

## **MEZZANINE DEBT TERM SHEET HEADINGS**

**Borrower:**

**Shareholders:**

**Sponsors:**

**Finance Parties:**

**Administrative Parties:**

**Lenders:**

**Majority Lenders:**

**Facility Agent:**

**Security Agent:**

**Account Bank:**

**Material Project Party:**

**EPC Contractor:**

**[O&M Contractor:]**

**[Project Site Lessor:]**

**[Offtaker[s]:]**

**[Material Project Party  
Support Providers:]**

**[Host Government:]**

**[Specify any other key Project  
participants:]**

**Lenders' Insurance Adviser:**

**Lenders' Technical Adviser:**

**Lenders' Environmental and  
Social Adviser:**

**Lenders' International Legal  
Adviser:**

**Lenders' Local Legal Adviser:**

**Borrower's Tax Adviser:**

**Borrower's Technical Adviser:**

**Borrower's and Sponsors'  
International Legal Adviser:**

**Borrower's and Sponsors'  
Local Legal Adviser:**

## **PROJECT, KEY DATES, PROJECT COSTS AND FUNDING STRUCTURE**

**Project:**

**Project Site:**

**Signing Date:**

**Financial Close:**

**Scheduled Project Completion  
Date:**

**Project Completion:**

**Technical Completion:**

**Financial Completion:**

**Project Costs:**

**Funding Sources:**

Equity, Loans

Contingency Loans

**Shareholders' Capital:**

**Operating Expenses:**

## **DOCUMENTATION AND SECURITY**

**Transaction Documents:** The Finance Documents and the  
Project Documents.

**Finance Documents:**

To include:

- (a) [Credit Agreement;] OR  
[(a) the Common Terms  
Agreement; (b) each  
separate Credit  
Agreement;]

- (b) Accounts Agreement;
- (c) Security Documents;
- (d) [Security Trust and Intercreditor Agreement;]
- (e) Direct Agreements;
- (f) Sponsor Support Agreement;
- (g) [*specify any export credit policies / guarantees and any other deal specific documents*]; and
- (h) certain other customary documents specified in the Credit Agreement.

**Credit Agreement:**

Term facility agreement between the Borrower and the Finance Parties.

**Accounts Agreement:**

Accounts Agreement between the Borrower, the Administrative Parties and the Accounts Bank.

**Security Documents:**

This include security over the:

- (a) the Borrower's rights to the Project Site and all plant and fixtures on the Project Site;
- (b) the Borrower's receivables/book debts;
- (c) the Borrower's rights to all equipment and movables, note the pledge to Senior Lender;
- (d) the Project Accounts [(excluding the Distributions Account)];
- (e) the Borrower's rights under all Project Documents;
- (f) the Borrower's rights in respect of all

Sponsor/Shareholder loans to the Borrower;

- (g) each Shareholder's rights in respect of all its equity interests in the Borrower;
- (h) each Sponsor's/Shareholder's rights in respect of all Sponsor/Shareholder loans made by it to the Borrower;
- (i) the Borrower's rights under all insurance policies required to be taken out in respect of the Project;
- (j) [the Borrower's rights under all reinsurance policies

All security interests must be first ranking subject only to the rights of creditors mandatorily preferred by applicable law. The form and substance (including the governing law) of the Security Documents will be determined by the Lenders.

**Direct Agreements:**

The Borrower must enter a Direct Agreement including the following:

- (a) consent to the creation of security over the Borrower's rights under the relevant Project Documents;
- (b) an undertaking to make all payments under the relevant Project Document;
- (c) an undertaking not to make any material amendment to, or waive of any provision of, or assign or transfer its rights or obligations under, the relevant Project Document;

- (d) an undertaking to provide notice in relation to any default or legal proceedings in connection with the relevant Project document;
- (e) an undertaking to notice prior to terminating or suspending performance under the relevant Project Document ;
- (f) an acknowledgement that the Finance Parties are entitled to remedy a breach of the relevant Project Document; and
- (g)** a mechanism to allow the Finance Parties in a default scenario, to step in and step out in respect of the rights and obligations of the Borrower under the relevant Project Document.

