisdiction | Not Applicable |

**ANNEXURE A**

**FORM OF NOTE CERTIFICATE**

|  |
| --- |
| **Certificate No. [NUMBER]** |
| **Date of Issue [DATE]** |
| **Amount $[AMOUNT]** |
| **[FULL COMPANY NAME]****$[AMOUNT] FIXED RATE SECURED NOTES [YEAR]** |

Created and issued pursuant to a resolution of [a duly appointed committee of] the board of directors of the Borrower passed on [DATE].

**THIS IS TO CERTIFY THAT** the noteholder is the holder of $[AMOUNT] fixed rate secured notes [YEAR] entered into by the Borrower as issuer on [DATE] (**Instrument**). Such Notes are issued with the benefit of and subject to the provisions contained in the Instrument and the Conditions endorsed on or annexed to this Certificate.

**Notes:**

|  |  |
| --- | --- |
| 1. | The Notes are repayable and shall bear interest in accordance with the Note Terms. |
| 2. | Payments of principal and interest on the Notes represented by this Certificate are secured under the terms of the Transaction Security, as defined in the Facility Letter. |
| 3. | This Certificate must be surrendered to the Borrower before any transfer or repayment, whether of the whole or any part of the Notes comprised in it, can be registered or effected, or any new certificate issued in exchange. |
| 4. | Words and expressions defined in the Instrument shall bear the same meaning in this Certificate and in the Conditions. |
| 5. | The Notes and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with any of them or their subject matter or formation shall be governed by, and construed in accordance with, [the law of England and Wales]. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Notes or their subject matter or formation. |
| 6. | A copy of the Instrument is available for inspection at the registered office of the Company. |
| Executed by [NAME OF COMPANY] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR/SECRETARY], [a director **OR** its secretary] | .................................Director.................................[Director **OR** Secretary] |

1. Parties may wish to refer to a “Security Trustee” [↑](#footnote-ref-0)
2. Include if there is a Guarantor [↑](#footnote-ref-1)
3. Include if the funds will be lent “off shore” and then transmitted to the in-country ultimate beneficiary. [↑](#footnote-ref-2)
4. Note – consider what specific form the notice will take for the Crowdfunder. [↑](#footnote-ref-3)
5. Note – each CrowdFunder to insert its bespoke final terms and form of notes. [↑](#footnote-ref-4)
6. This Facility Letter assumes that the Maturity Date for the Loans and the Notes is the same. [↑](#footnote-ref-5)
7. Note – typically only applicable for solar homes systems companies. [↑](#footnote-ref-6)
8. **Drafting Note** Borrower must appoint a UK-based service of process agent. [↑](#footnote-ref-7)