

[*INSERT FULL LEGAL NAME OF EXPORT BANK*]
AS BORROWER

AND

[BNG BANK N.V. / NEDERLANDSE WATERSCHAPSBANK N.V.]
AS LENDER

[EUR/USD] [*INSERT AMOUNT*] EXPORT CREDIT
REFINANCING AGREEMENT - CIRR

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THIS AGREEMENT is dated [•] and made

BETWEEN:

- (1) **[INSERT FULL LEGAL NAME OF RELEVANT EXPORT BANK]**, [public company with limited liability (*naamloze vennootschap*) / cooperative with excluded liability (*coöperatie met uitgesloten aansprakelijkheid*) / [other]] in its capacity as borrower (the "**Borrower**"); and
- (2) **[BNG BANK N.V./ NEDERLANDSE WATERSCHAPSBANK N.V.]** as lender (the "**Lender**").

WHEREAS:

- (A) The Borrower is the lender under the Export Credit Facility Agreement.
- (B) The Lender is willing to refinance [50 per cent. of] the financing made available by the Borrower under the Export Credit Facility Agreement. [On [or about the date hereof], the Borrower will also enter into a separate export credit refinancing agreement [*insert definition CIRR refinancing agreement other sector bank*] with [*insert legal name of other sector bank*] with a view to refinancing the remaining part of the financing made available under the Export Credit Facility Agreement.
- (C) The credit risk and country risk on the Export Credit Borrower under the Export Credit Facility Agreement is or will be insured by the ECA under the ECI for the benefit of [the Borrower][•] as agent and the Borrower as co-insured].
- (D) The rights of the Lender under this Agreement are or will be guaranteed by the ECA pursuant to the ECA Cover Document.
- (E) In connection with the ECA Cover Document, the Borrower has pledged or will pledge its rights under the Export Credit Facility Agreement to the ECA.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"**Assignment Agreement**" means an agreement in the form agreed between the relevant assignor and assignee.

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

"**Break Costs**" means the discounted cash flow (to be determined by the Lender in a commercially reasonable manner) of the positive difference between:

- (a) the amount of interest which the Lender was due to receive until the Final Repayment Date (disregarding any prepayment or cancellation) calculated in accordance with Clause 8.1 (*Calculation of interest*); and
- (b) the amount of interest which the Lender had received until the Final Repayment Date (disregarding any prepayment or cancellation) calculated by reference to the commercial interest reference rate for a loan with a maturity equal to the period between the relevant date of repayment or cancellation and the Final Repayment Date.

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Amsterdam [and [•]]¹.

"**Confidential Information**" means all information relating to a Party (the "**First Party**"), the Finance Documents or the Facility of which the other Party (the "**Second Party**") becomes aware in its capacity as a Party or which is received by the Second Party in relation to the Finance Documents or the Facility from the First Party or any of its advisers in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (a) is or becomes public information other than as a direct or indirect result of any breach by the Second Party of Clause 28 (*Confidential Information*);
- (b) is identified in writing at the time of delivery as non-confidential by the First Party or any of its advisers; or
- (c) is known by the Second Party before the date the information is disclosed to it by the First Party or any of its advisers or is lawfully obtained by the Second Party after that date, from a source which is, as far as the First Party is aware, unconnected with the First Party and which, in either case, as far as the Second Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in the then current recommended form of the Loan Market Association or in any other form agreed between the Borrower and the Lender.

"**Default**" means an Event of Default or any event or circumstance specified in Clause 18 (*Events of Default*) which would (with the expiry of a grace period, the giving of

¹ TBD whether to be aligned with Business Day definition in Export Credit Facility Agreement

notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Disruption Event" means either or both of:

- (a) a material disruption to the payment or communications systems or to the financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out), **provided that** the disruption is not caused by, and is beyond the control of, either Party; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or the other Party:
 - (i) from performing its payment obligations under the Finance Documents;
or
 - (ii) from communicating with the other Party in accordance with the terms of the Finance Documents,

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

"Drawdown Schedule" means the schedule set out in Schedule 2 (*Drawdown Schedule*).

"Dutch Civil Code" means the *Burgerlijk Wetboek* of The Netherlands.

"ECA" means Atradius Dutch State Business N.V., acting on behalf and for the account of the State of The Netherlands.

"ECA Cover Document" means the export credit guarantee issued by the ECA to the Lender in respect of this Agreement.

"ECA Mandatory Prepayment Event" means each of the following events or circumstances:

- (a) it is or becomes unlawful for the ECA to perform any of its obligations under the ECA Cover Document or for the Lender to receive the benefit of the ECA Cover Document;
- (b) any obligation or obligations of the ECA under the ECA Cover Document are not or cease to be legal, valid, binding or enforceable or the ECA Cover Document is not or ceases to be in full force and effect, provided this is not caused by the Lender; or

- (c) the ECA avoids, rescinds, repudiates, suspends, cancels or terminates all or part of the ECA Cover Document or evidences an intention to or purports to avoid, rescind, repudiate, suspend, cancel or terminate all or part of the ECA Cover Document.

"**ECI**" means the export credit insurance policy issued or to be issued by the ECA, with number [*insert policy number/reference*].

"**Event of Default**" means any event or circumstance specified as such in Clause 18 (*Events of Default*).

"**Export Credit Borrower**" means [*insert full legal name of borrower under the Export Credit Facility Agreement*].

"**Export Credit Facility Agreement**" means the [EUR/USD][•] export credit facility agreement dated [•] between, amongst others, the Export Credit Borrower as borrower and [•] as lender[s], in the form as delivered as a condition precedent under this Agreement.

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

"**FATCA**" means:

- (a) sections 1471 to 1474 of the US Internal Revenue Code of 1986 or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"**FATCA Deduction**" means a deduction or withholding from a payment under a Finance Document required by FATCA.

"**FATCA Exempt Party**" means a Party that is entitled to receive payments free from any FATCA Deduction.

"**Final Repayment Date**" means [•]².

"**Finance Document**" means:

² Insert actual date on which the loan should be repaid in full according to the repayment schedule

- (a) this Agreement;
- (b) an Assignment Agreement or a Transfer Certificate; or
- (c) any other document designated as such by the Lender and the Borrower.