**[Security Trust and Intercreditor Agreement:]**

[To be entered into between the Borrower and the Finance Parties to regulate the rights and obligations of the Lenders and [commercial banks] as between themselves.]

**Sponsor Support Agreement:**

Agreement between the Borrower, the Sponsors, the Shareholders and the Administrative Parties.

**Completion Guarantees:**

**Project Documents:**

To include:

- (a) Shareholders' Agreement;
- (b) Engineering Procurement and Construction Contract;
- (c) Operation and Maintenance Agreement ;
- (d) [Project Site Lease Agreement;]

- (e) [Offtake Contract];
- (f) [Offtake Guarantee Contract between [the Offtaker Guarantor / Host Government];]
- (g) each policy or insurance [and reinsurance];

The Project Documents must be in form and substance satisfactory to the Lenders and must be capable of being assigned to or otherwise secured in favour of the Finance Parties.

**Finance Documents -  
Governing law and dispute  
resolution:**

**Language of Transaction  
Documents:**

**FACILITY**

**Facility:** A term loan facility up to the Facility Amount.

**Facility Amount:**

**Purpose:**

**Availability Period:**

**Minimum amount of each Loan  
utilisation:**

**Maximum number of Loans:**

**Utilisation procedure:**

**Conditions Precedent:**

**Repayment:**

**Final Maturity Date:**

**First Repayment Date:**

**Payment Dates:**

**Interest Payments:**

**Interest Rate:**

**Interest Periods:**

x months.

**Default Rate:**

The aggregate of the Interest Rate plus [x]% per annum.

**Material Adverse Change:**

**Fees:**

Commitment fee of 1% per annum on the undrawn, uncanceled amount of the Facility.

Front end fee in an amount equal to 1 per cent of the Facility Amount, minus the amount of the appraisal fee paid to the Lenders, if any.

Annual facility administration fee of [.]

Annual security administration fee of [.]

Cancellation fee of [ ]% of the aggregate Facility Amount voluntarily cancelled.

Prepayment fee of [ ]% of the aggregate Facility Amount [voluntarily] prepaid.

All fees are non-refundable.

**Mandatory Prepayment and Cancellation:**

**Voluntary Prepayment and Cancellation:**

**Project Accounts:**

**Required DSRA Balance:**

An amount equal to six months of debt service

**[Required MRA Balance]**

Maintenance Reserve Account will be replenished up to the Required DSRA Balance from cashflows at the relevant level of the waterfall.

**Waterfall:**

In the absence of an Event of Default, amounts in the Collection Account will be applied, as follows:

(h) **First:** during the

Availability Period only,  
Project Costs;

- (i) **Second:** government taxes and charges in accordance with the Project Budget;
- (j) **Third:** Project operating costs in accordance with the Project Budget;
- (k) **Fourth:** all fees, expenses and other amounts due to an Administrative Party;
- (l) **Fifth:** all fees and expenses due to the Lenders;
- (m) **Sixth:** all default interest payable to the Finance Parties;
- (n) **Seventh:** all ordinary interest payable to the Lenders [and recurring amounts payable to the Interest Rate Hedging Counterparties];
- (o) **Eighth:** all tax payments payable to the Finance Parties;
- (p) **Ninth:** all scheduled repayments of the Loans;
- (q) **Tenth:** all pro rata mandatory prepayments of the Loans to the Lenders;
- (r) **Eleventh:** all non-pro rata mandatory prepayments of the Loans to any Lender;
- (s) **Twelfth:** all other amounts (other than any amounts referred to below) payable to any Finance Party;
- (t) **Thirteenth:** to the Debt Service Reserve Account to



the extent necessary to ensure that the Required DSRA Balance is standing to credit thereof;

- (u) [**Fourteenth:** to the Maintenance Reserve Account to the extent necessary to ensure that the Required MRA Balance is standing to the credit thereof;]
- (v) **Fifteenth:** to pay Loans amounts to be voluntarily prepaid by the Borrower;
- (w) **Sixteenth:** a fixed [ ]% return on invested capital by the Sponsors; and
- (x) **Seventeenth:** subject to satisfaction of the distribution conditions to the Distributions Account and Profit Sharing Account of the Subordinated Debt Lenders pro rata.