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions; and
- (b) any guarantee or similar indemnity assurance against financial loss of any person in respect of any item referred to in paragraph (a).

"Holding Company" of any person, means a person in respect of which that other person is a Subsidiary.

"Interest Payment Date" means each Utilisation Date and thereafter, each Repayment Date.

"Interest Period" means:

- (c) until the last Utilisation Date, each period from (and including) a Utilisation Date to (and excluding) the immediately succeeding Utilisation Date, or if there is no succeeding Utilisation Date, the immediately succeeding Repayment Date; and
- (d) thereafter, each period from (and including) the Repayment Date to (and excluding) the immediately succeeding Repayment Date.

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

"Loan Amount" means EUR [•]/USD [•] less the principal amount of any Loan Part (as at the relevant Utilisation Date), to the extent not reduced or cancelled under this Agreement.

"Loan Part" means each part of the Loan to be made available on a Utilisation Date.

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

- (a) if the numerically corresponding day is not a Business Day, that period will end on the next Business Day in the calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day; and

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period will end on the last Business Day in that calendar month.

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

"**New Lender**" has the meaning given to it in Clause 19.1 (*Assignments and Transfers by the Lender*).

["**Participating Member State**" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.]³

"**Party**" means a party to this Agreement.

"**Relevant Market**" means the [Eurozone interbank market] ⁴/[London interbank market]⁵.

"**Relevant Rate**" means [\bullet] per cent. per annum⁶.

"**Repayment Instalment**" means each scheduled instalment for repayment of the Loan specified under Clause 6 (*Repayment*).

"**Repayment Instalment Date**" means each date on which a repayment is to be made as set out in Schedule 3 (*Repayment Schedule*).

"**Repeating Representations**" means each of the representations and warranties set out in Clause 15 (*Representations*) [(other than Clauses 15.6 (*No misleading information*) and 15.9 (*No default*))].

"**Representative**" means any delegate, agent, manager, administrator, nominee, **attorney**, trustee or custodian.

"**Sanctions**" means the economic or financial sanctions laws, regulations, trade embargoes or other restrictive measures enacted, administered, implemented and/or enforced from time to time by any of the following (and including through any relevant Sanctions Authority):

- (a) the United Nations;
- (b) the European Union;

³ Include for a loan in EUR

⁴ Include for a loan in EUR

⁵ Include for a loan in USD

⁶ The Relevant Rate consists of CIRR minus 25 basis points plus a forward premium for EUR, and CIRR plus a forward premium for USD, to be fixed at the signing date of this document

- (c) the government of the United States of America;
- (d) the government of the United Kingdom; and
- (e) the Kingdom of The Netherlands.

"**Sanctions Authority**" means any agency or person which is duly appointed, empowered or authorised to enact, administer, implement and/or enforce Sanctions, including (without limitation):

- (a) the Department of the Treasury's Office of Foreign Assets Control of the United States of America;
- (b) the United States Department of State or the United States Department of Commerce;
- (c) Her Majesty's Treasury of the United Kingdom; and
- (d) United Nations Security Council.

"**Subsidiary**" means an entity 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.

"**Tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of them).

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

"**Tax Payment**" means either an increase in a payment made by the Borrower to the Lender under Clause 10.2 (*Tax gross-up*).

"**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) with any amendments which the Lender may approve or reasonably require.

"**Transfer Date**" means the transfer date specified in the relevant Assignment Agreement or Transfer Certificate.

"**Unpaid Sum**" means any sum due and payable but unpaid by the Borrower under the Finance Documents.

["US" means the United States of America.]⁷

"**Utilisation**" means the utilisation of the Facility.

"**Utilisation Date**" means each date on which (part of) the Facility is to be made available in accordance with the Drawdown Schedule.

"**VAT**" means:

- (a) any Tax imposed in compliance with Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other Tax of a similar nature whether imposed in a member state of the European Union in substitution for, or levied in addition to, such Tax referred to in paragraph (a) above, or imposed elsewhere.

1.2 **Construction**

Unless this Agreement expressly provides to the contrary, any reference in this Agreement to:

- (a) a Party or any other person includes its successors in title, permitted assigns and permitted transferees to, or of, all or any combination of its rights and obligations under the Finance Documents;
- (b) an "**amendment**" includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and "**amended**" will be construed accordingly;
- (c) "**assets**" includes present and future properties, revenues and rights of every description;
- (d) a "**Finance Document**" or any other agreement or instrument (other than the Export Credit Facility Agreement) includes any amendment to that Finance Document or other agreement or instrument, including any change in the purpose of, any extension of or any increase in the amount of a facility or any additional facility;
- (e) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association or body (including a partnership, trust, fund, joint venture or consortium), or any other entity (whether or not having separate legal personality);
- (f) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which a person to which it applies is generally

⁷ Include for a loan in USD

accustomed to comply) of any governmental, inter-governmental or supranational body, agency or department, or of any regulatory, self-regulatory or other authority or organisation;

- (g) a currency is a reference to the lawful currency for the time being of the relevant country;
- (h) a provision of law is a reference to that provision as amended and includes any subordinate legislation; and
- (i) a time of day is a reference to Amsterdam time.

1.3 A Clause or a Schedule is a reference to a clause of or a schedule to this Agreement.

1.4 The headings in this Agreement are for ease of reference only and do not affect its interpretation.

1.5 Unless this Agreement expressly provides to the contrary:

- (a) a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement;
- (b) a Default or an Event of Default is "**continuing**" if it has not been remedied or waived; and
- (c) any obligation of the Borrower under the Finance Documents which is not a payment obligation remains in force for so long as any payment obligation of the Borrower is outstanding or any part of the Loan Amount is available under the Finance Documents.