**Distributions:**

Dividends and distributions may only be made:

- (y) from the Distributions Account and Profit Sharing Account;
- (z) [[*specify number*] months after Project Completion];
- (aa) so long as, immediately after making such dividend or distribution:
  - (i) the Historic DSCR is at least 1.15
  - (iii) the Projected DSCR is at least 1.15
- (bb) so long as there is no Default outstanding and no Default is likely to occur after such dividend or distribution;

**Representations and Warranties:**

The representations and warranties include:

- (cc) status;
- (dd) powers and authority;
- (ee) binding obligations;
- (ff) non-conflict with other obligations;
- (gg) no requirements under the laws of its jurisdiction for Finance Party registration or licensing;
- (hh) validity and admissibility in evidence;
- (ii) effectiveness of choice of jurisdiction and governing law;
- (jj) no immunity from legal process;
- (kk) registrations and stamp duties in respect of the Transaction Documents;
- (ll) ranking of security created under the Security Documents and existence of other security interests;
- (mm) no insolvency;
- (nn) accuracy of information (including budgets and projections);
- (oo) financial statements in accordance with [IFRS] and give a true and fair view of its financial condition and operations;
- (pp) as at the Signing Date, no material adverse change since the Borrower's financial statements delivered to the Lenders;

- (qq) withholding taxes on payments under the Finance Documents, no adverse tax claims and all tax returns filed;
- (rr) no material undisclosed liabilities;
- (ss) ownership of assets;
- (tt) status of share capital;
- (uu) no other business or subsidiaries;
- (vv) no default, and no dispute or other event that may cause a Material Adverse Effect;
- (ww) all corporate and Project authorisations have been disclosed and are in full force and effect;
- (xx) as at the Signing Date and the Closing Date, correct and complete copies of the Project Documents have been delivered;
- (yy) no breach of law (including environmental law) which has or is reasonably likely to have a material adverse effect;
- (zz) compliance with BANK A's corporate governance requirements;
- (aaa) compliance with BANK A's environmental and social standards and requirements;
- (bbb) no environmental or social claims;
- (ccc) no improper or illegal payments; and

(ddd) no corrupt, fraudulent, coercive, collusive or obstructive practice or money laundering; and

(eee)

**Financial Reporting:**

The Borrower must deliver the following:

**Project Reporting:**

**Environmental and Social Reporting:**

**Financial Covenants:**

The Borrower must comply with the following financial covenants:

Debt to Equity Ratio:

Must not at any time exceed [x/y]

Historic DSCR:

Must, exceed 1.15. This ratio will measure historic cashflow available to pay historic debt service for the 6 month period prior to the relevant Calculation Date.

Projected DSCR:

Must, exceed 1.15. This ratio will measure projected cashflow available to pay projected debt service for the 6 month period commencing on the relevant Calculation Date.

Calculation Date:

For the Historic DSCR, each Payment Date after Project Completion.

For the Projected DSCR, the date of Project Completion and each Payment Date thereafter.