1.6 Any reference within a Clause to this Clause means the entirety of that Clause.

1.7 **Currency symbols and definitions**

["€", "EUR" and "euro" denote the single currency of the Participating Member States.]⁸

["USD" denote the lawful currency of the US.]⁹

1.8 **Dutch terms**

In this Agreement, where it relates to a Dutch person or the context so requires, a reference to:

⁸ Include for a loan in EUR

⁹ Include for a loan in USD

- (a) "**The Netherlands**" means the European part of the Kingdom of the Netherlands and "**Dutch**" means in or of The Netherlands;
- (b) a "**winding-up**", "**administration**" or "**dissolution**" includes declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*);
- (c) an "**administrator**" includes a *bewindvoerder*;
- (d) a "**liquidator**" includes a *curator*;
- (e) a "**receiver**" or an "**administrative receiver**" does not include a *curator* or *bewindvoerder*;
- (f) a necessary action to authorise, where applicable, includes without limitation:
 - (i) any action required to comply with the Dutch Works Council Act (*Wet op de ondernemingsraden*); and
 - (ii) obtaining unconditional positive advice (*advies*) from each competent works council;
- (g) "**negligence**" means *schuld*;
- (h) "**gross negligence**" means *grove schuld*; and
- (i) "**wilful misconduct**" means *opzet*.

1.9 **Third party rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

2. **THE FACILITY**

Subject to the terms of this Agreement, the Lender makes available to the Borrower a term loan facility in an aggregate amount equal to the Loan Amount.

3. **PURPOSE**

3.1 **Purpose**

The Borrower must apply all amounts borrowed by it under the Facility towards the refinancing of the funding made or to be made available by the Borrower to the Export Credit Borrower under the Export Credit Facility Agreement.

3.2 **Monitoring**

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to:

- (a) this Agreement; or
- (b) the Export Credit Facility Agreement.

4. **CONDITIONS OF UTILISATION**

4.1 **Initial conditions precedent**

The Lender shall not be required to make available the initial Loan Part until it has received (or waived receipt of) all of the documents and other evidence listed in Schedule 1 (*Conditions Precedent*) in form and substance satisfactory to the Lender. The Lender must notify the Borrower as soon as reasonably possible on being so satisfied.

4.2 **Further conditions precedent**

The Lender will only be obliged to comply with Clause 5 (*Advance of Loan Part*) if on the proposed Utilisation Date for the relevant Loan Part:

- (a) no Default is continuing or would result from granting the proposed Loan Part;
- (b) no ECA Mandatory Prepayment Event has occurred or would result from granting the proposed Loan Part; and
- (c) the Repeating Representations are correct in all material respects.

5. **ADVANCE OF LOAN PART**

- (a) If the conditions set out in this Agreement have been met, the Lender must make the relevant Loan Part available to the Borrower on each date and in such amount specified in the Drawdown Schedule.
- (b) The Lender is not obliged to make a Loan Part if, as a result, the Loan would exceed the Loan Amount.

6. **REPAYMENT**

6.1 The Borrower must repay the Loan in instalments by repaying on each Repayment Date an amount which reduces the outstanding Loan by the amount set out opposite that Repayment Date in Schedule 3 (*Repayment Schedule*).

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

7. **PREPAYMENT AND CANCELLATION**

7.1 **Illegality**

(a) If, in any applicable jurisdiction, it becomes unlawful for the Lender to perform any of its obligations as contemplated by any Finance Document or to fund or maintain any Loan, the Lender must notify the Borrower promptly on becoming aware of that event.

(b) After the Lender notifies the Borrower under paragraph (a) above:

(i) with immediate effect, the Lender will not be obliged to fund any Loan Part; and

(ii) on the date specified in paragraph (c) below:

(A) the Borrower must repay or prepay the Loan; and

(B) the Loan Amount will be cancelled.

(c) The date for:

(i) repayment or prepayment of the Loan and cancellation of the corresponding Loan Amount will be:

(A) the immediately following Interest Payment Date which is current on the date of the Lender's notice to the Borrower under paragraph (a) above; or

(B) if earlier, the date specified in that notice (which must be no earlier than the last day of any applicable grace period permitted by law); and

(ii) cancellation of the other Loan Amount will be the date specified in the Lender's notice to the Borrower (which must be no earlier than the last day of any applicable grace period permitted by law).

7.2 **Mandatory Prepayment – prepayment under Export Credit Facility Agreement**

- (a) If the whole or any part of the loans made under the Export Credit Facility Agreement are repaid or prepaid to the Borrower under the Export Credit Facility Agreement or otherwise (including pursuant to a transfer by the Borrower of its rights under the Export Credit Facility Agreement to a third party or the ECA), the Borrower must notify the Lender promptly upon becoming aware of that event.
- (b) After the occurrence of a repayment or prepayment under the Export Credit Facility Agreement described under paragraph (a) above, the Borrower must on the date specified in paragraph (c) below repay or prepay the Loan in an amount equal to the amount repaid or prepaid to the Borrower under the Export Credit Facility Agreement.
- (c) The date of prepayment of a Loan will be as soon as reasonable practicable and no later than the date of the notice under paragraph (a) above.

7.3 ECA Mandatory Prepayment Event

If an ECA Mandatory Prepayment Event occurs:

- (a) the Lender shall promptly notify the Borrower upon becoming aware of that event;
- (b) the Lender shall not be obliged to fund a Utilisation; and
- (c) if the Lender so requires and notifies, by not less than five days' notice to the Borrower, cancel the Facility and declare the outstanding Loan, together with accrued interest, and all other amounts accrued under this Agreement, immediately due and payable, whereupon the Facility will be cancelled and such outstanding Loan and amounts will become immediately due and payable.

7.4 Right of repayment and cancellation

- (a) If:
 - (i) any sum payable to the Lender by the Borrower is required to be increased under paragraph (c) of Clause 10.2 (*Tax gross-up*); or
 - (ii) the Lender claims indemnification from the Borrower under Clause 11 (*Increased Costs*),

the Borrower may, while the circumstances giving rise to the requirement for that increase or indemnification continue, give notice to the Lender of its intention to cancel the Facility and repay or prepay the outstanding Loan.

- (b) On receipt of a notice of prepayment and cancellation under paragraph (a) above:

- (i) the Loan Amount will immediately be reduced to zero; and
 - (ii) the Borrower must repay or prepay the Loan on the date specified in paragraph (c) below.
- (c) The date for repayment or prepayment of a Loan will be:
- (i) the immediately following Interest Payment Date which is current on the date of the notice under paragraph (a) above; or
 - (ii) if earlier, the date specified in the Borrower's notice to the Lender under paragraph (a) above.