**Financial Model:**

**General Undertakings:**

The Borrower will give customary general undertakings, including:

(fff) comply with laws (including environmental laws);

(ggg) maintain and comply with transaction authorisations;

- (hhh) use of Loan proceeds;
- (iii) payment and filing of taxes;
- (jjj) maintain statutory records;
- (kkk) arms length transactions for fair value;
- (III) covenants in relation to the security interests;
- (mmm) restrictions on borrowings;
- (nnn) restrictions on issuing shares or altering rights attached to shares;
- (ooo) no hedging or entry into of derivate contracts;
- (ppp) negative pledge;
- (qqq) restrictions on disposals;
- (rrr) restrictions on acquisitions;
- (sss) no mergers or amalgamations;
- (ttt) no other business and no subsidiaries;
- (uuu) no loans or guarantees to third parties;
- (vvv) restrictions on changing auditors or financial year end;
- (www)no amendments to constitutional documents;
- (xxx) compliance with BANK A corporate governance requirements;
- (yyy) no improper or illegal payments; and
- (zzz) no corrupt, fraudulent, coercive, collusive or

obstructive practice or  
money laundering.

**Project Undertakings:**

The Borrower will give customary  
undertakings:

(aaaa) develop the Project works  
in accordance with the  
Project Documents;

(bbbb) operate and maintain the  
Project in accordance with  
the Transaction  
Documents;

(cccc) use its best endeavours to  
achieve Project Completion  
by the Scheduled Project  
Completion Date;

(dddd) covenants in relation to  
the Project Documents,;

(eeee) restrictions on incurring  
capital expenditure  
otherwise than in  
accordance with the Project  
Budget;

(ffff) restrictions on incurring  
operating expenses other  
than in accordance with  
the Operating Budget;

(gggg) permit the Finance Parties  
to remedy any breach of its  
Project-related obligations  
under the Finance  
Documents;

(hhhh) restrictions on entering  
into material contracts;

(iiii) co-operate with the  
Lenders' advisers;

(jjjj) allow the Administrative  
Parties and Lenders'  
advisers access to inspect  
the Project Site and the  
Project works and any  
records of the Project  
during; and

(kkkk) [*specify any other Project-specific covenants*].

**Environmental and Social Undertakings:**

**Insurance:**

**Default:**

**Events of Default:**

Each of the following is an Event of Default:

(llll) failure by the Borrower, a Shareholder or a Sponsor to pay any amount payable under the Finance Documents on the due date;

(mmmm) breach by the Borrower of a Financial Covenant;

(nnnn) breach by the Borrower of the Hedging Strategy;

(oooo) failure by the Borrower to notify on any Default promptly after becoming aware of it;

(pppp) breach by the Borrower or any Material Project Party of any obligation;

(qqqq) breach of representation or warranty by the Borrower or any Material Project Party;

(rrrr) cross default by the Borrower or a Material Project Party;

(ssss) insolvency affecting the Borrower or a Material Project Party;

(tttt) insolvency proceedings in relation to the Borrower or a Material Project Party;

(uuuu) creditors' process in

relation to the Borrower or a Material Project Party;

(vvvv) invalidity, illegality or repudiation affecting a Finance Document or a security interest created under a Security Document;

(www) failure to maintain, or variation, suspension, cancellation or termination of, or breach of or failure to satisfy a condition of a transaction authorisation which is reasonably likely to have a Material Adverse Effect;

(xxxx) the Borrower or any Material Project Party fails to perform its obligations under a Project Document;

(yyyy) any Project Document is or becomes capable of being suspended, repudiated, cancelled or terminated prior to its maturity ;

(zzzz) [the full notice to proceed required to be delivered under the EPC Contract is not issued by *[date]*];

(aaaa) Project Completion does not occur by *[date]*;

(bbbbb) cessation of the Borrower's business, abandonment of the Project or a total loss in respect of the Project;

(cccc) a material part of the Project facilities is damaged or destroyed and either is not covered by the Project insurances or the Borrower's reinstatement plan is not approved by the Majority Lenders within the required time; and



(dddd) ineffectiveness of any of the required insurances;

(eeee) an environmental or social claim occurs which may have a Material Adverse Effect;

(ffff) expropriation or nationalisation of all or any part of the Project;

(gggg) an event or series of events occur which has or in the reasonable opinion of the Finance Parties is reasonably likely to have a Material Adverse Effect; and

(hhhh) [].

**Transfers:**

The Borrower, the Shareholders and the Sponsors may not assign or transfer their rights under the Transaction Documents.

**Costs and expenses:**

**Other provisions:**

The Credit Agreement and/or other Finance Documents will contain market standard provisions including market disruption, break costs, indemnities, tax gross up and other tax payments and indemnities, increased costs, set-off, amendments and waivers, payment mechanics, pro rata sharing, calculations, facility and security trust and administration, and confidentiality provisions.

**Validity of Indicative Term Sheet:**

This Indicative Term Sheet expires on [*specify date*] or such later date agreed in writing between the Lenders and the Borrower.

**CONDITIONS PRECEDENT**

**Conditions Precedent:**

Conditions precedent to first utilisation will include the following.

Corporation Authorisations

(iiii) A copy of the constitutional documents for the Borrower, each Shareholder and each Sponsor.

(jjjj) A copy of all corporate resolutions together with specimen signatures of all authorised signatories.

(kkkk) A certificate of an authorised signatory of the Borrower.

Financial Statements

(llll) Pro forma financial statements for the Borrower for the year ending [*specify year*].

(mmmm) The [audited] financial statements for the Shareholders and the Sponsors for the year ending [*specify year*].

Project Authorisations

(nnnn) A certified copy of [*list all key authorisations required for performance of the Finance Documents and for the implementation of the Project*] and evidence that all other authorisations required for the Project are in effect.

Finance Documents:

(oooo) An original of each Finance Document [(except the Interest Rate Hedging Documents)].

(pppp) Requirements (to be detailed in the Credit Agreement) regarding the creation and perfection of the security interests required to be created under the Security Documents.

Project Documents

(qqqqq) A certified true, correct and complete copy of each Project Document.

(rrrrr) Evidence that all conditions precedent to the Project Documents have been satisfied.

Insurance

(sssss) A certificate from the Lenders' Insurance Adviser confirming that the insurance cover in force in respect of the Project complies with the requirements of the Finance Documents and the Project Documents.

(ttttt) Copies of the policies of insurance which the Borrower is required to have effected in accordance with the Finance Documents and the Project Documents.

(uuuuu) A letter in a form required by the Lenders from each insurance broker.

Project Accounts

(vvvvv) Evidence that each Project Account has been opened in accordance with the Accounts Agreement.

(wwwww) A copy of any mandate or similar document to be entered into by any party with an Account Bank.

Project Budget, Project Development Plan and Financial Model

(xxxxx) The Project Budget.

(yyyyy) The Project Development Plan.

(zzzzz) The Financial Model.

The Financial Model shows

that the Projected Average DSCR will be at least 1.15.

Environmental and Social

(aaaaaa) A certificate from the Borrower confirming certain matters in relation to its environmental and social obligations under the Credit Agreement.

(bbbbbb) A certified copy of the environmental and social plan.

(cccccc) A certificate from the Lenders' Environmental and Social Advisor .

Shareholders Capital

(ddddd) Evidence that Shareholders' equity or subordinated loans in an amount of [ ] or greater has been provided to the Borrower.

(eeeeee)

Legal Opinions

(ffffff) A legal opinion of the Lenders' International Legal Counsel.

(gggggg) A legal opinion of the Lenders' Local Legal Counsel.

(hhhhh) A legal opinion of the Borrower's Legal Counsel.

Advisors' Reports

(iiiiii) Lenders' Technical Advisor report.

(jjjjj) Lenders' Insurance Advisor report.

(kkkkk) Lenders' Environmental and Social Advisor report.

(lllll) Lenders' International Legal Counsel report.

(mmmmm) Lenders' Local

Legal Counsel report.

Payment of fees, costs and expenses 1.1.1 Evidence that all fees, costs and expenses then due to the Finance Parties have been paid.

Others 1.1.2

1.1.3 [Translation of each document required by the Lenders.]

1.1.4