7.5 Prepayment of Loan

Any partial prepayment of the Loan will be deducted pro rata against the remaining Repayment Instalments.

7.6 Miscellaneous

- (a) Any notice of cancellation or prepayment under this Clause:
- (i) is irrevocable; and
 - (ii) unless a contrary indication appears in this Agreement, must specify:
 - (A) the date on which the relevant cancellation or prepayment is to be made; and
 - (B) the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement must be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) Any prepayment or cancellation under this Clause 7 is subject to payment by the Borrower of the applicable Break Costs no later than [•] Business Days following the date of the relevant prepayment or cancellation.
- (d) No prepayment or cancellation is allowed except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Loan Amount cancelled under this Agreement may be subsequently reinstated.
- (f) If all or part of a Loan is repaid or prepaid and is not available for re-borrowing, an equivalent amount of the Loan Amount will be deemed to be cancelled on the date of repayment or prepayment.

8. **INTEREST**

8.1 **Calculation of interest**

The rate of interest on the Loan is equal to the Relevant Rate.

8.2 **Payment of interest**

Except where this Agreement expressly provides to the contrary, the Borrower must pay accrued interest on the Loan on each Utilisation Date and thereafter, on each Repayment Date.

8.3 **Default interest**

- (a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest will accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (c) below, is [one] per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods.
- (b) Any interest accruing under this Clause 8.3 will be immediately payable by the Borrower on demand by the Lender.
- (c) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of the then current Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount will have a duration equal to the unexpired portion of the then current Interest Period relating to that Loan; and
 - (ii) the rate of interest applying to the overdue amount during that first Interest Period will be one per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.
- (d) Unpaid interest arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

9. **INTEREST PERIODS**

9.1 **Interest Periods**

The Loan has successive Interest Periods.

9.2 **Other adjustments**

The Lender and the Borrower may enter into such other arrangements as they may agree for the adjustment of Interest Periods and the consolidation and/or division of the Loan.

9.3 **Notification**

The Borrower must notify the Lender of the duration of each Interest Period promptly after ascertaining it.

10. **TAX GROSS UP AND INDEMNITIES**

10.1 **Definitions**

(a) In this Clause:

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

(b) Unless this Clause expressly provides to the contrary, a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

10.2 **Tax gross-up**

(a) The Borrower must make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower must, promptly on becoming aware that it must make a Tax Deduction (or that there is a change in the rate or the basis of a Tax Deduction), notify the Lender accordingly. The Lender must notify the Borrower on becoming so aware in respect of a payment payable to it.

(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.

(e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower must deliver to the Lender evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) the appropriate payment has been paid to the relevant taxing authority.

10.3 **Tax Credit**

If the Borrower makes a Tax Payment and the Lender determines that:

- (a) a Tax Credit is attributable to:
 - (i) an increased payment of which that Tax Payment forms part;
 - (ii) that Tax Payment; or
 - (iii) a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) it has obtained and utilised that Tax Credit,

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

10.4 **Value added taxes**

All amounts expressed to be payable under a Finance Document by the Borrower to the Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, if VAT is or becomes chargeable on any supply made by the Lender to the Borrower under a Finance Document, and the Lender is required to account to the relevant tax authority for the VAT, the Borrower must pay to the Lender (in addition to and at the same time as paying the consideration for such supply) an amount equal to the amount of the VAT and the Lender must promptly provide an appropriate VAT invoice to the Borrower).

10.5 **FATCA information**

- (a) Subject to paragraph (c) below, each Party must, within ten Business Days of a reasonable request by the other Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party; and
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests

for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a Party confirms to the other Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be, a FATCA Exempt Party, that Party must notify the other Party reasonably promptly.
- (c) No Party is obliged to do anything under paragraph (a) or (b) above which would or might in its reasonable opinion constitute a breach of any applicable:
 - (i) law or regulation;
 - (ii) fiduciary duty; or
 - (iii) duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information relating to its status under FATCA requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then that Party may be treated for the purposes of the Finance Documents (and payments made under them) as if it is not a FATCA Exempt Party until it provides the requested confirmation, forms, documentation or other information.

10.6 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party is required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party must, promptly on becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the other Party.

11. INCREASED COSTS

11.1 Definitions In this

Agreement:

"**Basel III**" means:

- (a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national

authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

- (b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and
- (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

"**CRD IV**" means:

- (a) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and
- (b) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

"**Increased Costs**" means:

- (a) a reduction in the rate of return from the Facility or on the Lender's (or its Affiliate's) overall capital;
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under any Finance Document,

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

11.2 **Increased Costs**

Except as provided below in this Clause, the Borrower must, within three Business Days of a demand by the Lender, pay to the Lender the amount of any Increased Costs incurred by the Lender or any of its Affiliates as a result of:

- (a) the introduction of, or any change in, or any change in the interpretation, administration or application of, any law or regulation; or
- (b) compliance with any law or regulation made after the date of this Agreement;
or

- (c) the implementation or application of, or compliance with, Basel III or CRD IV or any other law or regulation which implements Basel III or CRD IV (whether such implementation, application or compliance is by a government, regulator, the Lender or any of its Affiliates).

11.3 **Increased Costs claims**

- (a) If the Lender intends to make a claim for any Increased Costs it must notify the Borrower of the circumstances giving rise to and the amount of the claim.
- (b) The Lender must, as soon as reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

11.4 **Exceptions**

The Borrower need not make any payment for any Increased Costs to the extent that the Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) attributable to the implementation or application of or compliance with Basel III or CRD IV or any other law or regulation which implements Basel III or CRD IV to the extent that Increased Cost was capable of being calculated with sufficient accuracy prior to the date of this Agreement (in the case of the original Lender) or the date on which the Lender has become a Party (taking into account the lack of clarity or detail in Basel III or CRD IV (or any related information from a banking regulator in this respect) on the relevant date); or
- (d) attributable to the wilful breach by the Lender or any of its Affiliates of any law or regulation.

12. **OTHER INDEMNITIES**

The Borrower must indemnify the Lender against any reasonable cost, loss or liability incurred by the Lender as a result of:

- (a) the occurrence of any Default or Event of Default;
- (b) acting or relying on any notice, request or instruction which the Lender reasonably believes to be genuine, correct and appropriately authorised;
- (c) a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- (d) funding, or making arrangements to fund a Loan Part in accordance with the Drawdown Schedule but not made by reason of the operation of any one or

more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone);

- (e) the Loan (or part thereof) not being repaid in accordance with a notice of prepayment given by the Borrower; or
- (f) following the occurrence of an Event of Default which is continuing, instructing lawyers and tax advisers as permitted under this Agreement.

13. **MITIGATION**

13.1 **Mitigation**

- (a) The Lender must, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or being cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 10 (*Tax gross up and indemnities*), including without limitation transferring its rights and obligations under the Finance Documents to another Affiliate.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

13.2 **Limitation of liability**

- (a) The Borrower must indemnify the Lender promptly for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under this Clause.
- (b) The Lender is not obliged to take any steps under this Clause if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.

14. **COSTS AND EXPENSES**

14.1 **Transaction expenses**

Each Party will pay the costs and expenses incurred by it in connection with the entering into and completion of this Agreement.

14.2 **Amendment costs**

- (a) If a Party requests an amendment, waiver or consent in connection with a Finance Document, that Party must reimburse the other Party for the amount of all costs and expenses (including legal fees) reasonably incurred by that other Party in responding to, evaluating, negotiating or complying with that request or amendment or otherwise in connection with such amendment, waiver or consent.

- (b) If both Parties have aligned interests and consequently either Party requests an amendment, waiver or consent in connection with a Finance Document or an amendment is required or expressly contemplated under a Finance Document, each Party will pay the costs and expenses (including legal fees) incurred by it in connection with such amendment, waiver or consent.

14.3 **Enforcement costs**

The Borrower must pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

15. **REPRESENTATIONS**

15.1 **Representations**

The representations and warranties set out in this Clause are made by the Borrower to the Lender on the dates set out in Clause 15.11 (*Times for making representations*).

15.2 **Status**

It is a [limited liability company/cooperative with exclusion of liability]¹⁰, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

15.3 **Binding obligations**

- (a) The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations, legal, valid, binding and enforceable obligations.
- (b) Each Finance Document to which it is a party is in the proper form for its enforcement in the jurisdiction of its incorporation.

15.4 **Non-conflict with other obligations**

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

- (a) any law or regulation applicable to it; or
- (b) any agreement or instrument binding on it or any of its assets.

15.5 **Power and authority**

¹⁰ To be further amended depending on corporate structure of the Borrower

It has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, the Finance Documents and the transactions contemplated by those Finance Documents.

15.6 No misleading information

- (a) All information supplied by the Borrower or on its behalf to the Lender in connection with the Finance Documents was to the best of its knowledge, true and accurate in all material respects as at the date it was provided or as at the date at which it is stated to be given.
- (b) Nothing has occurred or been omitted from the information referred to in paragraph (a) above and no information has been given or withheld that results in that information being untrue or misleading in any material respect.

15.7 *Pari passu* ranking

The Borrower's payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors including the claim from [Nederlandse Waterschapsbank N.V.]¹¹/[BNG Bank N.V.]¹² under the Export Credit Refinancing Agreement – CIRR dated the date hereof and relating to the same Export Credit Facility Agreement, except for obligations mandatorily preferred by law applying to companies generally.

15.8 No proceedings pending

No litigation, arbitration or administrative proceedings or investigations of or before any court, arbitral body or agency which, if adversely determined, would have a material adverse effect on the Borrower's ability to perform its payment obligations under this Agreement has or have (to the best of its knowledge and belief) been started against the Borrower.

15.9 No default

No Default (as defined in the Export Credit Facility Agreement) is continuing.

15.10 Sanctions

Neither it nor any director, officer, agent, employee or Affiliate, is currently a designated target of, or is otherwise a subject of, Sanctions.

15.11 Times for making representations

- (a) The representations and warranties set out in this Clause are made by each Party on the date of this Agreement.

¹¹ Include in the agreement between BNG and the borrower

¹² Include in the agreement between NWB and the borrower

- (b) The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the first day of each Interest Period and, to the extent any utilisation is made on a day which is not the first day of an Interest Period, such Utilisation Date.

16. **INFORMATION UNDERTAKINGS**

16.1 **Financial statements**

Upon a first request thereto by the Lender, the Borrower must supply to the Lender as soon as the same become available, but in any event within 180 days after the end of each of its financial years, its audited consolidated financial statements for that financial year unless these are already made available on the Borrower's public website within that period.

16.2 **Documents dispatched to creditors**

The Borrower must supply to the Lender at the same time as they are dispatched, copies of all documents dispatched by the Borrower to its creditors generally (or any class of them) unless these are already made available on the Borrower's public website by then.

16.3 **Notification of Default**

- (a) The Borrower must notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.
- (b) Promptly on request by the Lender, the Borrower must supply to the Lender a certificate, signed by two of its authorised signatories, certifying that no Default is continuing (or, if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

16.4 **"Know your customer" checks**

The Borrower must, promptly on request by the Lender, supply any documentation or other evidence reasonably requested by the Lender (whether for itself or on behalf of any prospective new Lender) to enable the Lender or prospective new Lender to carry out and be satisfied with the results of any "know your customer" checks or other similar checks required under any applicable law or regulation in connection with the transactions contemplated by the Finance Documents.

17. **GENERAL UNDERTAKINGS**

17.1 **Authorisations**

The Borrower must promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any applicable law or regulation to enable it to perform its obligations under the Finance Documents and

to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

17.2 ***Pari passu* ranking**

The Borrower must ensure that its payment obligations under the Finance Documents at all times rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors including the claim from [Nederlandse Waterschapsbank N.V.]¹³/[BNG Bank N.V.]¹⁴ under the Export Credit Refinancing Agreement – CIRR dated the date hereof and relating to the same Export Credit Facility Agreement, except for obligations mandatorily preferred by law applying to companies generally.

17.3 **Sanctions**

Other than to the extent such undertaking is or would be unenforceable by reason of breach, or would result in a breach, of any provision of Council Regulation EC No. 2271/96, as amended from time to time, or any applicable implementing legislation, the Borrower shall to the best of its knowledge not directly or indirectly, use the proceeds of the Facility hereunder (or lend, contribute or otherwise make available such proceeds to any person):

- (a) to fund or facilitate any activities or business of, with or related to (or otherwise make funds available to or for the benefit of) any person, who is a designated target of or who is otherwise the subject of Sanctions; or
- (b) in any manner or for any purpose:
 - (i) that is prohibited by Sanctions:
 - (A) applicable to any Party or any of its Affiliates; or
 - (B) under the laws of the Netherlands or any Finance Document or the Export Credit Facility Agreement; or
 - (ii) that would result in a violation of Sanctions by any Party or any of its Affiliates.

18. **EVENTS OF DEFAULT**

18.1 **Events of Default**

Each of the events or circumstances set out in this Clause is an Event of Default (other than Clause 18.9 (*Acceleration*)).

18.2 **Non-payment**

¹³ Include in the agreement between BNG and the borrower

¹⁴ Include in the agreement between NWB and the borrower

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document unless its failure to pay is caused by: administrative or technical error or a Disruption Event payment is made within [three (3)] Business Days of its due date.

18.3 Other obligations

- (a) The Borrower does not comply with any obligation under the Finance Documents (other than those referred to in Clause 18.2 (*Non-payment*)).
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within three Business Days of the Lender giving notice to the Borrower of the failure to comply.

18.4 Misrepresentation

Any representation, warranty or statement made or deemed to be made by the Borrower in the Finance Documents is or proves to have been incorrect or misleading in any material respect when made, unless the circumstances giving rise to the misrepresentation, breach of warranty or misstatement:

- (a) are capable of remedy; and
- (b) are remedied within [10] Business Days of the misrepresentation, breach of warranty or misstatement to the Borrower.

18.5 Insolvency

- (a) The Borrower:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) suspends making payments on any of its debts; or
 - (iii) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- (b) A moratorium is declared in respect of any indebtedness of the Borrower.

18.6 Insolvency proceedings

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

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary

arrangement, scheme of arrangement or otherwise) of the Borrower other than a solvent liquidation or reorganisation of the Borrower;

- (b) a composition, compromise, assignment or arrangement with any creditor of the Borrower;
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
- (d) enforcement of any security over any assets of the Borrower, or any analogous procedure or step is taken in any jurisdiction.

This Clause 18.6 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within [15] days of commencement.

18.7 Cessation of business

The Borrower suspends or ceases to carry on the whole or a substantial part of its business.

18.8 Cross Default

- (a) Any Financial Indebtedness of the Borrower is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Borrower is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- (d) Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 18.8 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than 3 per cent. of the total [shareholders']/[members']¹⁵ equity of the Borrower as disclosed from time to time in its most recent financial statement.

¹⁵ In case the Borrower is limited liability company (e.g. a NV or BV): please retain shareholders'. In case the Borrower is a cooperative (e.g. a B.A. or a U.A.): please retain members'

18.9 Acceleration

If an Event of Default is continuing, the Lender may, by notice to the Borrower:

- (a) cancel all or part of the Facility;
- (b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable; and/or
- (c) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be payable on demand by the Lender.

Any such notice will take effect in accordance with its terms.

19. ASSIGNMENTS OR TRANSFERS BY THE LENDER

19.1 Assignments and Transfers by the Lender

Subject to the other provisions of this Clause, the Lender (the "**Existing Lender**") may assign any of its rights or transfer by way of transfer of contract (*contractoverneming*) any of its rights and obligations under the Finance Documents, together with its rights and obligations under the ECA Cover Document, to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the "**New Lender**").

19.2 Conditions of assignment or transfer

- (a) The consent of the Borrower is required for an assignment or transfer unless the assignment or transfer is:
 - (i) to the ECA; or
 - (ii) made at a time when an Event of Default is continuing.
- (b) The consent of the Borrower to an assignment or transfer (if required) must not be unreasonably withheld or delayed.
- (c) A transfer will only be effective if the procedure set out in Clause 19.3 (*Procedure for transfer*) is complied with.
- (d) If:
 - (i) a Lender assigns or transfers any of its rights and obligations under the Finance Documents; and

- (ii) as a result of circumstances existing at the date the assignment or transfer or change occurs, the Borrower would be obliged to make a Tax Payment,

then unless the assignment or transfer is made as a result of Clause 13 (*Mitigation*), the Borrower need only make that Tax Payment to the same extent that it would have been obliged to pay if the assignment or transfer or change had not occurred.

19.3 Procedure for transfer

- (a) Subject to the conditions set out in Clause 19.2 (*Conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (b) below when the Existing Lender and the New Lender execute a Transfer Certificate.
- (b) On the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by way of transfer of contract (*contractoverneming*) its rights and obligations under the Finance Documents, these rights and obligations will transfer from the Existing Lender to the New Lender (and these rights and obligations will cease to be the Existing Lender's rights and obligations and will become the New Lender's rights and obligations);
 - (ii) the New Lender will become a Party as a Lender; and
 - (iii) if all the Existing Lender's rights and obligations under the Finance Documents are transferred to the New Lender, the Existing Lender will cease to be a Lender under this Agreement.
- (c) Each Party (other than the Existing Lender and the New Lender) cooperates in advance (*verleent medewerking bij voorbaat*) with any transfer made in accordance with this Clause, and irrevocably authorises the New Lender and Existing Lender:
 - (i) to enter into and deliver any duly completed Transfer Certificate on its behalf; and
 - (ii) to accept notice of any transfer permitted under this Clause on its behalf.

19.4 Procedure for assignment

Lenders may utilise procedures other than those set out in Clause 19.3 (*Procedure for transfer*) to assign their rights under the Finance Documents **provided that** they comply with the conditions set out in Clause 19.2 (*Conditions of assignment or transfer*).

19.5 Copy of Transfer Certificate to the Borrower

The Existing Lender must, as soon as reasonably practicable after execution of an Assignment Agreement or Transfer Certificate, send to the Borrower a copy of that Assignment Agreement or Transfer Certificate.

19.6 Assignments and security by the Lender

- (a) Subject to Clause 19.1 (*Assignments and Transfers by the Lender*) and paragraph (b) below, no Lender may assign (*cederen*) or create a security interest in or over (whether by way of collateral or otherwise) any of its rights under any Finance Document.
- (b) The Lender may create a security interest in or over (whether by way of collateral or otherwise) any of its rights under any Finance Documents to secure obligations of the Lender to a federal reserve or central bank, except that no such security interest will:
 - (i) release the Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the security interest for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the Lender under the Finance Documents.

20. TRANSFERS BY THE BORROWER

The Borrower may not assign any of its rights (*cessie*) or transfer any of its rights and obligations by way of transfer of contract (*contractsovernemings*) under the Finance Documents without the prior consent of the Lender. The consent of the Lender to an assignment or transfer (if required) may not be unreasonably withheld or delayed.

21. PAYMENT MECHANICS

21.1 Payments

- (a) On each date on which a Party is required to make a payment to a Party under a Finance Document, that Party must make the payment available to that Party (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Party concerned as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) The Borrower instructs the Lender to make any payment due to it under a Finance Document on the account set out in Schedule 5 (*Borrower Account Details*), unless otherwise notified to the Lender in writing.

21.2 Partial payments

If the Borrower makes a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, it must make the payment instead towards its obligations under the Finance Documents in the following order:

- (a) *first*, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Lender under the Finance Documents;
- (b) *secondly*, in or towards payment *pro rata* of any accrued interest, fee or commission due but unpaid under this Agreement;
- (c) *thirdly*, in or towards payment *pro rata* of any principal sum due but unpaid under this Agreement; and
- (d) *fourthly*, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.

21.3 No set-off

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

21.4 Business Days

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

21.5 Currency of account

- (a) Unless a Finance Document specifies otherwise, [EUR/USD] is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes must be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than [EUR/USD] will be paid in that other currency.

21.6 Change of currency

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

21.7 **Disruption to payment systems**

- (a) If the Lender determines (in its discretion) that a Disruption Event has occurred or the Lender is notified by the Borrower that a Disruption Event has occurred:
 - (i) the Lender may, and must if requested to do so by the Borrower, consult with the Borrower for a period of not more than five days with a view to agreeing with the Borrower such changes to the operation or administration of the Facility ("**changes**") as the Lender may decide are necessary in the circumstances; and
 - (ii) the Lender is not obliged to consult with the Borrower in relation to any changes if, in its opinion, it is not practicable to do so in the circumstances and, in any event, is not obliged to agree to any changes.
- (b) Any agreement between the Lender and the Borrower will (whether or not it is finally determined that a Disruption Event has occurred) be binding on them as an amendment to (or, as the case may be, a waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 27 (*Amendments and Waivers*).
- (c) Notwithstanding any other provision of this Agreement, the Lender will not be liable for any damages, costs or losses (whether arising in contract, tort or otherwise and whether caused by the Lender's negligence, gross negligence or any other category of liability whatsoever, but not including any claim based

on the fraud of the Lender) arising as a result of the Lender taking or not taking any action under or in connection with this Clause 21.7.

21.8 **Timing of payments**

If a Finance Document does not provide for when a particular payment is due, that payment will be due within three Business Days of demand by the person to whom the payment is to be made.

22. **SET-OFF**

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

23. **NOTICES**

23.1 **Communications in writing**

Any communication to be made under or in connection with the Finance Documents must be made in writing and, unless otherwise stated, may be made by fax or letter, however in each case such communication must also be made by e-mail.

23.2 **Addresses**

- (a) The contact details of the Borrower for this purpose are:

Address: [•] E-mail: [•]
Telephone: [•]
Attention: [•]

- (b) The contact details of the Lender for this purpose are:

[OPTION 1 – BNG is Lender - Notice details to be confirmed at time of signing this agreement]

Address: Koninginnegracht 2, 2514AA The Hague, The Netherlands
E-mail: bo@bngbank.nl; tr_portefeuillebeheer@bngbank.nl Attention:
BO; TRPB.

[OPTION 2 – NWB is Lender - Notice details to be confirmed at time of signing this agreement]

Address: Rooseveltplantsoen 3, 2517 KR The Hague, The Netherlands
E-mail: pf@nwbbank.com and legal@nwbbank.com
Attention: Public Finance and Legal Department

[END OF OPTIONS]

- (c) The Borrower or the Lender may change its contact details by giving five Business Days' notice to the other Party.

23.3 **Delivery**

- (a) Except as provided below, any communication made or delivered by one Party to another under or in connection with the Finance Documents will only be effective if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 23.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication which would otherwise become effective on a non-working day or after business hours in the place of receipt will be deemed only to become effective on the next working day in that place.

23.4 **Electronic communication**

- (a) Any communication to be made between any of the Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the relevant Parties:
 - (i) agree that, unless and until notified to the contrary this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their electronic mail address or any other such information supplied by them.
- (b) For the purposes of the Finance Documents, an electronic communication will be treated as being in writing.
- (c) Any electronic communication made between the Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the other Party only if it is addressed in such a manner as that other Party may specify for this purpose.
- (d) Any electronic communication which would otherwise become effective on a non-working day or after business hours in the place or receipt will be deemed only to become effective on the next working day in that place.

- (e) Any reference in a Finance Document to a communication being sent or received will be construed to include that communication being made available in accordance with this Clause 23.4.

23.5 **English language**

- (a) Any communication made under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will

prevail unless the document is a constitutional, statutory or other official document.

24. **DAY COUNT CONVENTIONS**

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

25. **PARTIAL INVALIDITY**

If, at any time, any term of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of any Finance Document; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of any Finance Document.

26. **REMEDIES AND WAIVERS**

- (a) No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under a Finance Document will operate as a waiver, nor will any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

- (b) Each Party irrevocably waives any right it may have at any time to:
 - (i) suspend (*opschorten*) any obligation under this Agreement under Sections 6:52, 6:262 and 6:263 of the Dutch Civil Code or any other applicable law; or
 - (ii) rescind (*ontbinden*) this Agreement, in whole or in part, under Sections 6:228 and 6:265 of the Dutch Civil Code or any other applicable law.

27. AMENDMENTS AND WAIVERS

Any term of or any right or remedy under a Finance Document may be amended or waived only with the consent of the Borrower and the Lender and any such amendment or waiver will be binding on the Borrower and the Lender.

28. CONFIDENTIAL INFORMATION

28.1 Confidentiality

Each Party must keep all Confidential Information confidential and not disclose it to any person, save to the extent permitted by Clause 28.2 (*Disclosure of Confidential Information*).

28.2 Disclosure of Confidential Information

Each Party may disclose:

- (a) to any of its Affiliates and related funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as the Lender considers appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there is no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents to any of that person's Affiliates, related funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or another

Party and to any of that person's Affiliates, related funds, Representatives and professional advisers;

- (iii) appointed by the Lender or the Borrower (as applicable) or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraphs (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange, listing authority or similar body, or pursuant to any applicable law or regulation;
- (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii) who is a Party; or
- (viii) with the consent of the other Party,

in each case, such Confidential Information as the Lender considers appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there is no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii), the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information

except that there is no requirement to inform if, in the opinion of the Lender, it is not practicable so to do in the circumstances;

- (c) to the ECA (and any of its officers, directors, employees, professional advisers, auditors, partners and representatives) such Confidential Information as the Lender shall consider appropriate;
- (d) to any person appointed by the Lender or the Borrower or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents if such service provider has entered into such form of confidentiality undertaking agreed between the Borrower and the Lender; and
- (e) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

28.3 **Entire agreement**

This Clause:

- (a) constitutes the entire agreement between the Parties in relation to the obligations of the Lender under the Finance Documents regarding Confidential Information; and
- (b) supersedes any previous agreement, whether express or implied, regarding Confidential Information.

28.4 **Inside information**

The Lender acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Lender undertakes not to use any Confidential Information for any unlawful purpose.

28.5 **Notification of disclosure**

The Lender agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 28.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

- (b) on becoming aware that Confidential Information has been disclosed in breach of this Clause.

28.6 **Continuing obligations**

The obligations in this Clause are continuing and, in particular, will survive and remain binding on the Lender for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and the Facility has been cancelled or otherwise cease to be available; and
- (b) the date on which the Lender otherwise ceases to be the Lender.

29. **COUNTERPARTS**

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

30. **GOVERNING LAW**

- (a) This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Dutch law.
- (b) If a Party is represented by one or more attorneys in connection with the execution of any Finance Document and the relevant power of attorney is expressed to be governed by Dutch or any other law, each other Party accepts that choice of law in accordance with Article 14 of the Hague Convention on the Law Applicable to Agency of 14 March 1978.

31. **ENFORCEMENT**

31.1 **Jurisdiction**

- (a) Unless specifically provided in another Finance Document in relation to that Finance Document, the courts of Amsterdam, The Netherlands have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a "**Dispute**").
- (b) The Parties agree that the courts of Amsterdam, The Netherlands are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

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

SCHEDULE 1 CONDITIONS PRECEDENT

- (a) An original of the executed ECA Cover Document in a form satisfactory to the Lender, which executed ECA Cover Document can be delivered by the ECA after receipt of each of the following documents as signed by the Borrower (i) the pledge agreement between the Borrower and the ECA relating to the Export Credit Facility Agreement and (ii) the recourse agreement relating to the ECA Cover Document.
- (b) A PDF copy of the Export Credit Facility Agreement [with commercially sensitive terms redacted], in a form satisfactory to the Lender.
- (c) If requested by the Lender, a legal opinion by [•] on the Borrower's capacity to enter into this Agreement in a form satisfactory to the Lender.
- (d) A copy of the Borrower's signature book dated [•] or other proof of validity of Borrower's signature.
- (e) An up-to-date extract relating to the Borrower from [the Trade Register of the Dutch Chamber of Commerce][the relevant commercial register in the Borrower's jurisdiction of incorporation].
- (f) A PDF copy of the executed CIRR refinancing agreement with the other sector bank.

SCHEDULE 2
DRAWDOWN SCHEDULE^{16 17}

Proposed Utilisation Date	Currency	Amount	Aggregate Amount following proposed drawdown

¹⁶ A monthly -or less frequent- tenor to be included for the drawdown schedule

¹⁷ This schedule reflects the refinancing to be made available by the Lender under this Agreement. The remaining part of the financing made available under the Export Credit Facility Agreement by the Borrower will be made available in a separate export credit refinancing agreement [insert definition CIRR refinancing agreement other sector bank] with [insert legal name of other sector bank].

SCHEDULE 3 REPAYMENT SCHEDULE

Repayment Date	Repayment Instalment (in [EUR /USD])
[•]	[insert amount]

Lender account details:

[to which the Borrower should make repayments]

SCHEDULE 4 FORM OF TRANSFER CERTIFICATE

By: **[BNG BANK N.V./NEDERLANDSE WATERSCHAPSBANK N.V.]** (the "Existing Lender") and **[NEW LENDER]** (the New Lender)

Date: []

[•] – [EUR/USD][•] CIRR Export Credit Refinancing Agreement
dated [] (the "Agreement")

We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.

1. The Existing Lender transfers by way of transfer of contract (*contractoverneming*) to the New Lender the Existing Lender's rights and obligations referred to in the Schedule below in accordance with the terms of the Agreement.
2. The transfer date is [].
3. The administrative details of the New Lender for the purposes of the Agreement are set out in the Schedule.
4. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations in respect of this Transfer Certificate contained in the Agreement.
5. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
6. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by Dutch law.

By:

[BNG BANK N.V. /NEDERLANDSE WATERSCHAPSBANK N.V.]

By: By:

Its: Its:

[insert full legal name of Borrower]

By: By:

Its:

Its:

SCHEDULE 5 BORROWER ACCOUNT DETAILS

[Note: Borrower to provide account details for the account to which payments by the Lender are made. Once details have been provided – lender to confirm that details are sufficient] The payment details of the Borrower are as follows:

Correspondent Bank	[•]
Correspondent Bank SWIFT code	[•]
Beneficiary	[•]
Beneficiary SWIFT code	[•]
Beneficiary account number	[•]
Reference	[•]

Add Lender account details on which the Borrower needs to reimburse and make reference to this account in the agreement.

SIGNATORIES

Borrower

[insert full legal name of Borrower]

By: By:

Its: Its:

Lender

[BNG BANK N.V. /NEDERLANDSE WATERSCHAPSBANK N.V.]

By: By:

Its: Its: