SECOND AMENDED AND RESTATED
MEMORANDUM OF UNDERSTANDING

This Second Amended and Restated Memorandum of Understanding (the "**Second Restated MOU**") is entered into as of December 31, 2010, by and between:

DALKIA FRANCE SCA, a French *société en commandite par actions* with a share capital of €220,047,504 having its registered office at 37 avenue du Maréchal de Lattre de Tassigny – 59350 Saint-André-lez-Lille, registered with the Commercial and Companies Registry of Lille under number 456 500 537, duly represented by Bruno de Pellegars-Malhortie (hereinafter referred to as "**Dalkia**"),

And

KOHLBERG KRAVIS ROBERTS & CO. L.P., a Delaware (USA) limited partnership having its registered office at 9 West 57th Street, Suite 4200, New York City, New York, duly represented by William J. Janetschek (hereinafter referred to as "**KKR**"),

Individually referred to as a "**Party**" and together the "**Parties**".

RECITALS

1. Dalkia indirectly owns 100% of Société Valmy Défense 19 – SVD 19, a French *société par actions simplifiée*, with a share capital of €37,000 whose registered office is located at 37 avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-Lez-Lille and registered with the Commercial and Companies Registry of Lille under number 497 908 632 ("**SVD 19**"). SVD 19 owns and operates a 124MWth/69MWe biomass cogeneration plant (the "**Plant**") on the site of Smurfit Kappa Cellulose du Pin S.A. ("**SKCP**") in Facture, France.

2. The Parties entered into a Memorandum of Understanding (the "**Original MOU**"), dated as of November 3, 2010, regarding a possible transaction (the "**Transaction**") relating to the indirect acquisition of a majority stake of at least 85% of SVD 19 by funds advised by KKR..

3. Since then, certain of KKR's representatives and advisers have attended a management presentation on the Transaction, which was given by Dalkia in Paris on November 17, 2010, conducted due diligence regarding the Transaction, further to being provided with access to an electronic data room set up by Dalkia (the "**Data Room**"), and been afforded the opportunity to ask questions concerning the Transaction to Dalkia and its advisers.

4. The Parties' representatives having also held discussions on the terms of the contractual documentation required to effect the Transaction, in meetings in Paris on November 26 and 27, 2010 and December 1 and 2, 2010, and having made significant progress during such discussions, the Parties recorded the basis on which they were willing to seek to reach a mutually satisfactory agreement on the terms of such documentation and to complete the Transaction in an Amended and Restated Memorandum of Understanding (the "**First Restated MOU**") that was entered into on December 16, 2010.

5. Having now made further progress with a view to finalizing the terms of their agreement, the Parties wish to amend and restate the First Restated MOU in its entirety and replace it by this Second Restated MOU.

ARTICLE 1 FURTHER INFORMATION

1.1 KKR acknowledges that it has now completed its due diligence review concerning the Transaction and that it has no further questions or documents requests that remain outstanding or unanswered, subject to any additional disclosure (including updated financial statements) that Dalkia may provide to KKR prior to the signing of the definitive SPA (as defined below).

1.2 Notwithstanding the foregoing, should KRR have any further questions or queries, Dalkia will use reasonable commercial efforts to respond promptly to any reasonable additional requests for information or questions submitted by KKR and its affiliates and their respective representatives and advisers.

ARTICLE 2 DEFINITIVE DOCUMENTATION

2.1 Draft versions of the following agreements (the "**Draft Agreements**") are attached hereto as **Schedule 1**:

a. Agreement for the sale and purchase of the shares of SVD 19 among Valmy Energies Biomasse, Dalkia and Washington Investment Luxembourg (the "**SPA**") (attached hereto as **Schedule 1a**);

b. Term sheet of an investors' agreement (the "**Investors Agreement Term Sheet**") (attached hereto as **Schedule 1b**);

c. Operating and maintenance contract by and between SVD 19 and Dalkia (the "**O&M Contract**") (attached hereto as **Schedule 1c**);

d. SVD 19 transformation contract by and between SVD 19 and Dalkia (the "**SVD 19 Transformation Agreement**") (attached hereto as **Schedule 1d**);

e. Side agreement by and between SVD 19 and Dalkia (the "**Side Agreement**") (attached hereto as **Schedule 1e**);

f. Transfer agreement by and between SVD 19 and Dalkia (the "**Transfer Agreement**") (attached hereto as **Schedule 1f**);

g Real property development contract by and between SVD 19 and Dalkia (the "**Real Property Development Contract**") (attached hereto as **Schedule 1g**);

h. SVD 19 framework contract between SVD 19 and Dalkia ("**SVD 19 Framework Contract**") (attached hereto as **Schedule 1h**);

i. SVD 19 biomass supply contract by and between SVD 19 and Dalkia ("**SVD 19 Biomass Supply Contract**")(attached hereto as **Schedule 1i**);

j. Subscription agreement, pursuant to which, inter alia, Washington Investment Luxembourg, one or more of the KKR Funds (as defined in the SPA) and Dalkia or one of its Affiliates would subscribe for shares and preferred equity certificates issued by the Company (as defined in the Investors' Agreement Term Sheet) (the "**Subscription Agreement**") (attached hereto as **Schedule 1j**); and

k. Equity commitment letter by and between the KKR Funds (as defined in the SPA) and Washington Investment Luxembourg (the "**Equity Commitment Letter**") (attached hereto as **Schedule 1k**).

2.2 The Parties acknowledge that the Draft Agreements are based on the assumption that, no later than the signature of the definitive SPA, certain agreements will have been reached with SKCP and Smurfit Kappa Comptoir du Pin S.A.S. ("**SKCDP**") substantially in the form of the drafts or term sheets attached hereto as **Schedule 2** (the "**Smurfit Agreements**"), namely:

(a) Amendment to the operating contracts between SVD 19, Dalkia France, SKCP and SKCDP (the "**Amendment**") (attached hereto as **Schedule 2a**) including the annexes thereto, namely amended and restated forms of:

i. Framework Contract between Dalkia and SKCP (the "**SKCP Framework Agreement**");

ii. Transformation Contract between Dalkia and SKCP (the "**SKCP Transformation Contract**"); and

iii. Biomass Supply Contract between Dalkia and SKCDP (the "**SKCDP Biomass Supply Contract**").

(b) Either a grant of usufruct by SKCP to SVD 19 or a *promesse* of grant of usufruct by SKCP to SVD 19 substantially in line with the usufruct term sheet attached hereto as **Schedule 2b** (the "**Usufruct**").

In negotiating the Smurfit Agreements with SKCP and SKCDP, Dalkia shall give reasonable consideration to comments made by KKR but, for the avoidance of doubt, Dalkia shall be entitled to sign the Smurfit Agreements in any form acceptable to Dalkia regardless of considerations relating to the possible Transaction.

Conversely, KKR shall have no obligation to enter into a definitive SPA if the Smurfit Agreements or the forms thereof agreed between Dalkia, SKCP and SKCDP are not reasonably acceptable to KKR.

2.3 The Parties acknowledge that the Draft Agreements represent the agreement of the Parties as to substantially all of the terms and conditions of the Transaction as of the date hereof, subject to finalization of due diligence by KKR in respect of any additional disclosure by Dalkia in accordance with clause 1.1 above and subject to negotiation and finalization in accordance with clause 3.1 below, it being understood that, to the extent the Draft Agreements are related to or dependent on the terms of the Smurfit Agreements (in particular the SVD 19 Transformation Contract, the SVD 19 Framework Contract, the SVD 19 Biomass Supply Contract, the O&M Contract and the Investors' Agreement), certain adjustments may be required to be made to such Draft Documents consistent with the terms of the final Smurfit Agreements, which adjustments will be discussed and agreed in good faith by the Parties.

2.4 Dalkia has informed KKR that Dalkia is considering providing bank financing for SVD 19. If appropriate, in connection with the finalisation of the definitive SPA, KKR shall consider in good faith such modifications to the draft version of the SPA as may be required to permit Dalkia to implement such bank financing of SVD 19, it being understood that KKR shall not have any obligation to agree to any such modifications.

ARTICLE 3 TIMETABLE - COSTS

3.1 The Parties will use reasonable commercial efforts to negotiate the definitive versions of the Draft Agreements (the "**Definitive Documentation**") to the mutual satisfaction of the Parties including all annexes or schedules thereto, with a view to a signing of the definitive SPA prior to the expiration of the Exclusivity Period (defined below). The Parties agree that the signing of the definitive SPA shall be subject to SVD 19 and SKCP (i) having entered into an agreement pursuant to which SKCP grants or promises to grant SVD 19 an Usufruct substantially on the terms set out in the term sheet attached hereto as **Schedule 2b** and in accordance with clause 2.2 and (ii) having agreed on the Definitive Documentation. In addition, the Parties agree and acknowledge that signature of the Definitive Documentation shall be subject (i) to each signatory thereof having obtained appropriate internal corporate authorisations required of the relevant entity in compliance with law and/or the procedures of the group to which such entity belongs, with the relevant corporate or group bodies retaining full discretion in such regard and (ii) in the case of Dalkia, Dalkia having received confirmation from the Dalkia group statutory auditors in a form reasonably satisfactory to Dalkia that, following the proposed Transaction and notably in light of the terms of the Definitive Documentation and the Smurfit Agreements, the Dalkia group will not be required to consolidate in whole or in part SVD 19.

3.2 In the event that:

(i) the definitive SPA is signed prior to expiration of the Exclusivity Period (defined below);

(ii) KKR has obtained the EC Assurances (as defined in the draft version of the SPA) by the EC Assurances Long Stop Date (as defined in the draft version of the SPA); and

(iii) the Usufruct has not actually been transferred by SKCP to SVD 19 by March 15, 2011 substantially on the terms of the term sheet set out in **Schedule 2b** or as agreed in the definitive SPA,

then Dalkia shall indemnify KKR and its affiliates for all of KKR's and its affiliates' costs and expenses (including any applicable taxes) incurred reasonably in connection with the Transaction after November 3, 2010, including but not limited to the fees and expenses of its consultants and legal, accounting, tax, financial and other advisers, and, upon delivery of invoices or other documentary evidence thereof, promptly pay to KKR, or to such other person as KKR directs, such costs and expenses up to an absolute cap of two million Euros (€ 2,000,000).

For the avoidance of doubt:

(i) should the definitive SPA not be signed prior to the expiration of the Exclusivity Period (defined below) for any reason whatsoever; or

(ii) should the Usufruct be actually transferred to SVD 19 by March 15, 2011 but closing of the Transaction not take place by that date as a result of any other condition (including the Financing condition) to the SPA not being satisfied,

then Dalkia shall not have any indemnification obligation to KKR or any of its affiliates pursuant to this Second Restated MOU.

3.3 Subject to the provisions of Article 3.2, as a general principle, each of the Parties shall bear its own costs in relation to this MOU and any discussions, negotiations or due diligence relating to the transactions envisaged herein including negotiation and drafting of the Definitive Documentation.

ARTICLE 4 EXCLUSIVITY

Dalkia agrees and undertakes that, from the date hereof until 23:59 CET on January 31, 2011 (the "**Exclusivity Period**"), it will:

(i) not solicit, initiate or respond favourably to any approach and will not engage in or continue discussions with any third party with regard to the Transaction or a possible disposal of SVD 19, the Plant or any material part of their assets; and

(ii) not enter into or make any commitment or arrangement (including inter alia any option, preference right or exclusivity rights) with anyone relating to any possible disposal of SVD 19, the Plant or any material part of their assets, or any commitment, arrangement or agreement inconsistent in all or in part with the proposed Transaction.

ARTICLE 5 MISCELLANEOUS

5.1 Notwithstanding anything else contained in this Second Restated MOU, no legally binding relations (save for those specified in this Second Restated MOU and in the Confidentiality Agreement (as defined below)) exist or will exist, unless and until the definitive SPA shall have been executed and delivered by the Parties or their respective affiliates.

5.2 This Second Restated MOU shall be governed by and construed in accordance with French law and may only be amended by a written instrument signed by the Parties. The *Tribunal de commerce de Paris* shall have exclusive jurisdiction to hear all claims or proceedings arising out of this Second Restated MOU and the Parties waive any objection to jurisdiction or other objections to oppose the initiation of proceedings before such court.

5.3 Nothing in this Second Restated MOU shall be viewed as amending, waiving or detracting from the Confidentiality Agreement concluded between Dalkia S.A.S and KKR dated July 2, 2010 (the "**Confidentiality Agreement**"). This Second Restated MOU cancels and supersedes the Original MOU and the First Restated MOU.

5.4 This Second Restated MOU may not be assigned in whole or in part without the prior written consent of the other Party, provided that Dalkia and KKR may each make an assignment or novation in favour of one or more of its or their respective affiliates. Any other assignment made without the consent of the other party shall be deemed void.

5.5 This Second Restated MOU shall terminate automatically without any indemnity or liability being due by either Party to the other upon the earlier of (i) signature of the definitive SPA, or (ii) the expiration of the Exclusivity Period, provided that termination of this Second Restated MOU shall not affect the terms of the Confidentiality Agreement and that Article 3.3 and Article 5 hereof shall survive such termination.

DALKIA FRANCE SCA	KOHLBERG KRAVIS ROBERTS & CO. L.P.
By: ______________________________	By: ______________________________
Name: Bruno de Pellegars-Malhortie	Name: William J. Janetschek
Title:	Title:

Schedule 1 **Draft Agreements**

Schedule 2 **Smurfit Agreements**

Schedule 1

Draft Agreements

Schedule 1a)

SPA

VALMY ENERGIES BIOMASSE

AND

WASHINGTON INVESTMENT LUXEMBOURG

AND

DALKIA FRANCE

AGREEMENT FOR THE SALE AND PURCHASE OF THE SHARES OF SOCIÉTÉ VALMY DÉFENSE 19

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SALE AND PURCHASE AGREEMENT[1]

BETWEEN:

1. **Valmy Energies Biomasse**, a French *société par actions simplifiée*, with a share capital of Euros 37,000, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-lez-Lille, France, registered with the companies and trade register of Lille under number 493 537 443 (the "**Seller**");

AND:

2. **Washington Investment Luxembourg**, a Luxembourg *société à responsibilité limitée,* with a share capital of Euros 12,500, having its registered office at 61, rue de Rollingergrund, L-2440 Luxembourg, registered with the companies register of Luxembourg under number [x] (the "**Purchaser**");

AND:

3. **Dalkia France**, a French *société en commandite par actions*, with a share capital of Euros 220,047,504, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-lez-Lille, France, registered with the companies and trade register of Lille under number 456 500 537 ("**Dalkia France**").

The Seller, the Purchaser and Dalkia France shall hereinafter collectively be referred to as the "**Parties**" and individually as a "**Party**".

* *

*

WHEREAS:

(A) The Seller owns 3,700 shares of Euros 10 each (the "**Shares**") in the share capital of Société Valmy Défense 19, a French *société par actions simplifiée* with a share capital of Euros 37,000, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-lez-Lille, France, registered with the companies and trade register of Lille under number 497 908 632 ("**SVD 19**" or the "**Company**"), representing 100% of the share capital and voting rights of the Company on a fully-diluted basis.

(B) The Company's activity is the sale of energy produced by a cogeneration power plant (the "**Plant**") located on the site of an integrated paper factory, at Facture, 33380 Biganos (Gironde). Such factory is owned by Smurfit Kappa Cellulose du Pin, a *société par actions simplifiée* with a share capital of Euros 45,857,826, having its registered office at allée des Fougères, *Usine de Facture,* 33380 Biganos, registered with the companies and

[1] Assumption: this draft assumes that the promise to grant the usufruct between SKCP and SVD 19 is signed by the signature date.

trade register of Bordeaux under number 572 142 198 ("**SKCP**"), a member of the Smurfit Kappa group.

(C) The Seller is the wholly-owned subsidiary of Dalkia France. The Purchaser is a wholly-owned subsidiary of the KKR Funds, which are advised by Kohlberg Kravis Roberts & Co. L.P. (together with its subsidiaries, "**KKR**").

(D) Dalkia France and KKR entered into a memorandum of understanding concerning the Transaction on December 31, 2010 (the "**Second Amended and Restated MoU**").

(E) As part of the due diligence process, the Purchaser and its Representatives were:

(i) provided with an information memorandum relating to the Company and its business, dated April 2010 (the "**Information Memorandum**");

(ii) allowed access from November 4, 2010 to [•] 2010 to an on-line electronic data room accessible through the web-site of Imprima, populated by the Seller and containing documents relating to the Company, including a legal vendor due diligence report (the "**Data Room**");

(iii) given the opportunity to attend a management presentation and a questions and answers session on November 17, 2010, following which a set of slides used to support such management presentation was made available in the Data Room (the "**Slides**"); and

(iv) given the opportunity to submit questions to the Seller's Representatives and the management of the Company, and provided with written answers to such questions (the "**Written Answers**").

(F) The Information Memorandum, including Addendum n°1, the Data Room, the Slides, the Written Answers, together with Annex 8.1 to this agreement (the "**Agreement**") and its Schedules, are hereinafter referred to as the "**Disclosures**". An electronic copy of the Disclosures has been recorded on CD-Roms. One set of such CD-Roms was delivered to each of the Seller and the Purchaser on the date of this Agreement and another set was delivered to [•] (*notaire*) (the "**Notary**") who shall act as depositary of such Disclosures in accordance with the escrow agreement entered into as of the date hereof by and among the Seller and the Purchaser and the Notary (the "**Disclosures Escrow Agreement**"). Imprima has certified that the contents of the Data Room are exactly reproduced on the CD-Roms. The Seller and the Purchaser agree to refer only to the set of CD-Roms held by the Notary in the event of a dispute between them regarding the contents of the Disclosures.

(G) The Purchaser wishes to buy, and the Seller agrees to sell, the Shares on the terms and subject to the conditions set out in this Agreement (the "**Transaction**").

(H) The employee representative bodies of Dalkia France have been informed or have delivered their opinion ("*avis*") with respect to the Transaction on December 1, 2010.

(I) Words and expressions used in this Agreement shall have the meaning set forth in, and be interpreted in accordance with, Schedule (I) to this Agreement, unless otherwise defined in this Agreement.

IT IS AGREED:

1. SALE AND PURCHASE OF THE SHARES

In accordance with the terms and subject to the conditions set forth in this Agreement, the Seller shall sell, and the Purchaser shall purchase, the Shares with effect as of the Closing, free from all Third Party Rights, and with all rights attached to them, including the rights to dividends or distributions paid or made by the Company after the Closing.

2. CONSIDERATION

2.1 Share Purchase Price

The price for the sale and purchase of the Shares (the **"Share Purchase Price"**) shall be equal to:

EV + CNWC - CNFD

where*:*

"**EV**" means the enterprise value of the Company amounting to one hundred and twenty nine million six hundred thousand euros (EUR 129,600,000), as agreed by both Parties;

"**CNWC**" means the Closing Net Working Capital of the Company[2];

"**CNFD**" means the Closing Net Financial Debt of the Company.

For the avoidance of doubt, each of the Closing Net Working Capital and the Closing Net Financial Debt may have either a positive or negative value, and the transfer by the Company to Dalkia France of the rights and obligations of the Company under the SKCP Framework Contract, the SKCDP Biomass Supply Contract and the SKCP Transformation Contract pursuant to the Transfer Agreement and to the Amendment shall have taken place before Closing.

[2] [Accounting principles shall precise that there will be no biomass stock at Closing]

2.2 Estimated Share Purchase Price

No later than [two (2)/three (3)][3] Business Days prior to the Closing Date, the Seller shall deliver to the Purchaser its good faith estimate of the Closing Net Working Capital (the "**CNWC Estimate**") and of the Closing Net Financial Debt (the "**CNFD Estimate**") together with reasonable details thereof. The CNWC Estimate and the CNFD Estimate shall be calculated on a consistent basis with French GAAP and the accounting principles and policies attached as Schedule 2.2 to this Agreement (the "**Accounting Principles**").

The estimated Share Purchase Price for the sale and purchase of the Shares, to be paid at Closing by the Purchaser to the Seller in accordance with clause 5 (the "**Estimated Share Purchase Price**"), shall be equal to:

EV + CNWC Estimate – CNFD Estimate

For the avoidance of doubt, each of the CNWC Estimate and the CNFD Estimate may have either a positive or negative value.

2.3 Share Purchase Price Adjustment.

(a) No later than twenty (20) Business Days following the Closing Date, the Seller shall deliver to the Purchaser the Closing Financial Statements, together with a statement of the Seller (the "**Seller's Statement**") (i) setting forth the amount of the Closing Net Working Capital, of the Closing Net Financial Debt and of the Share Purchase Price Adjustment resulting therefrom and (ii) confirming that the Closing Financial Statements have been prepared in accordance with, and comply with, the Accounting Principles. For the purposes of preparing the Closing Financial Statements, the Seller shall be granted access to the books and records (and other financial information) of the Company, during normal business hours.

(b) If, within a period of twenty (20) Business Days from the receipt of the Seller's Statement, the Purchaser (i) indicates that it agrees with the amount of the Share Purchase Price Adjustment set forth in the Seller's Statement or (ii) does not serve a Purchaser's Disagreement Notice (as defined in clause 2.3(c)), such amount shall be final and binding on the Parties for the purposes of the payment of the Share Purchase Price Adjustment.

(c) If within the above period of twenty (20) Business Days, the Purchaser disagrees with the amounts of the Share Purchase Price Adjustment set forth in the Seller's Statement, the Purchaser shall notify the reasons for such disagreement to the Seller, together with (i) the adjustment(s) which in its opinion should be made to the Closing Financial Statements and (ii) its estimate of the Share Purchase Price Adjustment resulting therefrom (all together, the "**Purchaser's Disagreement Notice**"). After the Seller has provided the Purchaser with the Seller's Statement, the Seller shall provide to the

[3] Note: this is the likely timing, but to be confirmed by KKR and agreed by Dalkia prior to closing; however, will not be longer than 5 Business Days and will not be shorter than 2 Business Days prior to the Closing Date.

Purchaser, upon its request, any supporting documentation and related work papers used by the Seller in connection with the preparation of the Closing Financial Statements and, more generally, any other relevant documents, books and records and reasonable access to personnel of the Seller and Seller's internal accountants (but not to statutory auditors) who are responsible for the preparation of the Closing Financing Statements.

(d) Within a period of ten (10) Business Days from the receipt of the Purchaser's Disagreement Notice, the Seller shall review the Purchaser's Disagreement Notice. For the purposes thereof, the Purchaser shall make available to the Seller upon its request any supporting documentation and related work papers used by the Purchaser in connection with the review of the Closing Financial Statements and/or its calculation of the Share Purchase Price Adjustment and, more generally, any other relevant documents, books and records.

(e) If, within the ten (10)-Business Day period provided for in clause 2.3(d), the Seller (i) notified the Purchaser that it agrees with the amount of the Share Purchase Price Adjustment set forth in the Purchaser's Disagreement Notice or (ii) does not serve a Seller's Disagreement Notice (as defined in clause 2.3(f)), such amount shall be final and binding on the Parties for the purposes of the payment of the Share Purchase Price Adjustment.

(f) If the Seller disagrees with the amount of the Share Purchase Price Adjustment set forth in the Purchaser's Disagreement Notice, the Seller shall, within the ten (10)-Business Day period provided for in clause 2.3(d), notify such disagreement to the Purchaser, together with the reasons for said disagreement (the "**Seller's Disagreement Notice**"). In such a case, the Purchaser and the Seller shall attempt, within a further ten (10)-Business Day period, to reach an agreement in good faith in respect of the computation of the Closing Net Working Capital, the Closing Net Financial Debt and the Share Purchase Price Adjustment. Should they reach agreement during such ten (10) Business Day period, such Share Purchase Price Adjustment shall be final and binding on the Parties. Should they be unable to do so during that ten (10)-Business Day period, then any unresolved disputed items and the final determination of the Share Purchase Price Adjustment shall be referred to the Expert Accountant at the request of either the Purchaser or the Seller (which referral shall be in writing setting forth the matters that either the Purchaser or the Seller consider to be in dispute).

(g) Once the Expert Accountant has accepted its assignment, and except if the Purchaser and the Seller agree otherwise, the Expert Accountant shall:

(i) review and resolve only the remaining disputed items between the Seller and the Purchaser as to the Share Purchase Price Adjustment as identified in writing in the referral set forth in clause 2.3(f) as resulting from the Seller's Statement, the Purchaser's Disagreement Notice and the Seller's Disagreement Notice; and

(ii) determine the changes to be made (if any) to the Seller's Statement as a result of its review and resolution of the disputed items and determine the amount of the Share Purchase Price Adjustment resulting therefrom.

(h) In connection with its assignment, the Expert Accountant shall:

(i) give the Purchaser and the Seller a reasonable opportunity to make written and oral statements and require that the Purchaser and the Seller provide each other with a copy of any written statements at the same time as they are submitted to the Expert Accountant; and

(ii) permit each of the Purchaser and the Seller to attend any oral submissions made by the other of them.

(i) The Expert Accountant shall prepare and deliver to the Purchaser and the Seller, no later than twenty (20) Business Days from its appointment, its report on the disputed items it has reviewed and resolved pursuant to clause 2.3(g) and the related adjustments (if any) to the Closing Net Working Capital, the Closing Net Financial Debt and the Share Purchase Price Adjustment. The Expert Accountant's report shall (i) be made in writing in English (or, if in French, with an official English translation), and (ii) unless otherwise agreed by the Purchaser and the Seller, include an explanation, in reasonable detail, for each relevant adjustment.

(j) The Expert Accountant shall act in accordance with article 1592 of the French Civil Code, or should such Expert Accountant be unwilling or unable to make or continue the mission, in accordance with article 1843-4 of the French Civil Code, and its determination of any matter falling within its assignment shall be final and binding on the Parties, without right of appeal, save in the event of manifest or gross error (*erreur grossière ou manifeste*). The Share Purchase Price (namely, the Estimated Share Purchase Price, as adjusted by the amount of the Share Purchase Price Adjustment finally determined by the Expert Accountant) shall then be final and binding on the Parties. In the event the Expert Accountant commits a manifest or gross error, its determination affected by the manifest or gross error shall be null and void in all respects and a new Expert Accountant shall be appointed.

(k) The Parties shall co-operate reasonably with the Expert Accountant and comply with its reasonable requests made in connection with the carrying out of its duties under this Agreement.

(l) The fees of the Expert Accountant shall be equally shared between the Seller and the Purchaser.

2.4 Payment of the Estimated Share Purchase Price

At the Closing, upon the terms and subject to the conditions of this Agreement, in consideration for the sale, transfer and delivery of the Shares to the Purchaser at the Closing, the Purchaser shall pay to the Seller the Estimated Share Purchase Price, by way of a wire transfer in immediately available funds, to the Seller's Bank Account.

2.5 Payment of the Share Purchase Price Adjustment

Within ten (10) Business Days from the date of final determination of the Share Purchase Price Adjustment in accordance with clause 2.3, the Seller shall pay to the Purchaser or, as the case may be, the Purchaser shall pay to the Seller, the Share Purchase Price Adjustment, together with interest on the Share Purchase Price Adjustment at a rate equal to 300 basis points per annum divided by 365 and calculated based on the number of days elapsed from (and including) the

Closing Date to (but excluding) the date of payment. For the avoidance of doubt, no payment shall be made by the Purchaser or the Seller in the event that the Share Purchase Price as finally determined in accordance with clause 2.3 is equal to the Estimated Share Purchase Price.

In the event that the Share Purchase Price Adjustment is to be paid by the Seller to the Purchaser, such amount shall be paid by the Seller, by way of wire transfer of immediately available funds, to the bank account notified (no later than five (5) Business Days from the date of the final determination of the Share Purchase Price Adjustment) by the Purchaser to the Seller.

In the event that the Share Purchase Price Adjustment is to be paid by the Purchaser to the Seller, such amount shall be paid by the Purchaser to the Seller, by way of wire transfer of immediately available funds, to the Seller's Bank Account.

If the Share Purchase Price Adjustment is not paid when due, the interest rate payable on such amount shall be EURIBOR + 300 basis points from the date payment was due until the date of its payment.

2.6 Repayment of the Closing Shareholder's Loan

No later than [two (2)/three (3)][4] Business Days prior to the Closing Date, the Seller shall notify (the "**Closing Shareholder's Loan Notification**") to the Purchaser the amount of the Closing Shareholder's Loan as of the Closing Date.

The Closing Shareholder's Loan shall not exceed the amount (the "**Shareholder's Loan Cap**") that, when taken together with any other Indebtedness of the Company as of the Closing, would result in the Equity of the Company as of the Closing being less than Euros one million (€1,000,000).

At the Closing, on the terms and subject to the conditions set forth in this Agreement, the Purchaser shall pay or procure the payment to the Seller on behalf of the Company, or cause the Company to reimburse, the Closing Shareholder's Loan, by way of a wire transfer in immediately available funds, to the Seller's Bank Account.

The payment at Closing of the Closing Shareholder's Loan in the amount set forth in the Closing Shareholder's Loan Notification shall constitute the full and final payment and discharge of the Closing Shareholder's Loan.

[4] Note; please see note 3.

3. CONDITIONS PRECEDENT

3.1 Conditions to the obligations under this Agreement

The respective obligations of each Party to consummate the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable Law, by Purchaser and Seller:

(a) no Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, judgment, decree, injunction or other order which is in effect and which has the effect of making the transactions contemplated hereby illegal or otherwise prohibits the performance by the Purchaser and the Seller of their respective obligations under this Agreement;

(b) the Purchaser shall have received by no later than five (5) Business Days before the Initial Long Stop Date (the "**EC Assurances Long Stop Date**") such assurances (the "**EC Assurances**") as it deems necessary (including through discussions with representatives of the European Commission) that a Merger Notification is not required to be filed by the Purchaser and the Seller or their Affiliates with the European Commission in connection with the Transaction;

(c) in the event that the Purchaser does not receive the EC Assurances by the EC Assurances Long Stop Date, and the Purchaser and Seller waive condition 3.1(b), the obtaining of a decision from the European Commission under Article 6(1)(b) of the Council Regulation (EC) No 139/2004 of January 20, 2004 on the control of concentrations between undertakings declaring the Transaction to be compatible with the internal market without any condition that would be adverse to the business of the Purchaser and its Affiliates or the Dalkia Group (the "**Clearance**"); and

(d) the Smurfit Agreements shall have been duly executed and delivered by the parties thereto substantially in the form of Schedule 3.1(d), which agreements provide for *inter alia* (i) SKCP and SKCDP's consent to the change of control of the Company; and (ii) termination of the warranty letter (*lettre de substitution et de porte fort*) entered into by SKCP and Dalkia France on September 29, 2008, in each case without any liability, obligation, condition or restriction applicable to SVD 19 or its assets after the Closing (other than as envisaged in the Usufruct Agreement).

3.2 Conditions to obligations of Purchaser under this Agreement[5]

The obligations of Purchaser to consummate the Transaction shall be subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable Law, by the Purchaser:

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[5] Note: Parties to discuss inclusion of potential condition regarding the co-efficient performance criteria of the Plant if the co-efficient performance criteria of the Plant are not confirmed on terms reasonably satisfactory to the Purchaser by the date on which this Agreement is signed.

(a) each of the representations and warranties set forth in Schedule 8.1 shall be true and correct in all material respects on the date of this Agreement and as of the Closing Date (other than those representations and warranties that expressly relate to an earlier date, in which case such representations and warranties need only be true and correct as of such earlier date);

(b) Seller shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it at or prior to the Closing;

(c) the Ancillary Agreements shall have been duly executed and delivered by the parties thereto;[6]

(d) the full commissioning of the Plant by Dalkia France, all reservations being lifted and no defect whatsoever being notified by SVD 19, other than the reservations expressly made under the Real Property Development Contract in the form annexed hereto in Schedule [●][7]; and

(e) the Purchaser shall have obtained the Financing.

3.3 Conditions to obligations of Seller under this Agreement

The obligations of Seller to consummate the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of the following conditions, any or all of which may be waived, in whole or in part, to the extent permitted by applicable Law, by the Seller:

(a) each of the representations and warranties set forth in Schedule 9 shall be true and correct in all material respects on the date of this Agreement and as of the Closing Date (other than those representations and warranties that expressly relate to a particular date, in which case such representations and warranties need only be true and correct as of such date);

(b) Purchaser shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it at or prior to the Closing;

(c) [approval of the competent Govermental Entity for the transfer to Dalkia France of the right to operate a classified facility ("*autorisation d'exploiter ICPE*");][8]

(d) the KKR Equity Commitment Letter shall not have been rescinded, revoked or terminated, shall be in full force and effect and any conditions precedent to the equity

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[6] Note: subject to determination of practice of RTE regarding signature of their contracts which may make it appropriate to not include the RTE metering agreement, it being understood that Purchaser shall be satisfied that the RTE metering agreement is in force.

[7] Note: any reservations shall be satisfactory to each of Seller and Purchaser in their absolute discretion.

[8] Note: Dalkia to confirm that the letter has been delivered, so that this condition can come out.

commitment specified thereunder (other than those only capable of being satisfied at Closing) shall have been satisfied and the equity so committed shall have been paid to [Washington Investment Luxembourg 2]; and

(e) [confirmation satisfactory to Dalkia France from its statutory auditors that, following completion of the Transaction and taking account of the Transaction Agreements and the Smurfit Agreements, the Dalkia Group shall not be required to consolidate (other than under equity method) the Company or any of the entities identified in the Agreed Structure].[9]

3.4 Satisfaction of Conditions

(a) The Seller shall use its reasonable commercial efforts to ensure that the Conditions Precedent set out in clauses 3.1(d), 3.2(c), 3.2(d) and 3.3(c) are fulfilled, in each case as promptly as possible after the date hereof. In connection with the fulfillment of such Conditions Precedent, the Seller undertakes to keep the Purchaser regularly informed in writing as to progress towards satisfaction of such Conditions Precedent.

(b) The Purchaser: (i) shall use its reasonable commercial efforts to ensure that the Condition Precedent set out in clause 3.2(e) is fulfilled; and (ii) shall use its reasonable commercial efforts to obtain the EC Assurances as soon as practicable after the date hereof, taking into consideration the timing of discussions with, and any information requests of, representatives of the European Commission. In the event that the Purchaser has not received the EC Assurances by the EC Assurances Long Stop Date, the Purchaser and the Seller shall determine whether to waive the condition provided for in clause 3.1(b) by no later than the Initial Long Stop Date, and if the Purchaser and the Seller waive the condition provided for in clause 3.1(b), the Purchaser and the Seller shall use reasonable commercial efforts to obtain the Clearance as soon as practicable after the date of such waiver (which, for the avoidance of doubt, shall not include being required to accept, or agree to, any divestiture, restriction or condition in connection with their respective businesses or the businesses of any of their Affiliates or any modification to the Transaction Agreements).

(c) Each Party shall: (i) notify the other Party promptly upon becoming aware that any of the Conditions Precedent has been fulfilled; (ii) provide copies of the relevant confirmatory documentation; and (iii) inform the other Party upon becoming aware that any event has occurred that will result or would reasonably be expected to result in the failure of a Condition Precedent to be satisfied at or prior to the Closing.

[9] Note: to be deleted when terms of preferred equity certificates to be issued by [Washington Investment Luxembourg 2] have been provided to Dalkia, so that Dalkia can confirm with its accountants that such terms will not require it to consolidate SVD 19 and that the terms of the preferred equity certificates are satisfactory to Dalkia.

4. PRE-CLOSING OBLIGATIONS

4.1 Conduct of Business

From the date of this Agreement until Closing and except as provided for in Schedule 4.1, the Seller shall procure (unless otherwise required or permitted by the terms of this Agreement, in particular for the fulfillment of the Conditions Precedent, or permitted in writing by the Purchaser in its sole discretion, which shall not be unreasonably withheld or delayed) that the Company operates its business in the ordinary course (the Purchaser acknowledges that the Plant started operation recently and that as a result the business of the Company is evolving as set out in Schedule 4.1). In particular, but without limitation, the Seller shall procure that:

(a) the Company does not engage or offer to engage any employee or consultant (for the avoidance of doubt the term "*consultant*" shall not include third party services providers);

(b) no reorganization or change in the nature of any part of the business of the Company or the discontinuance of any part of it takes place or is decided (except the execution of agreements by and among, *inter alia*, the Company and Dalkia France, listed in clause 5.4 of this Agreement);

(c) no creation of any new business or activity by the Company takes place or is decided;

(d) save in the ordinary course of business, the Company shall not make any capital expenditure or capital commitment;

(e) the Company shall not enter into any contract relating to or affecting a material part of its business;

(f) the Company shall not declare, authorize, pay or make any dividend or other distribution (whether in cash, stock or in kind) and shall not reduce, purchase, redeem, split or otherwise change its share capital, except for any issue of shares in the Company to the Seller in connection with the capitalization, pursuant to clause 4.7, of loans made by the Seller to the Company;

(g) the Company shall not issue any share, loan capital, security or interest in its share capital, or security convertible into any of the foregoing;

(h) the Company shall not create, grant or issue any options, securities or other rights giving or likely to give access to the Company's share capital or voting rights;

(i) the Company shall not acquire, sell or agree to acquire or sell any share or other interest in any company, or enter into any partnership, association or joint-venture;

(j) the Company shall not create any Third Party Right over its assets;

(k) the Company shall not give any guarantee or indemnity for the obligations of any person;

(l) the Company shall not borrow any amount other than from the Dalkia Group;

(m) the Company shall not make any loan other than under the Cash Pooling Arrangement before the date of the Closing Shareholder's Loan Notification;

(n) neither the Seller nor the Company shall create or grant any option or right to acquire over, sell, transfer, lease, mortgage, pledge, encumber or grant security over or otherwise dispose of any material asset or part thereof used for the conduct of the Company's business;

(o) the Company shall not pass any shareholder resolution, including any shareholder resolution to alter its by-laws except for the purpose of any issue of shares in the Company to the Seller in connection with the capitalization, pursuant to clause 4.7, of loans made by the Seller to the Purchaser;

(p) the Company shall not fail to take any action required to maintain any of its insurances in force or knowingly do anything to make any policy of insurance void or voidable;

(q) the Company shall not delay the payment of any debt or account payable or advance the payment of any account receivable;

(r) the Company shall not make any alteration in the manner of keeping its books, accounts, or records except to the extent required by mandatory law;

(s) the Company shall not allow or procure any act or omission which would result in a willful breach of the Seller's Warranties; and

(t) the Company shall not enter into any agreement or make any commitment (conditional or otherwise) to do any of the foregoing.

4.2 Investors' Agreement and Agreed Structure

(a) The Parties shall cooperate reasonably to implement the Agreed Structure as soon as is reasonably practicable after the date hereof. In order to implement the Agreed Structure, the Purchaser shall be entitled to novate or otherwise transfer all its rights and obligations under this Agreement to a company to be established for the purpose of directly holding the shares in SVD 19 under the Agreed Structure ("**Bidco**"), and upon such novation or transfer all of the Purchaser's rights, obligations and liabilities shall become Bidco´s rights, obligations and liabilities and the Purchaser shall be released from any and all liability and shall have no further rights or obligations whatsoever pursuant to this Agreement (the "**Novation**"). The Seller shall provide such assistance to the Purchaser and its Representatives as they reasonably request in connection with the establishment of the Agreed Structure, including all actions as are reasonably necessary to effect the Novation.

(b) The Parties shall negotiate and finalize in good faith the Investors' Agreement as soon as reasonably practicable after the date hereof on the basis of the Investors' Agreement Term Sheet.

4.3 Financing Cooperation

Prior to the Closing, the Seller shall provide, and shall cause its Affiliates (including, for the avoidance of doubt, the Company) and its and their respective Representatives to provide, all cooperation and assistance reasonably required by the Purchaser in connection with obtaining the Financing, including, without limitation: (i) providing information relating to the Company within their possession to the Purchaser, any potential providers of the Financing and its and their respective Representatives; (ii) upon reasonable prior notice, participating in a reasonable number of meetings with the Purchaser, any potential providers of the Financing and its and their respective Representatives, including due diligence sessions (including accounting due diligence sessions); (iii) as promptly as practicable, furnishing the Purchaser and the potential providers of the Financing and its and their respective Representatives with all relevant financial and other information regarding the Company and the Company's business and assets as may be reasonably requested by the Purchaser and the potential providers of the Financing and its and their respective Representatives to assist in obtaining the Financing; (iv) having their internal accountants provide their reasonable cooperation and assistance; (v) considering in good faith (taking notably into account the Dalkia Group deconsolidation objectives) any comments made by the Purchaser and the potential providers of the Financing and its and their respective Representatives on this Agreement, the agreements listed in clause 5.4 and all other documents and agreements, it being agreed that the Seller or Dalkia France may accept or reject such comments in their sole discretion; and (vi) cooperating reasonably with the due diligence of the Purchaser and the potential providers of the Financing and its and their respective Representatives.

The Purchaser shall keep the Seller reasonably and timely informed of the status of negotiations concerning the Financing. In particular, the Purchaser shall inform the Seller promptly, if, at any time, the Purchaser has determined in its sole discretion that it is not possible to secure the Financing and that the Purchaser is not willing to waive the Condition Precedent set out in clause 3.2(e), in which case, this Agreement shall terminate, without any liability of either Party to the other.

4.4 Access to Information

From the date of this Agreement up to (and including) the Closing, the Seller shall cause the Company and Dalkia France to afford to the Purchaser, and its Representatives, upon reasonable written request and notice, reasonable access during normal business hours to persons concerned in the management of the Company, to contracts, books and records concerning the Company's business and the premises of the Plant.

4.5 Competition Notifications

(a) The Seller undertakes to provide, and shall procure that its Affiliates and its and their Representatives provide, all cooperation and assistance reasonably required by the Purchaser in connection with obtaining the EC Assurances, including: (i) providing information relating to the Company and its Affiliates within their possession; (ii) making relevant Representatives available to participate in meetings or telephone calls, including with representatives of the European Commission; (iii) promptly providing comments on any submissions made in connection with the EC Assurances; and (iv) promptly providing assistance to the Purchaser, so that it may respond to any requests made by representatives of the European Commission in connection with the EC Assurances.

(b) The Purchaser undertakes to: (i) promptly inform the Seller of any communication from the European Commission to the Purchaser (or its Representatives) related to the EC Assurances; (ii) allow the Seller (or its Representatives) to review any draft of any submissions to the European Commission in connection with the EC Assurances and consider reasonably such amendments as the Seller (or its Representatives) may reasonably request.

(c) In the event that the Purchaser and the Seller waive condition 3.1(b), the Purchaser undertakes to: (i) prepare the Merger Notification; (ii) consult with the Seller (and its Representatives) as to the form and content of the Merger Notification Form CO and allow the Seller (and its Representatives) to review the same in advance of submission and make such amendments as the Seller may reasonably request; (iii) keep the Seller informed as to the progress of the Merger Notification and, to the extent the European Commission does not object, to inform the Seller prior to all material communications (including material telephone calls and meetings) with the European Commission; (iv) to allow the Seller the opportunity to participate in any such calls and meetings, to the extent reasonably practicable; (v) allow the Seller (and its Representatives) to review any material written communications before submission, to the extent reasonably practicable, and to make such amendments to such communications as the Seller may reasonably request; (vi) provide promptly such information as may be reasonably requested by the European Commission or the competent authority of any member state in order to facilitate and expedite the satisfaction of the Competition Condition; and (vii) provide the Seller (and its legal counsel) with a final copy of the Form CO and all other material written communications with the European Commission, to the extent permitted by law.

(d) The Seller undertakes to: (i) to the extent the European Commission does not object and to the extent reasonably practicable, promptly inform the Purchaser of any communication from the European Commission to the Seller (or its Representatives); (ii) to the extent the European Commission does not object and to the extent reasonably practicable, consult with the Purchaser (or its Representatives) as to the form and content of any response by the Seller (or its Representatives) to any communications from the European Commission and allow Purchaser (or its Representatives) to review such response in advance of any submission and consider reasonably such amendments as the Purchaser (or its Representatives) may reasonably request; and (iii) provide promptly such information within the possession, custody or control of the Seller or its Affiliates (or its Representatives) as may be reasonably requested by the European Commission whether such request is made directly to Seller (or its Representatives) or to the Purchaser (or its Representatives).

4.6 Inter-Company Agreements

Except with respect to those Inter-Company Agreements set forth in Schedule 4.6[10], effective as of the Closing, the Seller shall cause the Company to enter into with Dalkia France and any of its Affiliates that are parties to contracts or arrangements with the Company, the necessary instruments to:

(a) terminate or novate to another entity other than the Company;

(b) release and forever, fully, unconditionally and irrevocably discharge the Company from any and all liabilities and obligations owing or owed by the Company to Dalkia France and its Affiliates, and take all such other actions as may be reasonably necessary to effect such termination, novation and release of all Inter-Company Agreements without any liability or obligation surviving or being incurred by the Company after Closing; and

(c) release and forever, fully, unconditionally and irrevocably discharge Dalkia France and its Affiliates from any and all liabilities and obligations owing or owed by Dalkia France and its Affiliates to the Company, and take all such other actions as may be reasonably necessary to effect such termination, novation and release of all Inter-Company Agreements without any liability or obligation surviving or being incurred by Dalkia France and its Affiliates after Closing.

4.7 Indebtedness and the Closing Shareholder's Loan

(a) The Seller covenants that at Closing, following the repayment of the Closing Shareholder's Loan, the Company shall have no Indebtedness towards Dalkia France and its Affiliates, and the Seller shall procure the delivery at Closing of a certificate from Dalkia France's chief financial officer in the form attached as Schedule 4.7(a) confirming that the Company has no Indebtedness towards Dalkia France and its Affiliates at Closing.

(b) If, on the date of the Closing Shareholder's Loan Notification, the Closing Shareholder's Loan is greater than the Shareholder's Loan Cap, the Seller shall procure the issue to it by the Company of the number of shares in the Company required to capitalize the entire amount by which the Closing Shareholder's Loan exceeds the Shareholder's Loan Cap, so that the Closing Shareholder's Loan in the Closing Shareholder's Loan Notification is not greater than the Shareholder's Loan Cap.

(c) The Seller covenants that, on the date of and following the Closing Shareholder's Loan Notification, the Company shall not borrow any further amounts from the Dalkia Group, such that there shall be no change in the Shareholder's Loan between the date of the Closing Shareholder's Loan Notification and Closing.

4.8 Subscription Agreement

[10] Note: to include *inter alia* all Transaction Agreements to which SVD 19 is a party. Parties need to discuss handling of ordinary course receivables and payables.

On the date on which all the Conditions Precedent are satisfied or, to the extent permitted by applicable Law, waived (except for those Conditions Precedent which can only be satisfied or waived at Closing), and in any event not later than five (5) Business Days before Closing, the Seller or another Dalkia Shareholder shall deliver a duly executed original copy of the Subscription Agreement to the Purchaser.

5. CLOSING

5.1 The Closing shall take place at the latest on: (i) the fifth Business Day after the date on which all the Conditions Precedent are satisfied or, to the extent permitted by applicable Law, waived (except for those Conditions Precedent which can only be satisfied or waived at Closing but subject to the satisfaction or waiver of such Conditions Precedent at Closing); or (ii) at such other time as the Seller and the Purchaser may agree in writing, but, in any event, no later than the Long Stop Date (the "**Closing Date**").

5.2 Unless otherwise agreed between the Parties and subject to fulfillment or waiver of the Conditions Precedent, the Closing shall take place at the office of De Pardieu Brocas Maffei A.A.R.P.I. (57, avenue d'Iéna, 75116 Paris) on the Closing Date.

5.3 Upon the terms and subject to the conditions of this Agreement, the sale, transfer and delivery of ownership of the Shares, delivery of the items referred to in clauses 5.4 and 5.5 and the payment of the Share Purchase Price and of the Closing Shareholder's Loan shall be deemed to take place simultaneously at the Closing, by the performance by the Parties of the actions contemplated by this Agreement (all deemed performed and consummated simultaneously, so that if a single action is not performed or consummated, or waived pursuant to clause 5.6 below, the Closing shall not take place).

5.4 <u>Seller Closing Deliveries</u>. At the Closing, the Seller shall deliver or cause to be delivered to the Purchaser:

(a) a certificate, in the form attached as <u>Schedule 5.4(a)</u> to this Agreement, signed by the Seller pursuant to which the Seller confirms the statements in clauses 3.2(a) and (b) and reiterates the Seller's Warranties as if given on the Closing Date;

(b) a duly completed, executed and dated share transfer form (*ordre de mouvement*) in respect of all of the Shares in favour of the Purchaser;

(c) the tax transfer forms in two original copies (*formulaire 2759/Cerfa n°10408*09 DGI*) relating to the sale of the Shares executed by the Seller;

(d) originals of the share transfer register (*registre des mouvements de titres*) and shareholders' accounts (*comptes d'actionnaires*) of the Company;

(e) the unconditional resignation letter effective as of the Closing Date of the current President of the Company, in the form attached as <u>Schedule 5.4(e)</u> confirming that the signatory has no claim against the Company for any amount whatsoever and that he waives any recourse against the Company;

(f) an original copy of the Investors' Agreement duly executed by the Seller or a Dalkia Shareholder;

(g) an original copy of the operating and maintenance contract to be entered into by and between SVD 19 and Dalkia France, duly executed by Dalkia France, in the form attached as Schedule 5.4(g) to this Agreement, with the biomass supply agreement between them attached thereto (the "**Operating and Maintenance Contract**");

(h) an original copy of the transformation contract to be entered into by and between SVD 19 and Dalkia France, duly executed by Dalkia France, in the form attached as Schedule 5.4(h) to this Agreement (the "**SVD 19 Transformation Contract**");

(i) an original copy of the side agreement to be entered into by and between SVD 19 and Dalkia France, duly executed by Dalkia France, in the form attached as Schedule 5.4(i) to this Agreement (the "**Side Agreement**");

(j) an original copy of the Transfer Agreement to be entered into by and between SVD 19 and Dalkia France, duly executed by Dalkia France and SVD 19, in the form attached as Schedule 5.4(j) to this Agreement;

(k) an original copy of each of the Ancillary Agreements, duly executed by the parties thereto[11];

(l) an original copy of each of the Smurfit Agreements, duly executed by the parties thereto;

(m) an original copy of the real property development contract to be entered into by and between SVD 19 and Dalkia France, duly executed by Dalkia France, in the form attached as Schedule 5.4(m) to this Agreement (the "**Real Property Development Contract**");

(n) an original copy of the framework agreement between SVD 19 and Dalkia France duly executed by Dalkia France, a draft of which is appended to this Agreement in Schedule 5.4(n) (the "**SVD 19 Framework Contract**");

(o) an original copy of the biomass supply agreement between SVD 19 and Dalkia France duly executed by Dalkia France, a draft of which is appended to this Agreement in Schedule 5.4(o) (the "**SVD 19 Biomass Supply Agreement**");

(p) original copies of the termination deeds of all Inter-Company Agreements effective as from the Closing Date, save as otherwise listed in Schedule 4.6 to this Agreement;

(q) the confirmation referred to in the Condition Precedent set out in clause 3.2(d);

(r) the certificate referred to in clause 4.7(a); and

[11] Subject to the signature of RTE.

(s) an original copy of the tax group exit agreement relating to the exit by the Company of the Dalkia France tax group without the Company having any obligation to the Dalkia Group in connection with such exit, and without the Company having any indemnification from the Dalkia Group in connection with such exit, a draft of which is appended to this Agreement as Schedule 5.4(s).

5.5 Purchaser Closing Deliveries. At Closing (or immediately after Closing with respect to the items referred to in clauses 5.5(e) through (j)), the Purchaser shall deliver or cause to be delivered to the Seller:

(a) a certificate signed by the Purchaser pursuant to which the Purchaser reiterates the Purchaser's Warranties (save for the Purchaser's Warranty set out in paragraph 5 of Schedule 9) as if given on the Closing Date, and confirms the statements in clauses 3.3(a) and (b) in the form attached as Schedule 5.5(a) to this Agreement;

(b) evidence (which shall be reasonably satisfactory to the Seller) from the Purchaser's bank of a wire transfer in immediately available funds made in respect of the Estimated Share Purchase Price and the Closing Shareholder's Loan Estimate;

(c) the Investors' Agreement, duly executed by an Affiliate of the Purchaser; and

(d) the tax transfer form in two original copies (*formulaire 2759/Cerfa n°10408*09 DGI*) relating to the sale of the Shares duly executed by the Purchaser;

(e) an original copy of the Operating and Maintenance Contract, duly executed by SVD 19;

(f) an original copy of the SVD 19 Transformation Contract, duly executed by SVD 19;

(g) an original copy of the Side Agreement, duly executed by SVD 19;

(h) an original copy of the Real Property Development Contract, duly executed by SVD 19;

(i) an original copy of the SVD 19 Framework Agreement, duly executed by SVD 19; and

(j) an original copy of the SVD 19 Biomass Supply Agreement duly executed by SVD 19.

5.6 Satisfaction of Closing actions

(a) The Purchaser will not be obliged to complete the Transaction should any of the Closing actions set out in clause 5.4 above not be effected on the Closing Date. The Seller will not be obliged to complete the Transaction should any of the Closing actions set out in clause 5.5 above not be effected on the Closing Date.

(b) Each of the Seller and the Purchaser may waive (in whole or in part) any of the other's respective obligations under clauses 5.4 and 5.5, but only if and to the extent that such waiver is in writing and is not in violation of any applicable Law. The waiver by the Seller or the Purchaser of the other's obligations under this clause 5, or of a Condition Precedent, shall not be a waiver of, or reduce or prejudice, the rights of such Party to obtain indemnification or otherwise make a claim in respect of such matter under the terms of this Agreement, including as regards indemnification in respect of breaches of the representations, warranties, covenants and agreements in this Agreement.

6. TERMINATION

6.1 Termination events. This Agreement may, at or prior to the Closing Date, be terminated:

(a) by written agreement of the Purchaser and the Seller;

(b) by written notice by either the Seller or the Purchaser to the other Parties, if any of the Conditions Precedent to such Party's obligations under this Agreement shall have become impossible to satisfy (and in the case where the impossibility relates to any Condition Precedent set forth in clause 3.1, such Condition Precedent or the relevant part thereof has not been waived by the Seller and the Purchaser and in the case where the impossibility relates to any Condition Precedent set forth in clause 3.2, such Condition Precedent has not been waived by the Purchaser, and in the case where the impossibility relates to any Condition Precedent set forth in clause 3.3, such Condition Precedent has not been waived by the Seller, in each case within five (5) Business Days of becoming aware of such impossibility except in the case of the Condition Precedent in clause 3.1(b), which may be waived at any time prior to the Initial Long Stop Date, which shall in any case be no later than five (5) Business Days after the EC Assurances Long Stop Date), provided, however, that the right to terminate this Agreement pursuant to this clause 6.1(b) shall not be available to any Party whose failure to fulfill any of its obligations under this Agreement has been a principal cause of or has resulted in the impossibility of such Conditions Precedent;

(c) by written notice by either the Seller or the Purchaser if Closing has not occurred on or before the Long Stop Date;

(d) if the Purchaser delivers the notice referred to in the second paragraph of clause 4.3; or

(e) by written notice of the Purchaser if the Subscription Agreement has not been delivered in accordance with clause 4.8.

6.2 Effect of termination. If this Agreement is terminated pursuant to clause 6.1, all further rights and obligations of the Parties under this Agreement shall terminate without any liability of any Party to the others, except that the obligations set forth in clauses 12 through 21 shall survive, and further provided that nothing in this clause 6.2 shall be deemed to release a Party from any liability for any breach by such Party of the terms of this Agreement pre-dating the termination and that the Parties' right to pursue all legal remedies in respect thereof shall survive such termination unimpaired.

Notwithstanding the foregoing, if this Agreement is terminated pursuant to clause 6.1(b), as a result of an impossibility to satisfy the Condition Precedent referred to in clause 3.1(b), clause 15.3 shall not survive.

7. SELLER'S SPECIFIC INDEMNITIES[12]

The Seller shall promptly indemnify the Purchaser and/or the Company, as the case may be, against any Loss (including as a result in respect of applicable taxes) incurred by the Purchaser and/or the Company, as the case may be, in connection with any breach by the Seller of its covenants and undertakings set out in this Agreement. The indemnity in this clause 7 shall not be subject to the limitations in clause 8, provided however that, for the avoidance of doubt, the matters relating to Seller's Warranties shall be exclusively governed by clause 8, and subject to the limitations set forth at clause 8.

8. SELLER'S WARRANTIES AND CONSEQUENCES OF BREACH

8.1 Representations and warranties. Subject to the limitations set out in this clause 8, the Seller represents and warrants to the Purchaser that the Seller's Warranties (i) are true and accurate as at the date of this Agreement and (ii) shall be true and accurate on the Closing Date, provided that any disclosures made by the Seller after the date of this Agreement that reveals faults, events or circumstances occurring before or after the date of this Agreement will not act so as to limit or reduce the liability of the Seller under the representations and warranties.

No limitation herein shall apply as regards Claims in relation to the Seller's Warranties set out in paragraphs 1.1 and 1.2 (the Seller and the Shares) of Schedule 8.1.

For the avoidance of doubt, save as otherwise agreed in writing between the Seller and the Purchaser and save as regards the legal warranty owed by the Seller to the Purchaser pursuant to French law with respect to fraud (*dol*), the Seller's Warranties are the only representations and warranties of the Seller in relation to the Transaction, to the exclusion of any other, whether express, legal or implied. The Purchaser shall not be entitled to rescind this Agreement absent fraud (*dol*).

8.2 Compensation. Subject to the provisions of this clause 8, the Seller hereby undertakes to indemnify and hold the Purchaser harmless from and against any Loss arising as a result of a Breach, including the reduction in the value of any asset or the increase in any liability.

8.3 Claim Notices. Any claim (a "**Claim**") in respect of a Breach of which the Purchaser becomes aware shall be notified in writing by the Purchaser to the Seller with reasonable details (to the extent available to the Purchaser) of the basis, acts or events on which it is based and, if reasonably capable of being determined, shall include an estimate of the amount of the Loss (the "**Claim Notice**"). The Purchaser shall provide the Seller with the Claim Notice as soon as reasonably practicable and in any event no later than within twenty (20) Business Days (the "**Claim Notice Period**") of the Purchaser becoming aware of any Claim, except with regard to a Claim relating to Tax matters, in which case the Claim Notice Period shall be limited to ten (10) Business Days. The failure by the Purchaser to comply with the Claim Notice Period mentioned

[12] Note: indemnity to be discussed regarding the Company not having obtained the Environmental Permit to operate the Plant with four radioactive sources (as opposed to two) from the relevant Governmental Entities by the time required by Law.

above shall not release the Seller from its obligations in respect of the Seller's Warranty giving rise to the relevant Claim, but shall result in a reduction of the indemnification due up to the amount of the actual damage caused to the Seller by such delay.

8.4 Time limit for making a Claim. The Seller shall not be liable for any Claim unless the Seller receives from the Purchaser a Claim Notice in respect of such Claim:

(a) on or before the last day of a twelve (12) month-period from the Closing Date, for any Claim other than a Tax Claim; or

(b) on or before the last day of a twenty (20) Business Day-period following the expiry of the applicable statute of limitation (*prescription légale*) in the case of a Tax Claim,

provided that for so long as Dalkia France is operator of the Plant, if Dalkia France does not promptly send to the Purchaser a notice from a Third Party during the twelve (12) month period referred to in 8.4(a) above, and such Third Party notice concerns a Third Party claim or potential Third Party claim, the Purchaser may issue a Claim Notice in respect of the subject matter of such Third Party notice on or before the date that is the last day of the twelve (12) month-period after the date on which the Purchaser became aware of the subject matter of the notice. For the avoidance of doubt: (i) the transmission to the Purchaser by Dalkia France, as operator of the Plant, of a Third Party notice shall not imply any acknowledgement by Dalkia France or the Seller that such Third Party notice gives rise to a Claim or forms the basis of a Claim Notice; and (ii) it shall be the sole responsibility of Purchaser to determine whether a Third Party notice may give rise to Claim.

8.5 Third Party Claims. In addition to complying with the provisions of clauses 8.3 and 8.4, if the Purchaser serves a Claim Notice in respect of a Third Party Claim, the Purchaser shall not make any admission of liability, settlement or compromise in relation to the Third Party Claim, except in accordance with this clause 8.5, without prior written approval of the Seller (such approval not to be unreasonably withheld or delayed).

Within fifteen (15) Business Days of a Claim Notice having been served by the Purchaser in respect of a Third Party Claim (and in any event before the expiry of any impending time limit applicable to the defense or appeal, if earlier), the Seller shall inform the Purchaser whether it wishes to conduct the defense of such Third Party Claim on its own and at its own expense. The decision by the Seller to conduct a Third Party Claim shall not amount to any undertaking by the Seller to compensate the Purchaser in respect of such Third Party Claim.

If the Seller notifies the Purchaser of its intention to conduct the defense of the Third Party Claim, the Purchaser shall provide such information and assistance as the Seller and its Representatives may reasonably require, at the Seller's cost, in connection with the preparation and conduct of such proceedings and/or negotiations, including without limitation, the commencement of any legal proceedings or arbitration and exercising all of the Company's rights of defense. In such a case, the Seller shall be free to take any reasonable action which it may deem necessary in order to reduce any amount that may be due under the Third Party Claim, provided that the Seller shall not have the power or right to admit to any fault or agree any settlement or remedy, other than the payment of money damages by the Seller, without the Purchaser's consent (such consent not to be unreasonably withheld or delayed). The Seller shall, at all times during the proceedings and until final settlement, (i) give to the Purchaser the opportunity to comment and the right to object with respect to the defense of the Third Party Claim, (ii) ensure that the Purchaser is involved in the material stages of the proceedings undertaken for the purpose of defending the interests of the Company, (iii) keep the Purchaser reasonably and promptly informed of the progress of any Third Party Claim and its defense, and (iv) promptly provide the Purchaser with copies of all material notices, communications and filings (including court papers).

If the Seller notifies the Purchaser of its intention not to conduct the defense of the Third Party Claim, or if it fails to reply to the Claim Notice within the time limit set out in the second paragraph of this clause 8.5, the Purchaser shall have the right to conduct the defense of such Third Party Claim on its own and at its own expense. In such a case, the Purchaser shall be free to take any action which it may deem necessary in order to defend the interests of the Company, subject to the provisions of the first paragraph of this clause 8.5, and the Seller shall provide such information and assistance as the Purchaser and its Representatives may reasonably require in connection with preparation and conduct of such proceedings and/or such actions. The Purchaser shall, at all times during the proceedings and until final settlement: (i) give to the Seller and its representatives the opportunity to comment and the right to object with respect to the defense of the Third Party Claim, (ii) ensure that the Seller or its representatives and advisers are involved in the various stages of the proceedings undertaken for the purpose of defending the interests of the Company, (iii) keep the Seller or its Representatives reasonably and promptly informed of the progress of any Third Party Claim and its defense, and (iv) promptly provide the Seller or its Representatives with copies of all material notices, communications and filings (including court papers).

8.6 Access to information and cooperation in relation to Tax matters.

In addition to complying with the provisions of clause 8.6, the Purchaser shall procure that the Company cooperates, at the expense of the Seller, with the Seller and its Representatives, on all Tax matters which may give rise to a Claim under the Seller's Tax Warranties, such cooperation including, without limitation, promptly providing information and documents held by the Purchaser or the Company as may reasonably be requested by the Seller for the defense of the Tax Claim, as well as the preparation and submission of Tax returns, waivers, approvals, forms, court applications, the lodging of reimbursement claims, inclusive of such claims as may be raised on a Third Party's request and complaints, legal remedies, powers of attorney and other such documents as are required in connection with Tax matters.

Each of the Purchaser and the Seller shall promptly and in reasonable detail inform in writing the other in writing upon becoming aware of the announcement or the commencement of any Tax matter, including but not limited to examinations, Tax audits, investigations, negotiations, disputes, appeals, litigation or other tax proceedings which may give rise to a Claim under the Seller's Tax Warranties (the "**Tax Proceedings**"). The written information shall include copies of the Governmental Entity's notice and other relevant documents and materials received in the context of the Tax Proceeding. The Parties agree to cooperate reasonably with each other in connection with such Tax Proceedings.[13]

[13] [Prior to signature of this Agreement, the Seller shall provide the Purchaser with any documentation and information (including but not limited to work papers, spreadsheets, copies of the French tax authorities' decisions or rulings) supporting the determination of the assets which are eligible to Section 39 AB of the French tax code provisions]

8.7 Thresholds and deductible for Claims. The Seller shall not be liable for a Claim,

(a) unless the amount of the Loss pursuant to that single Claim, taken together with the Loss pursuant to any other Claims resulting from the same or related facts, matters, events or circumstances, exceeds one hundred thousand Euros (Euros 100,000) (*seuil individuel*) (in which case the Purchaser shall be able to claim, subject to sub-paragraph (b), the whole amount of such single Claim); and

(b) unless the aggregate amount of the Loss for all Claims not excluded by sub-paragraph (i) exceeds five hundred thousand Euros (Euros 500,000) *(franchise globale)* (in which case the Purchaser shall be entitled to claim only for the excess over Euros 500,000).

8.8 Cap on Claims. The aggregate liability of the Seller for all Claims shall not exceed an amount equal to twenty five percent (25 %) of EV.

8.9 Qualification of Seller's Warranties and matters disclosed. The Seller's Warranties shall be subject to and limited by any matter fairly disclosed (meaning disclosed with such detail and specificity that a reasonable skilled and qualified individual in the relevant field would be expected to comprehend the nature and magnitude of the matter disclosed) in this Agreement (including, for the avoidance of doubt, in the Disclosures and any of the Annexes and Schedules). Any Disclosure made in this Agreement shall be treated as having been made in respect of each and every relevant Seller's Warranty (and not solely in respect of any particular Seller's Warranty to which such Disclosure makes reference).

The Seller shall not be liable for any Claim if and to the extent that the fact, matter, event or circumstance giving rise to such Claim is fairly disclosed in this Agreement or in the Disclosures.

8.10 Actual nature of Loss. The Seller will only be liable in respect of the Seller's Warranties for a Loss actually suffered by the Purchaser or the Company. In particular:

(a) if any Claim is based upon a Loss which is contingent only, the Seller shall not be liable to pay unless and until such contingent liability gives rise to an obligation to make a payment (but the Purchaser has the right to give notice of that Claim before such time);

(b) if a Breach results in a payment being owed by the Company, the Seller's payment obligation in respect of a Claim shall only mature once the corresponding payment is due and has been made by the Company, regardless of whether this is before or, in the event of a contingent liability, after the time limits in clause 8.4 have expired;

(c) the calculation of the amounts due by the Seller shall be made on the basis of a court decision concerning the amounts due, if any, or if there is no court decision on the basis of the Loss actually suffered by the Purchaser or the Company without taking into account any multiple and/or valuation further than may have been used in determining the Enterprise Value;

(d) the calculation of the amounts due by the Seller shall be reduced by any recovery (to the extent that the recovery is of a Loss that would otherwise have been payable by the Seller) as a result of any litigation relating to the subject matter of the Claim brought by the Company or the Purchaser and settled by a court (*décision exécutoire*), less the costs and expenses incurred as a result of bringing such litigation;

(e) [the calculation of the amounts due by the Seller shall be adjusted to take account of any Tax savings which the Purchaser or the Company benefits or will benefit as a result of the Loss, and any reduction of liability to Tax as a result of an increase in the amount of the losses available for any carry forward or carry back, that is actually obtained by the Purchaser or the Company;][14]

(f) any Loss arising from a Tax adjustment (i) resulting from a mere delay in its imposition or levy, or (ii) which has the effect of transferring liabilities, profits or revenues from one financial year to another and not resulting in a final Tax liability or (iii) as to value added tax which does not result in a final tax liability will not be compensated; save for the indemnities, penalties, interests and financial charges that the adjustments referred to in (i), (ii), or (iii) may give rise to;

(g) the indemnification of the Purchaser shall be increased by the amount of any Tax liability resulting, for the Purchaser or the Company, from the indemnification payment in order that the net amount of the indemnity received by the Purchaser or the Company after payment of the Taxes is equal to the Loss as if such Tax liability had not been incurred;

(h) no indemnification shall be due in connection with any Loss resulting from or in connection with the tax depreciation according to section 39 AB of the French tax code (*Code général des impôts*), it being understood that prior to this Agreement the Parties have agreed on the basis of such proposed tax depreciation; and

(i) [no indemnification shall be due in connection with any Loss resulting from or in connection with information reported on *déclaration fiscale modèle U, formulaire 6701/Cerfa n°10516*04*.][15]

8.11 Matters provided for in the Management Accounts. If a Claim relates to a specific liability or decrease in value of a specific asset, the Seller shall not be liable for such Claim to the extent that (and up to the corresponding amount, the Seller still remaining liable for the excess, if any) a reserve or provision was made for such specific liability or such decrease in value of such specific asset in the Management Accounts.

8.12 Matters taken into account in the Share Purchase Price Adjustment. The Seller shall not be liable for any Claim in respect of any matter to the extent that (and up to the corresponding amount, the Seller still remaining liable for the excess, if any) such matter has been taken into account for the purposes of the Share Purchase Price Adjustment set forth in clause 2.

8.13 Purchaser's duty to mitigate. The Purchaser shall procure that reasonable steps are taken to avoid or mitigate any Loss which it or the Company may suffer in consequence of any Breach.

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[14] Note: to be reviewed and discussed by the tax counsel of Dalkia and KKR.

[15] Note: subject to KKR's tax counsel being able to confirm that it is satisfied with the information therein.

8.14 Insured Claims. The Seller shall not be liable in respect of any Claim to the extent that (the Seller still remaining liable for the excess, if any) the amount of such Claim is actually recovered under a policy of insurance.

8.15 Recovery from third party after payment by Seller. Where the Seller has made a payment to the Purchaser in relation to any Claim and the Purchaser, or the Company becomes aware that it is entitled to recover (whether by insurance, payment, discount, credit, relief or otherwise) from a third party a sum which indemnifies or compensates the Purchaser or the Company in respect of the Loss that has been compensated, the Purchaser or the Company shall (i) promptly notify the Seller of the fact and provide such information as the Seller may reasonably require, (ii) take all reasonable steps or proceedings as the Seller may reasonably require to enforce such right, provided it is indemnified in a form reasonably satisfactory to it against costs and expenses incurred in connection therewith and such steps are not detrimental to it in any significant way, and (iii) pay to the Seller as soon as practicable after receipt an amount equal to the amount recovered from the third party (capped at the amount of the Claim and net of taxation and less any reasonable costs of recovery).

8.16 No liability for rates of Tax changes. The Seller shall not be liable for any Claim in relation to Tax matters if and to the extent it is attributable to, or the amount of such Claim is increased as a result of, any (i) legislation not in force at the date of this Agreement or at the Closing Date, (ii) change of law (or any change in interpretation on the basis of case law), regulation, directive, requirement or administrative practice or (iii) change in the rates of Taxation in force at the date of this Agreement or at the Closing Date.

8.17 No double recovery. The Purchaser shall not be entitled to recover damages or obtain payment, reimbursement, restitution, compensation or indemnity more than once in respect of any one Loss. For the avoidance of doubt and in order to avoid any risk of double recovery by the Purchaser, it is understood that any Claim or Loss entering within the scope of the commitments granted by Dalkia France covered by any of the Transaction Agreements and this clause 8 shall be governed in priority by the relevant Transaction Agreement and only subsidiarily by this clause 8, with any recovery made under the relevant Transaction Agreement coming in deduction of any losses or damages which might be recoverable under this clause 8.

8.18 Payment. The Seller will pay to the Purchaser (or if the Purchaser directs so, the Company) the amount of any Claim under this clause 8 in accordance with the written instructions of the Purchaser notified to the Seller in the Claim Notice within sixty (60) Business Days of the Claim Notice being sent or, if the Claim is contested, within sixty (60) Business Days of (i) the agreement between the Parties or (ii) a settlement in accordance with article 2044 of the French Code Civil or (iii) a final judicial decision without right of appeal or a judicial decision with a right of appeal that is not appealed. The absence of such payment in due time shall bear interest at a rate equal to EURIBOR +300 basis points until date of payment.

All amounts due by the Seller under this Agreement on or after the Closing Date shall be paid to the Purchaser (or if the Purchaser so directs, the Company) as a reduction of the Purchase Price.

9. PURCHASER'S WARRANTIES AND INDEMNITIES

9.1 The Purchaser represents and warrants to the Seller as at the date of this Agreement and as of the Closing Date that the Purchaser's Warranties set out in Schedule 9 to this Agreement are true and accurate, except where a Purchaser's Warranty is indicated to be made only on one date, in which case the Purchaser only represents that such Purchaser's Warranty is true and accurate as at such date.

9.2 The Purchaser shall promptly indemnify the Seller against any loss (including as a result in respect of applicable taxes) incurred by the Seller in connection with any breach by the Purchaser of its covenants and undertakings set out in this Agreement.

10. POST-CLOSING UNDERTAKINGS

The Purchaser undertakes to the Seller that it shall provide the Seller during a period of five (5) years as from the Closing Date with such information and/or documents which are reasonably necessary to fulfill any of its accounting, reporting and/or other obligations relating to the Company and its business prior to Closing. The costs of provision of such information and/or documents shall be directly borne by the Seller.

[*Provision regarding assistance of Dalkia Group for SVD 19 in respect of claims arising in respect of the period before Closing under property damage and business interruption insurance. To be confirmed as part of global insurance package further to discussions with KKR's insurance broker.*[16]]

11. GUARANTEE

11.1 On and from the date on which all the Conditions Precedent are satisfied or, to the extent permitted by applicable Law, waived (except for those Conditions Precedent which can only be satisfied or waived at Closing), and in any event on and from the date five (5) Business Days before Closing, Dalkia France guarantees to the Purchaser (as *caution solidaire*):

(a) the due and punctual payment to the Purchaser by the Seller of all amounts which the Seller is or shall become obliged to pay to the Purchaser pursuant to this Agreement including (without limitation) pursuant to clauses 2, 7, 8 and 15 of this Agreement; and

(b) the due and punctual performance by the Seller of all terms, covenants, stipulations, undertakings, promises and obligations contained in this Agreement and the due and punctual payment by the Seller in respect of any liability of the Seller to the Purchaser under or in connection with the terms, covenants, stipulations, undertakings, promises and obligations contained in this Agreement, including (without limitation) with respect to a breach thereof,

including (without limitation) in each case all interest, costs, commissions, fees and other charges and expenses and all other costs, charges and expenses which the Purchaser may incur in enforcing or obtaining, or attempting to enforce or obtain, payment of such amounts.

11.2 Dalkia France represents and warrants to the Purchaser as at the date of this Agreement and as of the Closing Date that the following warranties are true and accurate:

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[16] [KKR to provide language to be discussed and agreed with Dalkia]

(a) Dalkia France has obtained all corporate authorisations and all governmental, statutory, regulatory or other consents, licences and authorisations required to empower it to enter into and perform its obligations under this Agreement where failure to obtain them would materially and adversely affect its ability to enter into and perform its obligations under this Agreement;

(b) entry into and performance by Dalkia France of this Agreement will not (i) breach any provision of its constitutional documents or (ii) result in a breach of any laws or regulations in its jurisdiction of incorporation or of any order, decree or judgment of any court or any governmental or regulatory authority, where (in either case) such breach would materially and adversely affect its ability to enter into or perform its obligations under this Agreement; and

(c) Dalkia France is not insolvent or bankrupt under the laws of its jurisdiction of incorporation, unable to pay its debts as they fall due and has not proposed and is not liable to any arrangement (whether by court process or otherwise) under which its creditors (or any group of them) would receive less than the amounts due to them. Dalkia France is not aware of proceedings in relation to any compromise or arrangement with creditors or any winding up, bankruptcy or insolvency proceedings (including any *mandat had hoc*, *conciliation* or *procédure de sauvegarde*) concerning Dalkia France and no events have occurred which would justify such proceedings. No steps have been taken to enforce any security over any assets of Dalkia France and no event has occurred to give the right to enforce such security.

12. ASSIGNS AND SUCCESSORS

12.1 Subject to clause 4.2 and clause 12.2, it is acknowledged and agreed that this Agreement has been entered by each Party on the basis of the identity of the other Parties. This Agreement is therefore of a personal nature (*intuitu personae*) and the Parties may not assign or transfer or purport to assign or transfer any of their rights and obligations (including by way of a merger, *apport partiel d'actifs* or similar restructuring) under this Agreement except with the express consent of the other Party.

12.2 The Purchaser shall be entitled to assign, or otherwise transfer, its rights under this Agreement, and any rights arising in connection with them, to providers of the Financing.

12.3 The provisions of this Agreement will be binding upon and inure to the benefit of: (i) Bidco following a Novation; (ii) providers of Financing following an assignment or transfer under clause 12.2; and (iii) and any other permitted successors or assigns.

13. ANNOUNCEMENTS

13.1 Until Closing of the Transaction, the Parties undertake not to (and to procure that none of their respective Affiliates shall) make any announcement or issue any press release in connection with the existence or subject matter of this Agreement without the prior written approval of the other.

13.2 The restriction in clause 13.1 shall not apply to the extent that the announcement or press release is required by law, by any stock exchange or any regulatory or other supervisory body or authority of competent jurisdiction, whether or not the requirement has the force of law. If this exception applies, the Party (or any of its Affiliates) making the announcement or issuing the press release shall use its reasonable efforts to consult with the other Parties in advance as to its form, content and timing.

13.3 After Closing, the Parties (or any of their Affiliates) shall be free to make an announcement or issue a press release on terms approved by the Parties in connection with the Transaction.

14. CONFIDENTIALITY

14.1 For the purposes of this clause 14.1, "**Confidential Information**" means:

(a) (in relation to the obligations of the Purchaser) any information received or held by the Purchaser (or any of its Representatives) as a result of entering into or performing this Agreement relating to the Seller, the Seller's Group or, prior to Closing, the Company; or

(b) (in relation to the obligations of the Seller and Dalkia France) any information received or held by the Seller (or any of its Representatives) as a result of entering into or entering into or performing this Agreement relating to the Purchaser; and

(c) information relating to the provisions of, and negotiations leading to, this Agreement,

and includes written information and information transferred or obtained orally, visually, electronically or by any other means.

14.2 Each of the Parties shall (and shall ensure that each of its Representatives shall) maintain Confidential Information in confidence and not disclose Confidential Information to any person except (i) as this clause 14 permits, (ii) to such Party's Representatives, (iii) as the other Party approves in writing, (iv) to SKCP or SKCDP, and their Representatives, to the extent necessary for the purpose of the Transaction, or (v) in the case of the Purchaser, to potential sources of the Financing in relation to the Transaction.

14.3 Clause 14.2 shall not prevent disclosure by a Party or its Representatives to the extent it can demonstrate that:

(a) disclosure is required by law or by any court, stock exchange or any regulatory or governmental body (including any tax authority) having applicable jurisdiction. provided that the disclosing Party shall first inform the other Party of its intention to disclose such information and take into account the reasonable comments of the other Party, and provided, further, that Confidential Information may be disclosed to the European Commission by the Parties for the purpose of satisfying their obligations under this Agreement;

(b) disclosure relates to Confidential Information which was lawfully in the possession of that Party or any of its Representatives (in either case as evidenced by written records) without that Party being aware of any breach of an obligation of secrecy at the time of disclosure;

(c) disclosure relates to Confidential Information which has previously become publicly available other than through that Party's fault (or that of its Representatives); or

(d) disclosure is required for the purpose of any dispute arising out of this Agreement.

14.4 Each of the Seller and the Purchaser undertakes that it (and procures that its Affiliates) shall only disclose Confidential Information to Representatives if it is reasonably required for purposes connected with this Agreement or the transactions contemplated hereby or the financing of such transactions and only if the Representatives are informed of the confidential nature of the Confidential Information.

14.5 If this Agreement terminates, the Purchaser shall as soon as practicable on request by the Seller destroy all information or other documents derived from any Confidential Information provided that the Purchaser may keep a copy of such information and documents if required by law, regulation or order of any court or government agencies or internal compliance requirements. Any copies of such information and documents shall be subject to the confidentiality provisions herein.

15. COSTS

15.1 Subject to clause 15.2 and clause 15.3, the Seller and the Purchaser shall each be responsible for its own costs, charges, fees and other expenses (including those of its Representatives) incurred in connection with the proposed Transaction. The Seller undertakes to the Purchaser to procure that the Company shall not bear any costs and/or expenses in connection with the preparation, negotiation or completion of this Agreement, or the process leading to the selection of the Purchaser, all of which costs and expenses shall be borne by the Seller.

15.2 The Purchaser or its Affiliates shall bear all stamp duty, notarisation fees, registration fees or other documentary transfer or transaction duties, including in each case any related interest or penalties arising as a result of this Agreement [, provided that in respect of stamp duty the Purchaser shall only pay stamp duty up to an absolute cap of Euros two hundred and fifty thousand (Euros 250,000), the excess being borne by the Seller].[17]

15.3 If the Usufruct Agreement is not executed on or prior to the Long Stop Date and the Purchaser has obtained the EC Assurances, then Dalkia France shall, or shall procure that the Seller shall, pay to the Purchaser the amount of all of the costs and expenses (including any applicable taxes) incurred by the Purchaser and its Affiliates in connection with the Transaction after November 3, 2010, including but not limited to the fees and expenses of its consultants and legal, accounting, tax, financial and other advisers, and any costs and expenses incurred in connection with the Financing and, upon presentment of invoices or other documentary evidence thereof, promptly pay to the Purchaser, or to such other person as the Purchaser directs, such costs and expenses up to an absolute cap of Euros two million (€2,000,000).

[17] Note: to be confirmed whether this provision is necessary by tax counsel of Dalkia and KKR. KKR does not accept that Bidco should bear more than Euros 250,000 of any stamp duty charges.

16. NOTICES

16.1 Any notice in connection with this Agreement shall be in writing in English and delivered by hand, fax, registered post or courier using an internationally recognized courier company. A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, (ii) at the time of delivery, if delivered by registered post or courier or (iii) at the time of transmission if delivered by fax provided that in either case.

16.2 The addresses and fax numbers of the Parties for the purposes of clause 16 are:

Seller	Address:	Fax:
Valmy Energies Biomasse	c/o Dalkia France 34-36, avenue Kleber 75116 Paris France	[●]
For the attention of:	[●]	
Purchaser	Address:	Fax: [●]
Washington Investment Luxembourg	61, rue de Rollingergrund, L-2440 Luxembourg	
For the attention of:	[●]	
	Address:	Fax:
Dalkia France	34-36, avenue Kleber 75116 Paris France	[●]
For the attention of:	Secrétaire général	

16.3 Each Party shall promptly notify to the other Party any change to its name, relevant addressee, address or fax number.

17. ENTIRE AGREEMENT

This Agreement and all documents referred to herein (including in Recital (E)), constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any and all prior agreements, negotiations, correspondence, undertakings, understandings and communications of the Parties or their respective Affiliates with respect to the subject matter of this Agreement, including in particular the Second Amended and Restated MoU.

18. WAIVERS, RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, no failure or delay by any Party in exercising any right or remedy relating to this Agreement shall affect or operate as a waiver or variation of that right or remedy or preclude its exercise at any subsequent time. No single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.

19. VARIATIONS

No amendment of this Agreement shall be valid unless it is in writing and duly executed by or on behalf of the Parties.

20. INVALIDITY

Each of the provisions of this Agreement is severable. If any such provision is held to be or becomes invalid or unenforceable in any respect, it shall have no effect in that respect and the Parties shall use all reasonable efforts to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible.

21. GOVERNING LAW AND JURISDICTION

21.1 This Agreement shall be governed by, and construed in accordance with, the laws of France.

21.2 If any dispute arises out of or in connection with this Agreement including the breach, termination or invalidity thereof (a "**Dispute**"), the Parties shall meet in good faith to reach an amicable settlement at the request of a concerned Party. If the Dispute is not resolved by the signing of written terms of settlement by authorized representatives of each concerned Party within twenty (20) days of the meeting between the concerned Parties to resolve the Dispute or within thirty (30) days of any Party's notice sent to organize a settlement meeting in relation to the Dispute (or such longer period as they may have agreed), then the Dispute shall be submitted to the exclusive jurisdiction of the Paris Commercial Court (*Tribunal de commerce de Paris*).

Made in Paris,
On [●], in three (3) originals

SIGNED	SIGNATURE: _________________
on behalf of **Valmy Energies Biomasse**	NAME: [●]
SIGNED on behalf of **Purchaser**	SIGNATURE: _________________ NAME: [●]

SIGNED on behalf of **Dalkia France**	SIGNATURE: __________________ NAME: [●]

LIST OF SCHEDULES

[*Note: list of schedules to be revised and completed.*]

SCHEDULE I	DEFINITIONS AND INTERPRETATION
SCHEDULE 2.2	ACCOUNTING PRINCIPLES
SCHEDULE 3.1(d)	FORM OF THE SMURFIT AGREEMENTS
SCHEDULE 4	EXCEPTIONS TO PRE-CLOSING CONDUCT OF BUSINESS
SCHEDULE 4.1	EXCEPTIONS TO THE ORDINARY COURSE OF BUSINESS
SCHEDULE 4.6	POST CLOSING INTER-COMPANY AGREEMENTS
SCHEDULE 4.7(x)	FORM OF THE CERTIFICATE CONFIRMING THAT THE COMPANY HAS NO INDEBTEDNESS
SCHEDULE 5.4(x)	FORM OF CERTIFICATE RELATING TO THE REITERATION OF THE SELLER'S WARRANTIES
SCHEDULE 5.4(x)	RESIGNATION LETTER OF THE REPRESENTATIVE OF THE COMPANY
SCHEDULE 5.4(x)	TERM SHEET FOR INVESTORS' AGREEMENT
SCHEDULE 5.4(x)	OPERATING AND MAINTENANCE AGREEMENT
SCHEDULE 5.4(x)	SVD19 TRANSFORMATION AGREEMENT
SCHEDULE 5.4(x)	SIDE AGREEMENT
SCHEDULE 5.4(x)	TRANSFER AGREEMENT
SCHEDULE 5.4(x)	REAL PROPERTY DEVELOPMENT CONTRACT
SCHEDULE 5.4(x)	SVD 19 FRAMEWORK CONTRACT
SCHEDULE 5.4(x)	SVD 19 BIOMASS SUPPLY AGREEMENT
SCHEDULE 5.5(a)	FORM OF CERTIFICATE RELATING TO THE REITERATION OF THE PURCHASER'S WARRANTIES
SCHEDULE 8.1	SELLER'S WARRANTIES
SCHEDULE 9	PURCHASER'S WARRANTIES

SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. Definitions. In this Agreement, the following words and expressions shall have the following meanings:

Accounting Principles has the meaning ascribed to it in clause 2.2 and Annex A.2.1 to Schedule 8.1;

Affiliate means, in relation to any Party, any subsidiary or Parent Company of that Party and any subsidiary of any such Parent Company, in each case from time to time; for the purpose of this definition, (i) "***subsidiary"*** shall mean any company in relation to which another company is its Parent Company, and (ii) the KKR Funds and KKR and their Affiliates shall be deemed to be Affiliates of the Purchaser;

Agreed Structure means the holding structure for the Company agreed upon by the Parties, as appended hereto in Schedule [●][18];

Agreement has the meaning ascribed to it in Recital (F);

Amendment means the amendment to the SKCP Framework Contract, the SKCP Transformation Contract and to the SKCDP Biomass Supply Contract to be entered into by and among SKCP, SKCDP, Dalkia and the Company in the form appended as Schedule [●];

Ancillary Agreements means: (i) CRE Contract; (ii) the meter service agreement between SVD 19 and RTE; and (iii) the "mirror" network connection of electricity contract between SVD 19 and SKCP, as appended hereto in Schedules [●], [●] and [●] respectively;

Bidco has the meaning ascribed to it in clause 4.2(a);

Breach means any Seller's Warranty being untrue or inaccurate;

Business Day means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in France, Luxembourg or New York;

Cash Pooling Arrangement means the cash pooling arrangement entered into between the Company and [x] and [x] dated [x];

Claim has the meaning ascribed to it in clause 8.3;

Claim Notice has the meaning ascribed to it in clause 8.3;

Claim Notice Period has the meaning ascribed to it in clause 8.3;

Clearance has the meaning ascribed to it in clause 3.1(c);

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[18] [schedule to include the terms of the financial instruments to be subscribed by Dalkia (notably PECS)]

Closing means completion of the sale and purchase of the Shares in accordance with the provisions of this Agreement;

Closing Date has the meaning ascribed to it in clause 5.1;

Closing Financial Statements means the financial statements (*arrêté comptable*) of the Company as at the Closing Date prepared by the Seller on a consistent basis with the Accounting Principles;

Closing Net Financial Debt means, as at the Closing Date (immediately prior to the Closing), (i) the aggregate amount of the Indebtedness of the Company (including for the avoidance of doubt the Closing Shareholder's Loan) minus (ii) the aggregate amount of cash or cash equivalents of the Company;

Closing Net Working Capital means the Net Working Capital of the Company as at the Closing Date (immediately prior to Closing);

Closing Shareholder's Loan means the Shareholder's Loan as at the Closing Date (immediately prior to Closing);

Closing Shareholder's Loan Notification has the meaning ascribed to it in clause 2.6;

Company has the meaning ascribed to it in Recital (A);

Conditions Precedent means the conditions set out in clauses 3.1, 3.2 and 3.3;

Confidential Information has the meaning ascribed to it in clause 14.1;

CRE Contract means the agreement to be entered into by SVD 19 and EDF for a twenty (20)-year period for the purchase of the electricity produced by the Plant;

Dalkia Group means Dalkia France and its Affiliates;

Dalkia Shareholder has the meaning ascribed to it in the definition of Subscription Agreement;

Data Room has the meaning ascribed to it in Recital (E);

Disclosures has the meaning ascribed to it in Recital (F);

Disclosures Escrow Agreement has the meaning ascribed to it in Recital (E);

Dispute has the meaning ascribed to it in clause 21.2;

EC Assurances has the meaning ascribed to it in clause 3.1(b);

EC Assurances Long Stop Date has the meaning ascribed to it in clause 3.1(b);

Environmental Laws means all applicable treaties, directives, laws, decrees, regulations, instructions, orders (*arrêtés*), circulars, codes, usual customs and practices as well as injunctions and recommendations of the competent authorities, concerning environmental protection (and in particular protection of air, water, soil and sub-soil, hygiene and public health, noise or protection of properties and individual safety (*sécurité des biens et des personnes*), including the provisions of the French Civil Code and the rules relating to liability for one's own account (*responsabilité du fait personnel*), on account of a third party (*responsabilité du fait des tiers*), on account of goods (*responsabilité du fait des choses*) and nuisances (*troubles de voisinage*);

Environmental Permits means all permits, approvals (*agréments*), licences and other authorizations required for compliance with the Environmental Laws;

Equity means [●];

Equity Commitment Letter means the letter to be signed by, among others, the KKR Funds in the form attached as Schedule [x];

Estimated Share Purchase Price has the meaning ascribed to it in clause 2.2;

Expert Accountant means [*first choice accountant*] or if [*first choice accountant*] is unable to fulfill its assignment for any reason whatsoever, [*second choice accountant*], or if [*second choice accountant*] is unable to fulfill its assignment for any reason whatsoever, another accountant the Parties agree to appoint together, or if the Parties do not agree upon the appointment of another accountant within five (5) Business Days from the notification to them by [*second choice accountant*] of its incapacity to fulfill its assignment, an accountant belonging to a firm of auditors of international reputation appointed by way of a court order of the President of the *Tribunal de Commerce de Paris*, acting by way of summary proceedings (*statuant en la forme des réferés*), at the request of either the Purchaser or the Seller, with the decision of the President being binding upon the Purchaser and the Seller;

EURIBOR means [1 month EURIBOR];

EV has the meaning ascribed to it in clause 2.1;

Financing means such funds from third party banks, made available on an unconditional basis and on terms acceptable to the Purchaser, as are necessary for the Purchaser to consummate the transactions contemplated hereby;

French GAAP means generally applicable accounting principles in France [●];

Governmental Entity means any supra-national, national, state, municipal or local government (including any subdivision, court, administrative agency or commission or other authority thereof) or any quasi-governmental or private body exercising any regulatory or other governmental or quasi-governmental authority, including the European Union;

Indebtedness means all obligations (a) for borrowed money (including amounts outstanding under overdraft facilities and under shareholders' loans), (b) evidenced by notes, bonds, debentures or other similar contractual obligations, (c) in respect of "earn-out" obligations and other obligations for the deferred purchase price of property, goods or services (including trade payables or accruals incurred in the ordinary course of business), (d) under all capital leases (determined in accordance with the Accounting Principles), (e) in respect of letters of credit and bankers' acceptances, (f) for contractual obligations relating to interest rate protection, swap agreements and collar agreements, or (g) in the nature of guarantees of the obligations described in clauses (a) through (f) above of any entity and (h) any accrued interest on any of the foregoing;

Information Memorandum has the meaning ascribed to it in Recital (E);

Initial Long Stop Date means March 15, 2011 or, if later, the date falling forty-five (45) days after the date hereof;

Intellectual Property Rights means patents, trade marks, service marks, logos, trade names, internet domain names, copyright (including rights in computer software) and database rights, rights in designs and other intellectual property rights, in each case whether registered or unregistered, and ***registered*** includes registrations and applications for registration;

Inter-Company Agreements means the agreements or arrangements entered into by and among the Company with Dalkia France or any Affiliate of Dalkia France;

Investors' Agreement means the definitive investors' agreement to be entered by and between the Seller and the Purchaser on the Closing Date on the basis of the Investors' Agreement Term Sheet;

Investors' Agreement Term Sheet means the investors' agreement term sheet appended hereto in Schedule [x];

IT Systems means the information and communications technologies used by the Company, including hardware, proprietary and third party software, services, networks, peripherals and associated documentation;

KKR has the meaning ascribed to it in Recital C;

KKR Equity Commitment Letter means the equity commitment letter from the KKR Funds to the Purchaser dated as of the date hereof;

KKR Funds means: (i) KKR Global Infrastructure Investors L.P., a Cayman Islands exempted limited partnership with registered office at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands and registered under number 43026 at the Cayman Islands Registrar for Exempt Limited Partnership; (ii) KKR European Infrastructure Investors L.P., a Scottish limited partnership with registered office at 50 Lothian Road, Festival Square, Edinburgh EH3 9WJ, registered under number 8364 with the Scottish Registrar of Limited Partnerships; and (iii) KKR Global Infrastructure Investors SBS L.P., a Cayman Islands exempted limited partnership with registered office at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, registered under number 44484 at the Cayman Islands Registrar for Exempt Limited Partnership;

Land Contract means the land agreement dated August 7, 2008, entered into by and among the Company and SKCP;

Law means laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes which are legally binding and in force;

Long Stop Date means the Initial Long Stop Date, provided however that, in the event that (i) the Condition Precedent set out in clause 3.1(b) is not satisfied on the EC Assurances Long Stop Date, and (ii) the Seller and the Purchaser agree to waive condition 3.1(b) no later than the Initial Long Stop Date, the Long Stop Date shall be the earlier of (a) the date that is thirty-five (35) Business Days after the date the Merger Notification is formally submitted to the European Commission following such waiver and (b) April 30, 2011;

Loss means any prejudice, loss, costs, damages or expenses (including reasonable legal costs and any consequential insurance premium increase), suffered by the Purchaser and/or the Company as a result of a Breach of any of the Seller's Warranties, including any irrecoverable VAT thereon and indirect or consequential prejudice, loss, costs, damages or expenses;

Management Accounts means the management accounts of the Company as of [November 30], 2010 as communicated in the Data Room;

Material Agreements means the SKCP Framework Contract, the SKCDP Biomass Supply Contract, the Land Contract, the SKCP Transformation Contract and the Smurfit Agreements;

Merger Notification means a merger notification in connection with the Transaction to the European Commission on Form CO;

*[**Net Working Capital***](#) means:

(a) all current assets of the Company, including, without limitation, accounts receivable, notes receivables, prepaid expenses, inventory, allowance for doubtful accounts, current income and value added tax receivables and other current assets and accounts, but excluding receivables or other current assets transferred to Dalkia France pursuant to the Smurfit Agreements, deferred tax receivables, cash or cash equivalents and the current portion of any receivable owed to the Company in respect of a Financial Debt; minus

(b) all current liabilities of the Company, including, without limitation, accounts payable, accrued expenses, current income and value added tax liabilities, and other current liability accounts, but excluding deferred tax liabilities, payables or other current liabilities transferred to Dalkia France pursuant to the Smurfit Agreements and the current portion of any Financial Debt;][19]

Notary has the meaning ascribed to it in Recital (F);

Novation has the meaning given to it in clause 4.2(a);

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[19] [Subject to review by Dalkia and KKR tax and accounting teams] Accounting Principles will specify that determination of Net Working Capital will be made after taking account of cut-off resulting from termination of relationships between SVD 19 and Dalkia Group entities in accordance with Clause 4.6 (including, in particular, the Cash Pooling Arrangement and the tax group agreement) such that receivables and liabilities which have been cancelled due to Clause 4.6 will not be included in Net Working Capital determination.

Operating and Maintenance Contract has the meaning ascribed to it in clause 5.4(g);

Owned IP means the registered and unregistered Intellectual Property Rights owned by the Company. The registered Owned IP is listed in Annex [•];

Parent Company means any entity, investment fund or company which holds a majority of the voting rights in another company, or which is a member of another company and has the right to appoint or remove a majority of its board of directors or other governing body, or which is a member of another company and controls a majority of the voting rights in it under an agreement with other members, or which manages the Purchaser or is managed by the same entity as the Purchaser, in each case whether directly or indirectly through one or more companies;

Plant has the meaning ascribed to it in Recital (B);

Purchaser's Disagreement Notice has the meaning ascribed to it in clause 2.3(c);

Purchaser's Warranties means the warranties given by the Purchaser to the Seller as set out in Schedule 9 to this Agreement;

Real Property Development Contract has the meaning ascribed to it in clause 5.4(n);

Representatives means, in respect of any person, such person's Affiliates and such person's and its Affiliates' respective directors, officers, employees, professional advisers, including, without limitation, legal advisors and accountants, and other representatives;

Second Amended and Restated MoU has the meaning ascribed to it in Recital (D);

Seller's Bank Account means the Seller's bank account at [•]; account name: [•]; account number: [•]; sort code: [•] (and/or such other account(s) as the Seller may notify to the Purchaser in writing no later than five (5) Business Days before a payment is to be made to the Seller's Bank Account);

Seller's Disagreement Notice has the meaning ascribed to it in clause 2.3(f);

Seller's Group means the Seller and its Affiliates from time to time;

Seller's Representatives means Mr. Kevin Korengold (*Directeur de Projet*), Mr. Christophe Roulot (*Directeur Etudes et Grands Projets*) and Mr. Bruno De Pellegars;

Seller's Statement has the meaning ascribed to it in clause 2.3(a);

Seller's Warranties means the warranties given by the Seller to the Purchaser as set out in Schedule 8.1 to this Agreement, including representations set out in Annexes to this Schedule 8.1;

Shares has the meaning ascribed to it in Recital (A);

Share Purchase Price has the meaning ascribed to it in clause 2.1;

Share Purchase Price Adjustment means the difference (if any) between (i) the Share Purchase Price (as finally determined in accordance with clause 2.3) and (ii) the Estimated Share Purchase Price; the Share Purchase Price Adjustment shall be paid by the Purchaser to the Seller if the Share Purchase Price exceeds the Estimated Share Purchase Price and by the Seller to the Purchaser if the Share Purchase Price is lower than the Estimated Share Purchase Price;

Shareholder's Loan means any amount borrowed by the Company from the Dalkia Group, including amounts borrowed pursuant to the Cash Pooling Arrangement, and any accrued and unpaid interest on such borrowed amounts;

Shareholder's Loan Cap has the meaning ascribed to it in clause 2.6;

Side Agreement has the meaning ascribed to it in clause 5.4(i);

SKCDP means Smurfit Kappa Comptoir du Pin, a French *société par actions simplifiée* with a share capital of Euros 2,268,225, having its registered office at 12, avenue Gustave Eiffel, 33600 Pessac, registered with the companies and trade register of Bordeaux under number 780 111 357. SKCDP is an Affiliate of SKCP;

SKCDP Biomass Supply Contract means the biomass combustible supply agreement entered into by and among the Company, Dalkia France and SKCDP on August 7, 2008;

SKCP has the meaning ascribed to it in Recital (C);

SKCP Framework Contract means the framework agreement dated August 7, 2008 entered into by and among the Company, SKCP and Dalkia France, as amended by an amendment dated September 9, 2008;

SKCP Transformation Contract means the transformation agreement dated August 7, 2008 entered into by and among the Company, SKCP and Dalkia France;

Slides has the meaning ascribed to it in Recital (E);

Smurfit Agreements means: (i) the Amendment; and (ii) an agreement by and between SVD 19 and SKCP providing for the grant by SKCP of a usufruct for the land used by the Plant to SVD 19 on the terms set out in Schedule [●] (the "**Usufruct Agreement**");

Subscription Agreement means the agreement in the form appended as Schedule [x] pursuant to which, inter alia, Dalkia France or one of its Affiliates (the "**Dalkia Shareholder**") shall subscribe for shares and preferred equity certificates in [Washington Investment Luxembourg 2 S.à.r.l.] that has been established to acquire indirectly, through one or more wholly-owned subsidiaries, the entire share capital of SVD 19 pursuant to the Agreed Structure;

SVD 19 has the meaning ascribed to it in Recital (A);

SVD 19 Biomass Supply Contract has the meaning ascribed to it in clause [●];

SVD 19 Framework Contract has the meaning ascribed to it in clause 5.4(o);

SVD 19 Transformation Contract has the meaning ascribed to it in clause 5.4(h);

Tax means all taxes, duties, levies or imposts of any kind or nature imposed by any Governmental Entity including but not limited to taxes on income (including capital gains), capital, payroll, employment, social security, turnovers, value added taxes, excise taxes, franchise taxes, custom/import duties and stamp duties, payments subject to a requirement to withhold (including royalties, interest and dividends) and all penalties, interest surcharges or fines related to any of the foregoing, and interest thereon [and any payment or repayment to the Seller or one of its Affiliates in respect of Article [●] of the Tax Consolidated Group Exit Agreement];

Tax Claim means a claim for a Breach of any of the Tax Seller's Warranties;

Tax Proceedings has the meaning ascribed to it in clause 8.6;

Tax Seller's Warranties means the Seller's Warranties set out under Part C of Schedule 8.1 to this Agreement;

Third Party means any party other than the Company, the Purchaser, the Seller or any of their respective Affiliates;

Third Party Claim means any claim or potential claim by a Third Party in respect of any matter or circumstance which might result in a Claim being made;

Third Party Rights means any mortgage, charge, pledge, lien, ownership right (*démembrement*), encumbrance and/or any guarantee, right of prior approval, right of first offer, right of pre-emption, option, security interest, title retention or any other third party rights, or any agreement to create any of the above;

Transaction has the meaning ascribed to it in Recital (G);

Transaction Agreements means all agreements entered into by the Purchaser or SVD 19, on the one hand, and Dalkia France, the Seller or any of their Affiliates, on the other hand, in connection with the transactions contemplated by this Agreement, including the Real Property Development Contract, the Operation and Maintenance Contract, the SVD 19 Framework Contract, the SVD 19 Transformation Contract, the Side Agreement, the Transfer Agreement and the SVD 19 Biomass Supply Contract;

Transfer means any sale, disposal, contribution, carve-out or other transfer; and ***Transferred*** shall be read accordingly;

Transfer Agreement means the transfer agreement to be entered into between SVD 19 and Dalkia France, in the form attached in Schedule [x];

Usufruct Agreement has the meaning ascribed to it in the definition of the Smurfit Agreements in this Schedule 1;

Warranted Accounts means the financial accounts of the Company in respect of the financial year ended on December 31, 2009, including a balance sheet (*bilan*), together with the profit and loss accounts (*compte de résultat*) and the annexes thereto and prepared in accordance with French GAAP, on a consistent basis with past practice;

Written Answers has the meaning ascribed to it in Recital (E).

2. Interpretation. In this Agreement:

(a) references to a ***person*** include any individual, firm, body corporate (wherever incorporated), government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);

(b) headings do not affect the interpretation of this Agreement; the singular shall include the plural and vice versa; and references to one gender include all genders;

(c) if a French term has been added in parenthesis after an English term, the French term shall prevail for the interpretation of the relevant English term;

(d) when calculating the period of time within which or following which any act is to be done or step taken, the rules set for the in articles 640 to 642 of the *Code de Procédure Civile* shall apply;

(e) any sentence introduced by the terms ***including***, ***include***, ***in particular*** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

(f) any statement qualified by the expression "*so far as the Seller is aware*", "*to the Seller's best knowledge*" or any similar expression shall mean the actual knowledge of the Seller's Representatives, after reasonable enquiry, including any knowledge such person should reasonably have after reasonable enquiries in relation to the relevant matter;

(g) any statement qualified by the expression "*ordinary course of business*" or any similar expression shall, as regards the Company, be interpreted in light of the fact that since January 1, 2010, the Company (i) [completed] construction and acceptance of the Plant, (ii) [completed] tests and ramp up of the Plant and (iii) began operating the Plant and generally procuring biomass and supplying electricity and steam in accordance with the CRE Contract, the Material Agreements and other agreements to which the Company is or was party to with SKCP and SKCDP;

(h) Schedules. The Schedules comprise schedules to this Agreement and, along with the Annex, form part of this Agreement; and

(i) Inconsistencies. Where there is any inconsistency between the definitions set out in this Schedule and the definitions set out in any clause or any other Schedule, then, for the purpose of construing such clause or Schedule, the definitions set out in such clause or Schedule shall prevail.

SCHEDULE 2.2

ACCOUNTING PRINCIPLES

SCHEDULE 4

EXCEPTIONS TO PRE-CLOSING CONDUCT OF BUSINESS

SCHEDULE 4.6

POST CLOSING INTER-COMPANY AGREEMENTS

SCHEDULE 5.4 (A)

FORM OF CERTIFICATE RELATING TO THE REITERATION OF THE SELLER'S WARRANTIES

SCHEDULE 5.4 (E)

RESIGNATION LETTER OF THE REPRESENTATIVE OF THE COMPANY

SCHEDULE [●]

INVESTOR’S AGREEMENT TERM SHEET

SCHEDULE 5.4 (G)

OPERATING AND MAINTENANCE AGREEMENT

SCHEDULE 5.4 (H)

SVD 19 TRANSFORMATION AGREEMENT

SCHEDULE 5.4 (l)

REAL PROPERTY DEVELOPMENT CONTRACT

SCHEDULE 5.5 (A)

FORM OF CERTIFICATE RELATING TO THE REITERATION OF THE PURCHASER’S WARRANTIES

SCHEDULE 8.1

SELLER'S WARRANTIES

PART A: GENERAL/COMMERCIAL

1. The Seller and the Shares

1.1 Authorizations, valid obligations, filings and consents.

(a) The Company is duly incorporated and validly existing under the laws of France. The Company has full power under its constitutional documents to conduct its business as conducted at the date of this Agreement.

(b) The Seller has obtained all corporate authorizations and (other than to the extent relevant to the Conditions Precedent) all governmental, statutory, regulatory or other consents, licenses or authorizations required to empower it to enter into and perform its obligations under this Agreement.

(c) Entry into and performance by the Seller of this Agreement will not (i) breach any provision of its constitutional documents or (ii) (subject to fulfillment of the Conditions Precedent) result in a breach of any laws or regulations in its jurisdiction of incorporation or of any order, decree or judgment of any court or any governmental or regulatory authority.

1.2 The Shares.

(a) All the Shares have been validly issued and fully subscribed and paid-up, and the Seller will be at Closing the sole owner of the Shares free from all Third Party Rights (except with regard to this Agreement). The Company has not issued any securities within the meaning of article L. 228-1 of the French Commercial Code (*valeurs mobilières*), other than the Shares.

(b) The Seller has not granted to any person the right (exercisable now or in the future and whether contingent or not) to call for the issue of any share or other securities in the Company.

(c) The Company has not issued or agreed to issue any share other than the Shares, loan capital, security or interest in its share capital, or security convertible into any of the foregoing.

(d) The Company has not created any Third Party Right over the Shares.

1.3 Subsidiaries - Other interests.

(a) The Company does not own nor has any interest of any nature in any shares or other equity securities issued by any undertaking.

(b) The Company has not acquired, sold or agreed to acquire or sell any shares or other interest in any company, partnership or other joint-venture.

2. Financial Matters

2.1 The Warranted Accounts.

(a) The Warranted Accounts (i) were prepared in accordance with French GAAP, on a consistent basis with past practice and (ii) are correct (*réguliers*) and genuine (*sincères*), and give a true and fair view (*donnent une image fidèle*) of the state of affairs and financial situation of the Company as of the date thereof or for the periods covered thereby and of the results of its operations for the periods covered thereby.

(b) As at December 31, 2009, the Company had no off-balance sheet commitments that were not disclosed in the Warranted Accounts. The Warranted Accounts either make adequate provision for or disclose all liabilities as at December 31, 2009, in accordance with French GAAP, applied on a consistent basis with past practice.

2.2 The Management Accounts.

(a) The Management Accounts (i) were prepared in accordance with French GAAP or if otherwise as specified in the accounting principles set out in Schedule [x], applied on a consistent basis with past practice and (ii) give a true and fair view (*donnent une image fidèle*) of the state of affairs and financial situation of the Company as of the date thereof or for the periods covered thereby and of the results of its operations for the periods covered thereby.

(b) The Management Accounts either make adequate provision for or disclose all liabilities as at [●], 2010, in accordance with French GAAP or if otherwise as specified in the accounting principles set out in Schedule [x], applied on a consistent basis with past practice.

2.3 Position since December 31, 2009.

Between December 31, 2009 and the date of this Agreement:

(a) the Company has operated its business in the ordinary course of business (to the exception of any transaction entered into for the purposes of the completion of the Conditions Precedent);

(b) the Company has not declared, authorized, paid or made any dividend or other distribution (whether in cash, stock or in kind, except for any dividends provided for in the Accounts), nor has reduced, purchased, redeemed, split or otherwise changed its share capital;

(c) the Company has not made any capital commitment which exceeds Euros [●], with the exception of those made under the Real Property Development Contract;

(d) the Company has not passed any shareholder resolution other than required or permitted by the terms of this Agreement in particular for the fulfillment of the Conditions Precedent or as permitted in writing by the Purchaser.

2.4 Statutory books. The statutory books of the Company required to be kept by applicable laws have been maintained in all material respects in accordance with such laws.

2.5 Financial Debt owed by the Company. The Company has not contracted any Financial Debt owed to any entity other than to an entity of the Seller's Group. The Company has not contracted any other borrowings (other than the receipt of trade credit in the ordinary course of business).

2.6 Receivables.

(a) The receivables recorded in the Warranted Accounts and in the Management Accounts, as well as those created after [●], 2010, arose in the ordinary course of business in connection with bona fide arm's length transactions, have been properly invoiced and are valid and genuine;

(b) There are no facts or circumstances that indicate that any such accounts receivables may not be paid in full when due or within any standard payment terms and appropriate reserves have been provided in the Warranted Accounts [or the Management Accounts] or the Closing Financial Statements in accordance with the Accounting Principles, to reflect any known uncertainties regarding collection of the said accounts receivable in full[20]; and

(c) The Company has not made or agreed to make any loan (other than the granting of trade credit in the ordinary course of business or in connection with the Cash Pooling Arrangement).

2.7 No Broker. There is no broker, finder or financial advisor who is acting or has acted on behalf of the Seller, or any person, firm or corporation entitled to receive any brokerage, finder's or financial advisory fee from the Company, in connection with the transaction contemplated by this Agreement.

3. The Business Assets

3.1 Sufficiency of assets. The Company owns or leases or has a valid right to use all the material assets (tangible or intangible) necessary to carry on its business as currently carried on and such will not be affected by the consummation of the transactions provided for in this Agreement.

3.2 Condition. All the plant, machinery, equipment and vehicles used by the Company for the conduct of its business are in a workable operating and repair condition, fully maintained and serviced on a timely basis to operate the business, and subject to normal wear and tear consistent

[20] [To be discussed : impact of the transfer agreement on the Warranted Accounts]

with the age of such assets: all the plant, machinery, equipment and vehicles used by the Company for the conduct of its business are in a workable operating and repair condition, fully maintained and serviced on a timely basis to operate the business, and subject to normal wear and tear consistent with the age of such assets.

3.3 Third Party Rights: the Company has not created any Third Party Right over its material assets. Neither the Seller nor the Company has created or granted any option or right to acquire over, sell, transfer, lease, mortgage, pledge, encumber or grant security over or otherwise dispose of any asset or part thereof used for the conduct of the Company's business.

3.4 Closing of the factory. SKCP has not informed the Seller nor the Company of its intention to close its factory located in Facture (33380 Biganos, France). The Seller has made all reasonable inquiries with SKCP, notably in the frame of the negotiations of the Smurfit Agreements, as to SKCP's intention as at the date hereof to close said factory.

4. Contractual Matters

4.1 Contracts. Save as otherwise provided in Annex A.4 or in the Material Agreements or in the CRE Contract, the Company is not a party to any contract which:

(a) by the effect of the proposed transaction, may be terminated by the other party;

(b) may (i) breach any provision of its constitutional documents or (ii) result in a breach of any laws or regulations in its jurisdiction of incorporation or of any order, decree or judgment of any court or any governmental or regulatory authority;

(c) requires, or confers any right to require, the issue of any shares or any security convertible into or exchangeable for shares in the Company now or at any future time;

(d) establishes any joint venture, consortium, partnership or profit (or loss) sharing agreement;

(e) cannot be performed within its terms within 24 months after the date on which it was entered into or cannot be terminated on less than 24 month-notice and, in both cases, which creates a financial obligation for the Company in excess of Euros 50,000 per agreement;

(f) establishes any agency, distributorship, and marketing, purchasing, manufacturing or licensing agreement or arrangement;

(g) relates to or affects a material part of the business of the Company.

4.2 Defaults. The Company has not received written notice that it is in default under any contract to which it is a party.

4.3 The contracts to which the Company is a party provide for valid and binding obligations of the Company and of any other parties to these contracts, such obligations being, to the Seller's knowledge, enforceable against the parties to these contracts in accordance with their terms.

4.4 The Company has not given or agreed to give any guarantee or indemnity for the obligations of any person.

5. **Litigation and Investigations**

5.1 Litigation. The Company is not involved as a party in any litigation, arbitration or administrative proceedings and, so far as the Seller is aware, no such proceedings have been threatened by or against the Company. The Company has not instituted or settled any litigation where that action is likely to result in a payment to or by the Company.

5.2 Investigations. The Company has not received notice of any current or pending investigation by a Governmental Entity concerning the Company.

6. **Insolvency and related matters**

6.1 Winding up. The Company has not received any written notice that an order has been made, petition presented or meeting convened for the winding up of the Company or for the appointment of any provisional liquidator.

6.2 Administration and receivership. The Company has not received any notice concerning the appointment of a receiver in respect of the whole or any part of the property or assets of the Company.

6.3 Voluntary proceedings. The Company has not been a party to any conciliation (conciliation), had hoc mandate (*mandat had hoc*) or safeguard proceeding (*procédure de sauvegarde*) with any of its creditors in the eighteen (18) months prior to the date of this Agreement.

7. **Employment**

No employees or consultants. The Company has not entered into any employment or consultant contract and has not offered to engage any employee or consultant since its incorporation. There is no employee within the Company as of the date hereof. The Company has not entered into any *de jure* or *de facto* employment relationship with any individual, and there is no written threat of requalification into an employment relationship of any *de jure* or *de facto* relationship between the Company and any individual.

PART B: REGULATORY MATTERS

1. Licences. The Company has obtained all licences, permissions, authorisations (public or private) or consents (the "**Consents**") required for carrying on its business effectively in the places and in the manner in which it is carried on at the date of this Agreement in accordance with all applicable laws and regulations. Save as otherwise provided in **Annex B**, all such Consents are in full force and effect, and have been complied with. There are no circumstances which indicate that any of these Consents will be revoked or not renewed, in whole or in any significant part, in the ordinary course of events (whether as a result of the Transaction or otherwise).

2. Compliance.

(a) The Company has complied in all respects with all laws and regulations applicable to it, which could have consequences on its business.

(b) The Company has conducted its business and corporate affairs in all material respects in accordance with its constitutional documents.

(c) There has been no default by the Company under any order, decree or judgment of any court or any governmental or regulatory authority in the jurisdiction in which it is incorporated which applies to such Company.

PART C: TAXATION[21]

1.1 All Tax and Tax-related returns and documents required to be filed by the Company have been filed within the required time periods or the necessary extensions have been obtained from the relevant administrative authorities, and are true, fair and complete, and accurately reflect the Company's Tax obligations for the periods corresponding to the returns and all amounts appearing as owed under such returns have been either paid or recorded or sufficiently provisioned. The Company has at all times complied with its obligations concerning the custody of documents as provided in the relevant Tax laws and regulations.

1.2 The Company is up to date in the payment of all Taxes or has made sufficient provisions or has recorded sufficient charges to be paid, to provide for the payments of the said Taxes in the Warranted Accounts.

1.3 Save as otherwise provided in Annex C.3, no Tax authority has notified in writing the Company of any claims, requests for information, notices of Tax adjustment or challenge, or Tax audit notice. The Company has not been notified in writing of any future Tax audit.

1.4 The Company does not benefit or has not benefited from any special Tax regime ((i) whether or not conditional on discharge of any obligation by the Company or any other person, (ii) of general application or subject to the approval of any administrative or Governmental Entity) that may cease or be called into question as a result of the execution of the Agreement or the consummation of the transactions contemplated by the Agreement.

1.5 All information provided in the Tax returns of the Company with respect to any Tax losses is true and accurate.

1.6 All transactions entered into by the Company have been made or entered into on arm's length terms and will not give rise to an assessment by any authority competent to assess, control or collect Taxes. The Company has concluded a contract or has been party to an agreement, transaction or operation which may be assessed, disregarded, rejected or otherwise re-characterized on the grounds that it was made for the purpose of avoiding, circumventing, deferring or reducing Tax.

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[21] Note: the deletion of warranty 1.11 is subject to KKR being able to confirm before the signing of this Agreement that 83.5% of the fixed assets owned by the Company are eligible for tax depreciation according to section 39 AB of the French Tax Code (*Code Général des Impôts*).

1.7 The Company is and has at all times been resident for tax purposes in its place of incorporation and is not and has not at any time been treated as resident in any other jurisdiction for any tax purpose (including for the purpose of any double taxation arrangement).

1.8 The Company is not liable for any tax as the agent of any other person or business nor has any joint liability for any tax of any third party. In particular, without limitation, the Company has not acted, in respect of the period during which a competent Tax authority is entitled to make a Tax audit or inquiry, as agent or tax representative of a third party for VAT purposes.

1.9 The Company does not constitute a permanent establishment of any other person, business or enterprise for any Tax purpose.

1.10 There is no discrepancy between the values of the assets as shown in the Warranted Accounts of the Company and the tax bases of each of such assets by reference to which any gain or loss likely to arise from the disposal of these assets would be computed for Tax purposes.

[PART D: REAL ESTATE

1.1 Properties.

(a) Save for the real estate property owned by the Company listed in **Annex D.1** (the "**Owned Real Estate Property**"), the Company is not the owner of any real estate property.

(b) The Company is the rightful owner of the Owned Real Estate Property and has a valid and transferable title to such property, free from any Third Party Right.

(c) The Owned Real Estate Property complies with the obtained administrative authorizations which are final and there is no construction or part of any building erected by the Company on the land object of the Land Contract, or the Usufruct Agreement as the case may be, without the necessary administrative authorizations.

(d) The Owned Real Estate Property has been entirely erected on the land object of the Land Contract and it does not encroach on SKCP's or any third party's land.

1.2 Leases: There are no leases, sub-leases or financial leases or right for use (*mise à disposition gratuite*) entered into by the Company, other than the Land Contract.][22]

PART E: ENVIRONMENT

The sole representations made by the Seller in connection with environmental matters are those mentioned in this Part E below. These representations only concern the period starting on the signing date of the Land Contract until the date of this Agreement. Therefore, the Seller makes no representation and gives no warranty for the period before the signing date of the Land Contract.

[22] Subject to review of Dalkia operational team.

1.1 Compliance with Environmental Laws.

(a) [Save as otherwise provided in **Annex E.1**,] the Company is in compliance with Environmental Laws and, to the best knowledge of the Seller, there are no circumstances which may give rise to any liability, obligation or duty under Environmental Laws.

(b) All permits and authorizations required by Environmental Laws to be obtained by the Company to conduct its business as currently conducted have been duly obtained, published and complied with and are no longer challengeable before Courts and/or administrations.

(c) No works requiring any building permit or mandatory insurance policies have been carried out by the Company without such authorizations or policy.

1.2 Claims, Proceedings, Actions etc.

(a) Save as otherwise provided in **Annex E.2**, there are no claims, proceedings, actions or investigations pending against the Company with respect to any non-compliance with, or any liability (whether actual or prospective), obligation or duty under, Environmental Laws.

(b) Save as otherwise provided in **Annex E.2**, no claims, complaints, demands or notices (whether in writing or otherwise) have been received by the Company alleging or specifying any non-compliance with or liability under any Environmental Laws.

1.3 Environmental Permits. Save as otherwise provided in **Annex E.3**:

(a) all Environmental Permits for any operations or activities of or permitted by the Company have been obtained, are being and have at all times been complied with, are valid and are in full force and effect and there are no facts or circumstances which may result in any Environmental Permit being terminated, revoked, suspended, varied or modified;

(b) no Environmental Permit held by the Company contains any unusual conditions, or is subject to any restrictions on its transfer or any restrictions or requirements on any change of ownership of shares in the Company or otherwise requires any consent, notification or other action to be obtained, made or taken in order for that consent to remain in full force and effect (without variation) following Closing;

(c) save as otherwise provided in **Annex E.3**, at the date of this Agreement there are no outstanding requests for or in respect of any Environmental Permit;

1.4 Information. All reports, audits, assessments, reviews or investigations (including any testing, sampling or monitoring results) required by law, issued or carried out, in the possession or control of the Company concerning Environmental matters in relation to any operations or activities of the Company have been disclosed to the Purchaser.

PART F: PT/IT

1.1. IP

(a) The Company has a valid right to use all Intellectual Property Rights it uses in the ordinary course of business.

(b) The Company owns all of the rights and interests in and has title to all of the Owned IP.

(c) The licenses of Intellectual Property Rights granted to, and by, the Company are binding and in force. The Company has not been informed of any default pursuant to such licenses, and has not been informed in writing of any grounds on which such licenses might be terminated.

(d) The Intellectual Property Rights are not subject to any security interest, option, mortgage, charge or lien. The Owned IP will not be lost, or rendered liable to termination, by virtue of the acquisition of the Shares or the performance of this Agreement.

1.2 No infringement. The Company has not been given notice in writing of any infringement by its operations in the last 3 years of the rights of third parties, including any Intellectual Property Rights or unfair competition. To the best knowledge of the Seller, no third party is infringing the Intellectual Property Rights.

1.3 Data protection The Company complies with all applicable data protection applicable laws and the Company has not received in writing any notice or allegation alleging that it has not complied with any of them.

PART G: INSURANCE

1. The Company is covered by sufficient insurance policies in force which provide coverage to the extent and in a adequate manner (a) to cover the Company, its civil, criminal or third party liability and its assets (industrial equipment, buildings and construction operations), businesses, business interruption (direct or indirect immaterial damages) and operations and the risks insured against or in connection therewith, (b) as may be or may have been required by Law and by any and all contracts to which the Company is or has been a party, and (c) consistent with practices of other companies of the Dalkia Group in the same line of business.

2. A list of the insurance policies in force is enclosed in Annex G.

3. The Company has paid all the premiums called for the current insurance period or that shall be called as regularization premium for the past period or for the construction works.

4. All the loss occurred until the Closing Date has been correctly reported to the insurer. No insurer has refused, denied or disputed coverage and there are no unpaid claims under any such policies or binders.

[5. All the potential indemnification to be received from the insurers by the Seller for loss already reported under the insurance policies will be paid or refunded to the Purchaser.][23]

6. The Company has not committed or omitted to take any act which might render null or inoperative any such insurance policies or which might cause their cancellation or which has for consequence to reduce the benefit of the coverage.

7 . Insurance policies covering the Company are all Dalkia's group policies. The Company shall therefore no longer benefit from such policies after Closing as a result of the Transaction. The Purchaser shall procure that the Company enters into new insurance policies which shall be effective from the Closing Date.

PART H: ANTI-CORRUPTION REPRESENTATIONS

1. None of the Company, Dalkia or any subsidiary of Dalkia (each, a "**Company Affiliate**"), and any of the directors, officers, agents, employees or other persons that act for or on behalf of the Company or any Company Affiliate (each, a "**Company Representative**") has offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any person under circumstances where the Company, such Company Affiliate or such Company Representative knew or had reason to know that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of (1) influencing any act or decision of such Government Official in his official capacity, (2) inducing such Government Official to do or omit to do any act in relation to his lawful duty, (3) securing any improper advantage, or (4) inducing such Government Official to influence or affect any act or decision of any Government Entity, in each case, in order to assist the Company in obtaining or retaining business for or with, or in directing business to, any person (collectively "**Anti-Corruption Prohibited Activities**").

2. As of the date of this Agreement, the Seller has disclosed all facts known to it regarding (a) all claims, damages, liabilities, obligations, losses, penalties, actions, judgments, and/or allegations of any kind or nature that are asserted against, paid or payable by the Company, any Company Affiliate or any Company Representative in connection with non-compliance with any anti-bribery or anti-corruption laws applicable to the Company or any Company Affiliate (collectively, "**Anti-Corruption Laws**") by the Company or any Company Affiliate or Company Representative in relation to the business or affairs of the Company, and (b) any investigations involving possible non-compliance with any Anti-Corruption Laws by the Company or any Company Affiliate or Company Representative in relation to the business or affairs of the Company.

[23] Subject to review by Dalkia insurance team.

ANNEXES TO SCHEDULE 8.1

DISCLOSURES

SCHEDULE 9

PURCHASER'S WARRANTIES

1. The Purchaser has obtained all corporate authorizations and (other than to the extent relevant to the Conditions Precedent) all governmental, statutory, regulatory or other consents, licenses and authorizations required to empower it to enter into and perform its obligations under this Agreement where failure to obtain them would materially and adversely affect its ability to enter into and perform its obligations under this Agreement.

2. Entry into and performance by the Purchaser of this Agreement to which it is a Party will not (i) breach any provision of its constitutional documents or (ii) (subject, where applicable, to fulfillment of the Conditions Precedent) result in a breach of any laws or regulations in its jurisdiction of incorporation or of any order, decree or judgment of any court or any governmental or regulatory authority, where (in either case) such breach would materially and adversely affect its ability to enter into or perform its obligations under this Agreement.

3. The Purchaser is not insolvent or bankrupt under the laws of its jurisdiction of incorporation, unable to pay its debts as they fall due and has not proposed and is not liable to any arrangement (whether by court process or otherwise) under which its creditors (or any group of them) would receive less than the amounts due to them. The Purchaser is not aware of proceedings in relation to any compromise or arrangement with creditors or any winding up, bankruptcy or insolvency proceedings (including any *mandat had hoc*, *conciliation* or *procédure de sauvegarde*) concerning the Purchaser and no events have occurred which would justify such proceedings. No steps have been taken to enforce any security over any assets of the Purchaser and no event has occurred to give the right to enforce such security.

4. The Purchaser is not subject to any order, judgment, direction, investigation or other proceedings by any Governmental Entity which will, or are likely to, prevent or delay the fulfillment of any of the Conditions Precedent.

5. As of the date of this Agreement only, the Purchaser is not aware of any facts or circumstances which could reasonably be expected to result in a Claim being made against the Seller or any misrepresentation by or on behalf of the Seller in connection with the proposed Transaction.

6. There is no broker, finder or financial advisor who is acting or has acted on behalf of the Purchaser, or any person, firm or corporation entitled to receive any brokerage, finder's or financial advisory fee from the Company, in connection with the transaction contemplated by this Agreement.

7. None of the Purchaser or any Affiliate of the Purchaser, and any of the directors, officers, agents, employees or other persons that act for or on behalf of the Purchaser or any Purchaser Affiliate (each, a "**Purchaser Representative**") has offered, paid, promised to pay, or authorized the payment of any money, or offered, given, promised to give, or authorized the giving of anything of value, to any officer, employee or any other person acting in an official capacity for any Governmental Entity to any political party or official thereof or to any candidate for political office (individually and collectively, a "**Government Official**") or to any person under

circumstances where the Purchaser, such Purchaser Affiliate or such Purchaser Representative knew or had reason to know that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to any Government Official, for the purpose of (1) influencing any act or decision of such Government Official in his official capacity, (2) inducing such Government Official to do or omit to do any act in relation to his lawful duty, (3) securing any improper advantage, or (4) inducing such Government Official to influence or affect any act or decision of any Government Entity, in each case, in order to assist the completion of the Transaction, except as required to be paid pursuant to applicable Law (including filing fees).

8. A true and complete copy of the executed KKR Equity Commitment Letter has been made available to the Seller on or prior to the date hereof. The KKR Equity Commitment Letter constitutes the valid and binding obligation of the parties thereto and the equity funding to be provided thereunder is not subject to any conditions precedent other than those expressly set forth therein.

Schedule 1b)

Investors Agreement Term Sheet

PROJECT WASHINGTON

TERM SHEET FOR INVESTORS' AGREEMENT

Kohlberg Kravis Roberts & Co. L.P. (together with its subsidiaries, "**KKR**"), as adviser to its investment funds (the "**KKR Funds**"), is evaluating the acquisition of a majority stake in Société Valmy Défense 19 ("**SVD 19**"), a French *société par actions simplifiée* (the "**Acquisition**"). To effect the Acquisition, a newly formed French company ("**Bidco**") will acquire the entire share capital of SVD 19 from Valmy Energies Biomasse ("**VEB**"), an indirect wholly-owned subsidiary of Dalkia SAS ("**Dalkia**"). Concomitantly, Dalkia will subscribe for shares and preferred equity certificates ("**PECs**") in a newly formed Luxembourg company (the "**Company**") that indirectly, through one or more wholly owned subsidiaries, owns the entire share capital of Bidco. The Acquisition, the investment by Dalkia in the Company and the other transactions contemplated by this term sheet are referred to as the "**Proposed Transaction**". The structure envisaged for the Proposed Transaction is further set out in the paper entitled "Project Washington – Draft Strawman Structure Paper" dated 29 November, 2010 that has been prepared by Deloitte LLP. This term sheet sets out the proposed terms and conditions of the agreement between Dalkia and the KKR Funds in respect of their respective participations in the Company (the "**Investors' Agreement**").

THE INVESTORS' AGREEMENT	
Investors:	VEB or any entity majority owned and controlled (directly or indirectly) by Dalkia (in either case, the "**Dalkia Investor**") and a newly formed Luxembourg company majority owned and controlled by the KKR Funds (the "**KKR Investor**" and, together with the Dalkia Investor, the "**Investors**"). In addition, for Luxembourg legal reasons, one or more of the KKR Funds (or persons or entities designated by them) may directly hold a nominal shareholding in the Company, and any such KKR Funds (or such persons or entities designated by them) will also be party to the Investors' Agreement.
Company:	The Company will be a *société à responsabilité limitée* incorporated and tax resident in Luxembourg. The Company and its direct and indirect subsidiaries are referred to for the purposes of this term sheet as the "**Group**".
Ownership Percentages:	Upon consummation of the Proposed Transaction, the Investors' respective ownership percentages of the share capital and PECs in the Company shall be: Dalkia Investor: 15%, subject to a maximum investment amount of €5 million. The Dalkia Investor shall not have any commitment beyond such amount; KKR Investor: 85% (or such higher percentage resulting from the application of the cap on the Dalkia initial investment amount). The KKR Investor shall not have any commitment beyond such amount. At the closing of the Proposed Transaction, the Investors will invest in

	shares and PECs in the same proportion. The above ownership percentages exclude any equity securities that may be issued to members of Management (defined below) (see "Management Equity Participation Plan" below). If any shares or other securities are issued to members of Management by the Company or another member of the Group, the Investors' respective indirect full-diluted ownership percentages will be proportionately reduced. Any class of equity or debt securities issued by the Company from time to time are collectively referred to herein as "**Company Securities**" and the Company Securities held by the Investors (or their permitted transferees, but excluding Management) from time to time are referred to as the "**Investor Securities**".
Boards:	The Company's board of directors (*conseil de gérants*) (the "**Board**") initially will be composed of 5 directors (or such other number as the Investors reasonably agree) (certain of which shall be Luxembourg residents). Subject to legal requirements, the size of the Board may be changed and one or more individuals not designated by any individual Investor (including, for example, one or more members of Management) may be appointed to the Board, provided that the principles of proportional representation (described in the paragraph below) are maintained. The Board may elect a chairman. The Investors will be entitled to designate a number of directors that is proportionate to their respective percentage ownership of the equity securities of the Company (as close as reasonably practicable), provided that (i) so long as an Investor holds at least 10% of the Investor Securities, it shall be entitled to designate at least one director, and (ii) so long as an Investor holds a majority of the Investor Securities it shall be entitled to designate a majority of the directors. Any director designated by an Investor can be removed only by such Investor. A quorum of the Board will consist of a majority of the directors, provided that, so long as the Dalkia Investor continues to hold 10% of the Investor Securities, at least one Dalkia-designated director shall be required to constitute a quorum at a first meeting, provided, further, that if any Board meeting is not quorate, then such Board meeting may be reconvened and the quorum for such reconvened meeting shall be a majority of the directors only. Each director will be entitled to cast one vote. A chairman will not have a casting vote. Subject to the Dalkia Approval Rights (defined below), actions of the Board will require the affirmative vote of a majority of the directors present at a meeting at which a quorum is present. The articles of association of the Company shall provide that any one director designated by the KKR Investor or any two directors (at least one of which is designated by the KKR Investor) shall have authority

	to represent SVD 19 with regard to third parties in respect of all matters. Any director may call a meeting of the Board on 5 business days' notice to the other directors, provided that meetings may be called on 2 business days' notice to address any urgent matters. Directors may attend a Board meeting by phone, videoconference or other electronic means and such attendance shall count for quorum purposes. A director may grant a power of attorney to another director to cast such appointing director's vote at any Board meeting and such power of attorney shall constitute the attendance of such appointing director for quorum purposes. At any meeting of the Board at which the directors take any actions, at least a majority of the members of the Board who are in attendance at such meeting shall be physically present in Luxembourg at the time of such actions. A majority of the meetings of the Board in any calendar year shall take place in Luxembourg. It is agreed that the Board will meet periodically to discuss and review the following items before any decision is made in relation thereto by the board of any other member of the Group: - review of the financial accounts and of the financial performance of the Group companies; - any acquisition or disposition of any material asset; and - any material capital expenditure. The boards of directors (or similar governing bodies) of each other member of the Group (the "**Other Boards**") shall be designated by the KKR Investor.
Dalkia Approval Rights:	So long as the Dalkia Investor holds at least 10% of the Investor Securities, the following actions by the Company or any member of the Group require the approval of the Dalkia Investor (which may be given by written consent of the Dalkia Investor, by shareholder resolution of the Company which includes the affirmative vote of the Dalkia Investor or by resolution of the Board) (the "**Dalkia Approval Rights**"): - a change of the business purpose[1] of any member of the Group; - any action that would result in a loss of Luxembourg tax residency of the Company for Luxembourg tax purposes; - the acquisition by any member of the Group (by way of share purchase, asset purchase, merger, reorganization or other business

[1] To be defined in the Investors' Agreement as relating to owning and operating, directly or indirectly through subsidiaries, the Plant.

	combination or business transaction) of any material asset not connected to the biomass cogeneration plant that SVD 19 owns (the "**Plant**"); - the issuance of any equity or equity-linked securities of any member of the Group (other than the Company), other than any equity or equity-linked securities that may be issued (i) to members of Management (defined below) or (ii) in connection with any Reorganization Transaction (defined below); - subject to applicable law, a liquidation, dissolution, winding-up, bankruptcy, *ad hoc* mediation (*mandat ad hoc*), conciliation procedure (*procedure de conciliation*), safeguard procedure (*sauvegarde*), or judicial reorganisation (*procédure de redressement)* of any member of the Group; - a change in legal form of any member of the Group (other than any Reorganization Transaction (defined below)) or a transfer of the principal place of business of any member of the Group outside of its jurisdiction of incorporation; - an amendment to the articles of association, by-laws or similar constitutional document of any member of the Group which materially and adversely affects the Dalkia Investor in a manner which is disproportionate to the effect of such amendment on the KKR Investor, including, for the avoidance of doubt, any adverse amendment to the Dalkia Approval Rights; - (a) the adoption of any new Dividend Policy (defined below) or (b) any amendment to (i) the Dividend Policy (defined below) then in effect, or (ii) the yield or interest payment terms and conditions of the shareholder loans or the PECs, in each case of (a) and (b), which would adversely affect the Dalkia Investor; - any failure to declare or pay dividends in accordance with the Dividend Policy (defined below), subject to the fiduciary duties of the Board or the Other Boards (as the case may be); - the participation by any member of the Group in an economic interest grouping *(GIE)* or other entity, consortium or association, membership of which may give rise to joint and several liability or unlimited liability of any member of the Group;

[2] This consent right shall be removed if the agreements are novated by SVD 19 to Dalkia in accordance with the current ongoing discussions between KKR, Dalkia and Smurfit.

[3] This consent right shall be removed if Dalkia is not obligated to surrender the Plant to Smurfit at the end of the project in accordance with the current ongoing discussions between KKR, Dalkia and Smurfit.

	- the giving of any guarantee or granting of any pledge, mortgage, charge or other security interest securing the obligations of any person (including legal entities) that is not a member of the Group; - any contract or transaction between any member of the Group, on the one hand, and KKR, any KKR Fund, the KKR Investor or any of their respective affiliates or the partners, members, officers, directors or employees of any of the foregoing, on the other hand, provided that the following contracts and transactions are excluded from this requirement: (i) customary directors' fees and expense reimbursement for directors of the Board or Other Boards; (ii) a transaction fee in the amount not to exceed €[●] payable to KKR upon completion of the Proposed Transaction pursuant to a transaction services agreement, (iii) an annual monitoring fee in the amount not to exceed €[●] per annum payable to KKR for advisory and monitoring services to be provided to the Group by KKR pursuant to an advisory services agreement; (iv) other than in connection with the closing of the Proposed Transaction, fees payable from time to time to KKR Capital Markets or Capstone for advisory or consulting services provided to the Group, provided that the aggregate amount of such fees payable by the Group in any fiscal year shall not exceed €[•], and (v) any other contract or transaction, provided that the details of the related party status of the contract or transaction are disclosed to and approved by the Board and such contract or transaction is in the ordinary course of business and on arms-length terms; - [any amendment to any agreement between SVD 19 or any member of the Group, on the one hand, and any entity of the Smurfit Kappa Group, on the other hand, which agreement is guaranteed by Dalkia, and which amendment would increase Dalkia's liability under such guarantee;][2] - [the disposal of the Plant.][3]
Business Plan / Annual Budget:	The first rolling 5-year business plan for the Group (the "**Business Plan**") will be adopted by the Board at the time of completion of the Proposed Transaction. At the end of each fiscal year, Management will propose an annual budget for the Group for the following year ("**Annual Budget**"), which shall be subject to approval of the Board. The Board shall have sole authority to adopt any new, or to amend or approve any variance from any existing, Business Plan or Annual Budget.
Dividends:	The dividend policy for the Group (the "**Dividend Policy**") will be adopted by the Board at the time of completion of the Proposed Transaction, in consultation with the Dalkia Investor. The Dividend Policy will provide that SVD 19 and each other member of the Group

	will pay an annual dividend in an amount reasonably determined by the Board to be distributable based on the capital structure of SVD 19 and the other members of the Group, subject to (i) applicable laws and regulations, (ii) obligations under third party financing arrangements of the Group, (iii) the ongoing capital requirements of the Group, including for capex and other working capital requirements, in accordance with the Annual Budget and Business Plan, and (iv) legal reserves or other reserves deemed necessary or appropriate by the Board for contingencies or liabilities. The Board shall have sole authority to adopt any new, or, subject to the Dalkia Approval Rights, to amend or approve any variance from any existing, Divided Policy. Dividends or other payments by the Company on account of any class of the Company Securities shall be paid pro rata among the holders of such class of Company Securities.
Reserved Matters:	The Board shall establish such rules for the governance of the Company and each Other Board shall establish such rules for the relevant other member of the Group as such board deems appropriate in light of the nature and scope of its activities (subject, in any event, to the Dalkia Approval Rights). The governance rules shall include a list of matters reserved for decision by the relevant board or the shareholders of the relevant member of the Group. In the case of SVD 19, it is expected that the list of matters reserved for decision by the board of directors of SVD 19 (the "**SVD 19 Board**") will include all actions and other matters that are material to SVD 19 in monetary terms or in any other respect, including (but not limited to) the following: - any proposed amendments or deviations from the then-effective Business Plan or Annual Budget; - adoption of the annual accounts; - adoption of, or material change to, accounting standards; - the annual (or other periodic) report(s) of Management; - any incurrence of debt or the granting of loans of a material amount; - the giving of any guarantee for the obligations of any member of the Group; - the granting of any pledge, mortgage, charge or other security interest securing the obligations of any member of the Group; - any acquisition or disposition of any material asset;

	- any lease of real property; - any material capital expenditure; - entry into, termination or material amendment of any material contract or commitment; - hiring or terminating any employee, establishing compensation for any employee or adopting, amending or terminating any employee benefit plans or policies; - commencement or settlement of any material litigation, arbitration or other dispute process with any person (including any governmental or regulatory authority); - hiring of any financial, legal, tax, industry or other adviser or consultant; - any material filing with any governmental or regulatory authority; - entry into, termination or amendment of any contract or commitment in respect of any of the foregoing. As used above, the term “material” will be defined more specifically in the Investors’ Agreement.
President / Management:	SVD 19 will have a president (the “**President**”) who shall be appointed (and may be removed with or without cause) by the SVD 19 Board. The President will have authority to represent and bind SVD 19 with regard to third parties in respect of all matters, save in respect of the matters reserved for decision of the SVD 19 Board or the shareholders of SVD 19 pursuant to applicable law, the articles of association, by-laws or similar constitutional document of SVD 19 or the Investors’ Agreement (including the Dalkia Approval Rights). The SVD 19 Board from time to time may appoint (and remove with or without cause) such other officers or members of management (the President and such other officers and members of management are collectively referred to as “**Management**”) with such powers, duties and responsibilities as the SDV 19 Board may determine, subject to the matters reserved for decision of the SVD 19 Board or the shareholders of SVD 19 pursuant to applicable law, the articles of association, by-laws or similar constitutional document of SVD 19 or the Investors’ Agreement (including the Dalkia Approval Rights).
Information Rights:	Subject to applicable laws and customary confidentiality provisions, (i) so long as an Investor continues to hold any Investor Securities, such Investor will be entitled to receive the annual and quarterly financial

	statements of (a) if prepared, each member of the Group and (b) the Group on a consolidated basis, together with the auditors' reports delivered with any such financial statements that are audited, and (ii) so long as an Investor continues to hold at least 10% of the Investor Securities, such Investor will be entitled to receive: - a copy of any information packs for meetings of the Board and the Other Boards; - the Business Plan and each Annual Budget; - notice of an event of default under any third party financing agreement of the Group; - if and when prepared, any reports of Management to the Board or the Other Boards; and - reasonable access to the books, records and accounts of each member of the Group for bona fide purposes in connection with the ownership of Company Securities.
Capital Increases; Preemption Rights:	Any new Company Securities (or any capital increase by the Company) shall be made on terms and conditions determined by the Board, provided that the price per security of such new Company Securities shall be not less than the fair market value of such securities (on a pro forma basis after giving effect to such issuance or capital increase), as determined by the Board in good faith, provided, further, that, so long as the Dalkia Investor owns at least 10% of the Investor Securities, if the Dalkia Investor disagrees with such price, the price will be established by an independent expert pursuant to a process to be agreed in the Investors' Agreement. Prior to an IPO (defined below), the Investors shall be entitled to pro-rata pre-emption rights on issues of new Company Securities (or any capital increase by the Company). Such pre-emption rights shall be subject to customary exemptions relating to, inter alia, issuances (or capital increases): (i) pursuant to management incentive plans or similar benefit programs or agreements where the primary purpose is not to raise additional equity capital; (ii) subject to the Dalkia Approval Rights, as consideration for the acquisition of another business entity; and (iii) pursuant to any Reorganization Transactions (defined below).
Management Equity Participation Plan:[4]	The Board shall have the right to make available up to 5% of the Company Securities (or securities of any other member of the Group) to one or more members of Management pursuant to an equity participation plan on terms and conditions customary for KKR transactions.

[4] Note: Management equity arrangements to be discussed.

Transfer Restrictions and Exit and Liquidity Provisions:	
Transfer Restrictions during Restricted Period:	Until the 3rd anniversary of the closing of the Proposed Transaction (the "**Restricted Period**"), neither Investor will be permitted to transfer any of its Company Securities except to an entity that is a "majority owned affiliate" of such Investor (i.e. a majority owned and controlled subsidiary of such Investor or, in the case of the KKR Investor, the KKR Funds or any majority owned and controlled subsidiary of the KKR Funds, or, in the case of the Dalkia Investor, Dalkia or any majority owned and controlled subsidiary of Dalkia), provided such transferee remains a majority owned affiliate of such transferring Investor and, if it ceases to be a majority owned affiliate of such transferring Investor, such transferee shall re-transfer the Company Securities to the transferring Investor or to another majority owned affiliate of such transferring Investor, provided further that in the event of a KKR Fund Value Transfer, such transfer shall give rise to customary pro-rata tag-along rights in favor of the Dalkia Investor. For the purposes hereof, a **KKR Fund Value Transfer** shall mean any sale for value by a KKR Fund to another KKR Fund, other than a KKR Reorganization or a KKR Syndication. A **KKR Reorganization** shall mean any transfer by a KKR Fund effected primarily for tax, legal, regulatory, accounting or other similar reasons. A **KKR Syndication** shall mean any transfer by a KKR Fund to a vehicle controlled by KKR or any affiliate of KKR and wholly owned by one or more investors excluding KKR or any affiliate of KKR and in respect of which neither KKR nor any affiliate of KKR shall be entitled to receive any carried interest or other distribution or payment (other than customary management fees and customary cost reimbursements). The transfer restrictions shall apply to indirect transfers, i.e. transfers by the KKR Funds of shares or other interests in the KKR Investor and by Dalkia of shares or other interests in the Dalkia Investor.
Transfers after Restricted Period:	*Private Sales* After the Restricted Period, each Investor may transfer (i) any of its Company Securities to a "majority owned affiliate" of such Investor as described above, or (ii) all or any portion of its Company Securities (provided that the shares, the PECs and shareholders' loans, if any, must be sold together in a proportionate "strip") to a bona fide third party purchaser, subject to: (i) if the transferor is the Dalkia Investor: - a customary right of first offer in favor of the KKR Investor; and - if the third party purchaser is a competitor of KKR (i.e. a financial buyer, to be defined in the Investors' Agreement), a customary right of

	last refusal in favor of the KKR Investor. The right of first offer and right of last refusal granted to the KKR Investor shall also apply mutatis mutandis to indirect transfers, i.e. transfers by Dalkia of shares or other interests in the Dalkia Investor (other than to a majority owned affiliate of the Dalkia Investor); (ii) if the transferor is the KKR Investor: - if the KKR Investor organizes a sale process for the purposes of transferring all or any portion of its Company Securities, the KKR Investor shall invite the Dalkia Investor to participate in such sale process and allow the Dalkia Investor to make an offer; - if no sale process is organized, the KKR Investor shall not accept any offer from a third party without first allowing the Dalkia Investor to make an offer with at least 30-day notice; and - if the third party purchaser is a competitor of Dalkia (i.e. an operating competitor, to be defined in the Investors' Agreement), a customary right of last refusal in favor of the Dalkia Investor. If the Dalkia Investor has not made an offer or if the KKR Investor has not retained the Dalkia Investor's offer and (if applicable) the right of last refusal is not exercised by the Dalkia Investor, the Dalkia Investor shall have customary pro-rata tag-along rights. The right of offer and right of last refusal granted to Dalkia shall apply mutatis mutandis to (i) any transaction as a result of which the Company would cease to directly or indirectly control SVD 19 and (ii) indirect transfers, i.e. transfers by the KKR Funds of shares or other interests in the KKR Investor (other than to a majority owned affiliate of the KKR Investor, but, for tag-along rights only, including a KKR Fund Value Transfer). *Exit Transaction* The KKR Investor (or the KKR Funds, as the case may be) shall be entitled to cause a full exit transaction to a third party or third parties, whether structured as a share sale, asset sale, merger, recapitalization, reorganization or other business combination of the Company or any other member of the Group, or a similar transaction involving the KKR Investor itself (each, an "**Exit Transaction**") and in connection therewith cause the Dalkia Investor and all other shareholders in the Group to sell their entire stake in the Group, (via customary drag-along rights) and, if such drag-along right is not exercised, the Dalkia Investor shall be entitled to sell its entire stake in the Company to such third party or third parties (via customary tag-along rights). The KKR Investor (or the KKR Funds, as the case may be) shall have the right to determine the timing, structure, pricing and all other terms, conditions and matters in relation to any Exit Transaction, provided that, if the Exit Transaction is part of a larger transaction that includes the sale to such third party or third parties of other businesses or assets outside the scope of the Group, then the price allocated to the sale of the

	businesses and assets of the Group shall be a fair allocation of the overall consideration for such larger transaction, as determined by the KKR Investor (or the KKR Funds, as the case may be) in good faith. In the event of a change of control of the KKR Investor in favor of a third party (a person that is not a KKR Fund or a majority owned affiliate of the KKR Funds) that is not an Exit Transaction, the Dalkia Investor shall have the right to sell to the KKR Investor (or, at the KKR Investor's option, to such third party) all (but not less than all) of the Dalkia Investor's Company Securities at the fair market value of such Company Securities as determined by the Board in good faith. For the avoidance of doubt, the foregoing provision does not apply to a KKR Fund Value Transfer (i.e. only pro-rata tag-along rights would apply). If a third party purchaser acquires some but not all of the Company Securities, such third party purchaser shall become a party to the Investors' Agreement and shall have such rights under the Investors' Agreement as are commensurate with the level of ownership of Company Securities so acquired, provided that, in the event that the Dalkia Investor disposes of any of its Company Securities to a third party purchaser, the following rights of the Dalkia Investor shall not be assigned to and shall not otherwise be exercisable by such third party purchaser (unless the KKR Investor otherwise agrees): (i) the right of last refusal in the event of a transfer by the KKR Investor to a competitor; and (ii) the put option on a change of control of the KKR Investor. *IPO and Public Sales* After the Restricted Period, the KKR Investor may initiate an initial public offering of equity securities of the Company or any member of the Group, or of the KKR Investor (or any holding company which owns equity securities of the Company and is formed for the purpose of consummating such public offering) (an "**IPO**") and in connection therewith the KKR Investor (or the KKR Funds, as the case may be) shall have the right to determine the timing, structure, pricing and all other terms, conditions and matters in relation to the IPO, including the right to determine whether to include and, if so, the size of a secondary offering tranche in the IPO, provided that the primary securities market on which the public company's equity securities shall be listed shall be an internationally recognized securities market in Europe or the United States. The Dalkia Investor will be entitled to participate pro-rata in any such secondary offering tranche in an IPO. Prior to and in anticipation of an IPO, upon request of the KKR Investor (or the KKR Funds, as the case may be), the Dalkia Investor will enter into any additional agreements (including any replacement securityholders agreements and registration rights or liquidity rights agreements) relating to the rights and obligations of the shareholders of the public company from and after the IPO as may reasonably be required by the KKR Investor or the (proposed) public company. Following a lock-up period not to exceed 270 days after the

	IPO, sales of listed securities may be made, subject to applicable securities laws and in accordance with post-IPO liquidity provisions to be agreed in the Investors' Agreement reasonably designed to allow for an orderly sell down of the parties' shareholdings. *Cooperation* The Dalkia Investor will cooperate reasonably with the KKR Investor (or the KKR Funds, as the case may be) and each member of the Group in connection with any Exit Transaction or IPO, provided that the Dalkia Investor shall not be required to make any representations or warranties in any agreement related to an Exit Transaction or IPO or any sale in connection with which the Dalkia Investor has a tag-along right other than customary representations and warranties as to the corporate matters of the Dalkia Investor, the absence of conflicts and title to the securities to be sold, and provided further that the Dalkia Investor shall not be required to make any undertakings with respect to non-competition matters. Without limiting the foregoing, the Dalkia Investor will support and participate in any Reorganization Transaction intended to facilitate an Exit Transaction or IPO, provided that such Reorganization Transaction does not materially and adversely affect the Dalkia Investor in a manner which is disproportionate to the effect of such Reorganization Transaction on the KKR Investor. The term "**Reorganization Transaction**" means any actions necessary, appropriate or desirable as determined by the KKR Investor (or the KKR Funds, as the case may be), (i) to liquidate, dissolve or wind up, (ii) to merge or de-merge and/or (iii) to reorganize, recapitalize or otherwise restructure, the Company or any other Group Company, in each case, so as to optimize the structure of the Group in anticipation of an Exit Transaction or IPO.
Put and Call in connection with Operation and Maintenance Agreement:	In the event of a termination of the operation and maintenance agreement between Dalkia and SVD 19 (the "**O&M Agreement**") for a reason other than force majeure or breach by Dalkia, the Dalkia Investor shall have the right to sell to the KKR Investor all (but not less than all) of the Dalkia Investor's Company Securities at the fair market value of such Company Securities as determined by the Board in good faith, provided, that, so long as the Dalkia Investor owns at least 10% of the Investor Securities, if the Dalkia Investor disagrees with such valuation, the valuation will be established by an independent expert pursuant to a process to be agreed in the Investors' Agreement. In the event of a termination of the O&M Agreement for force majeure, the KKR Investor shall have the right to acquire all (but not less than all) of the Dalkia Investor's Company Securities at a price equal to the fair market value of such Company Securities as determined by the Board in good faith, provided, that, so long as the Dalkia Investor owns at least 10% of the Investor Securities, if the Dalkia Investor disagrees with such valuation, the valuation will be established by an

	independent expert pursuant to a process to be agreed in the Investors' Agreement. Transfer of the Investor Securities shall then take place once the expert has provided its valuation. In the event of a termination of the O&M Agreement for breach by Dalkia, the KKR Investor shall have the right to acquire all (but not less than all) of the Dalkia Investor's Company Securities at a price equal to the fair market value of such Company Securities as determined by the Board in good faith, provided, that, so long as the Dalkia Investor owns at least 10% of the Investor Securities, if the Dalkia Investor disagrees with such valuation, the valuation will be established by an independent expert pursuant to a process to be agreed in the Investors' Agreement, provided further, that in the event of such disagreement the KKR Investor may complete the purchase of the Dalkia Investor's Company Securities and pay to the Dalkia Investor the price determined by the Board at the time of such transfer, subject to adjustment upward or downward in accordance with the price determined by the independent expert. The expert's fees shall be borne by Dalkia.
Implementation:	To the extent practicable, the organizational documents of each member of the Group will reflect the terms of the Investors' Agreement, provided that the Investors' Agreement will govern among the Investors in the event of any conflict or inconsistency with the organizational documents of each member of the Group. Each Investor will agree to vote its shares in the Company and take all other action in its power and authority to act in accordance with the terms of the Investors' Agreement so as to ensure that the provisions of the Investors' Agreement will be given full force and effect, subject to applicable laws.
Governing Law/ Dispute Resolution/ Remedies:	The Investors' Agreement shall be governed by the laws of Luxembourg. Any dispute arising out of or in connection with the Investors' Agreement shall be submitted to binding arbitration, except that specific performance, injunction or other equitable relief may be sought in any court of competent jurisdiction in respect of any material breach of the Investors' Agreement that threatens to irreparably harm an Investor.
Miscellaneous:	The Investors' Agreement will contain other customary provisions for agreements of this type, including, among others: - Tax matters - Non-recourse provisions - Confidentiality - Amendment - Termination

Transaction Expenses:	At the closing of the Proposed Transaction, Bidco (or another member of the Group) will pay the fees and expenses of KKR and its affiliates (including advisers' and consultants' fees and expenses) in connection with the Proposed Transaction and the financing thereof.

Schedule 1c)

O&M Contract

OPERATION AND MAINTENANCE CONTRACT

<u>BETWEEN THE UNDERSIGNED</u>:

1. **Société Valmy Défense 19 – SVD 19**, a French "*société par actions simplifiée*" with a share capital of €37,000 having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-Lez-Lille, registered with the Trade and Companies Register of Lille under number 497 908 632,

   represented by [•], in his/her capacity as [•], duly authorized for the purposes hereof,

hereinafter referred to as "**SVD 19"**,

<u>on the one hand</u>,

<u>AND</u>:

2. **Dalkia France**, a French "*société en commandite par actions*" with a share capital of €220,047,504, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-Lez-Lille, registered with the Trade and Companies Register of Lille under number 456 500 537,

   represented by [•], in his/her capacity as [•], duly authorized for the purposes hereof,

hereinafter referred to as "**Dalkia"**,

<u>on the other hand</u>,

SVD 19 and Dalkia shall hereinafter be collectively referred to as the "**Parties**" and individually as a "**Party**".

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WHEREAS:

A. Under the terms of a decree dated June 17, 2008 published in the Official Journal on July 2, 2008, SVD 19 was awarded a contract with an electrical power purchase obligation, the other party to which was EDF, pursuant to a Call for Tender (as defined hereinafter) initiated by the Energy Regulation Commission (*Commission de Régulation de l'Energie* (the "**CRE**")).

B. The Dalkia group supplies its industrial customers with a range of energy services, which specifically include decentralised energy production, heat generation, and optimised fuel management.

C. Smurfit Kappa Cellulose du Pin, a French "*société par actions simplifiée*" with a share capital of 45,857,826 euros, having its registered office at Allée des Fougères – Usine de Facture, 33380 Biganos, registered with the Trade and Companies Register of Bordeaux under number 572 142 198 ("**SKCP**"), is a company of the Smurfit Kappa group. SKCP owns and operates an integrated factory that produces kraft paper for use in the manufacture of corrugated cardboard packaging, located in Facture (Gironde) (the "**Factory**").

D. Since SKCP's operations make heavy use of steam, SVD 19 and SKCP entered into a relationship regarding SVD 19's construction and operation of a biomass cogeneration plant located at SKCP's site. This relationship led to the execution of the following agreements on August 7, 2008:

(i) a framework contract between SVD 19, SKCP and Dalkia, amended by an amendment dated September 9, 2008 (the **"SKCP Framework Contract**");

(ii) a transformation contract between SVD 19, SKCP and Dalkia (the "**SKCP Transformation Contract**");

(iii) a biomass supply contract between SVD 19, Smurfit Kappa Comptoir du Pin ("**SKCDP**") and Dalkia (the "**SKCDP Biomass Supply Contract**"). SKCDP is a sister company of SKCP; and

(iv) a land contract between SVD 19, SKCP and Dalkia (the "**Land Contract**").

E. Pursuant to a novation agreement dated [•] and as part of an internal reorganization of the Dalkia Group, the SKCP Framework Contract, the SKCP Transformation Contract and the SKCDP Biomass Supply Contract were transferred to Dalkia and were amended on the same day. Following such transfer, SVD 19 had no further rights and obligations under those agreements.

F. On [•], the Parties entered into (i) a framework contract (the "**SVD 19 Framework Contract**"), which provides for certain obligations between Dalkia and SVD 19 as regards the Project (as defined below), and (ii) a transformation contract (the "**SVD 19 Transformation Contract**"), which provides for the transformation of Primary Fluids (as defined below) into Utilities (as defined below) between Dalkia and SVD 19.

G. On [•], the Land Contract was terminated and replaced by a usufruct contract (the "**Usufruct Contract**") entered into between the Parties on the same day.

H. Pursuant to a share purchase agreement dated [•], and as a result of the contractual changes described above, [BidCo] acquired [on the date hereof] from Valmy Energies Biomasse S.A.S., a Dalkia subsidiary, shares in SVD 19 representing one hundred percent (100%) of SVD 19's share capital and voting rights.

I. Following such sale of SVD 19, SVD 19 intends to entrust to Dalkia with the provision of operation and maintenance services. For such purpose, the Parties have agreed to proceed with the execution of this operation and maintenance contract (the "**Contract**").

*

*   *

NOW, THEREFORE, IT HAS BEEN AGREED AS FOLLOWS:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

Article 1.1 Definitions

Access Rights: means all necessary licenses, permissions, rights of way, and easements within and through, over and under the Site to the extent available to SVD 19 under the Usufruct Contract.

Additional Payment: has the meaning ascribed to it in **Article 9.2**.

Affiliate: means:

(i) with respect to any person being a legal entity, a person or entity (a) Controlled by the relevant person (b) which Controls the relevant shareholder or (c) which is Controlled by one or more persons or entities that Control the relevant person, it being however understood that two companies or funds managed by the same management company are not considered to be Affiliates for the purposes of this Contract; and

(ii) with respect to any individual, his/her lineal ascendants or lineal descendants or spouses.

Applicable Laws: means:

(i) any or all laws of the Republic of France or of the European Union (in so far as they are applicable in France) from time to time being in force, including any rules or other subsidiary legislation made under any such legislative instrument; and

(ii) any applicable guidance, directions or other requirements (including the requirement to obtain any Government Authorisations) issued by a Government Entity with which the relevant Party is required to comply,

and shall include any modification, amendment or re-enactment of any of the foregoing.

Auxiliary Equipment Electricity: refers to the electrical power to be supplied to the Plant and which is consumed by the Plant for its own proper operation.

Backup: shall mean a gas fired boiler house (comprising several low pressure boilers), of a total capacity of seventy (70) hour tonnes included in the Plant installations and intended to be used to produce steam to be supplied to Dalkia under the SVD 19 Transformation Contract when the primary Plant biomass boiler is unavailable.

Backup Specific Use: has the meaning ascribed to it in **Article 9.1**.

BI: has the meaning ascribed to it in **<u>Article 10.1</u>**.

Biomass: refers to Internal Biomass and/or External Biomass, as the case may be.

Black Liquor Steam (BLS): refers to the Primary Fluid consisting of the steam produced by SKCP's black liquor boiler and supplied by Dalkia to the Plant pursuant to the SVD 19 Transformation Contract.

Call for Tender: shall mean the call for tender launched by the CRE in a notice published in the Official Journal of the European Union of December 9, 2006 (procurement notice Nr 2006/S 235 251239) for the construction in French territory of electrical plants using biomass, with a total installed power of 300 MW.

Change: refers to any variation (whether by addition, amendment, substitution, omission or otherwise) outside the scope of Services contemplated under this Contract to:

(i) the contractual agreed performance standards; or

(ii) the Plant.

Change in Law: means the coming into effect after the Execution Date of:

(i) any addition, modification or amendment of any Applicable Laws; and

(ii) any applicable judgment of a relevant court of law made after the date of the Contract which changes a precedent and adversely and materially affecting the Services and/or the Plant;

provided that Changes in Law shall not include changes in paragraphs (i) and (ii) above relating to Tax.

Change Report: has the meaning ascribed to it in **<u>Article 6.1.2.</u>**

Compensation: has the meaning ascribed to it in **<u>Article 10.1</u>**.

Construction Defect: means any defect in any of the Plant or anything installed on or under the Site attributable to:

(i) defective design;

(ii) defective workmanship or defective materials, plant or machinery used in such construction having regard to standards and codes of practice current at the date of construction of the Plant;

(iii) defective installation of anything in or on the Site including but not limited to Plant, but not extending to damage of loose equipment;

(iv) defective preparation of the Site on which the Plant is constructed;

(v) defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions; or

(vi) any latent defect *(vice caché).*

Contract: has the meaning ascribed to it in Paragraph I of the Recitals.

Control: refers to control within the meaning of Article L. 233-3 of the French Commercial Code (and the verb to Control and the various words derived therefrom shall be interpreted on the basis of the aforementioned concept of Control).

CRE: has the meaning ascribed to it in Paragraph A of the Recitals.

CRE Contract: refers to the contract for purchase by EDF of electrical energy entered into on **[●]** between SVD 19 and EDF (including both general and specific terms), the Call for Tender, its Specifications and SVD 19's tender to the Call for Tender.

Dalkia's Representative: has the meaning ascribed to it in **Article 4.6**.

EDF: refers to Electricité de France.

EE: has the meaning ascribed to it in **Article 10.1**.

ETotal: has the meaning ascribed to it in **Article 10.1**.

ETR: has the meaning ascribed to it in **Article 8.3**.

Excluded Items: refers to (i) any items to be replaced or repaired which are not mentioned in **Schedule 6** to this Contract and (ii) the replacement or repair which exceeds five million euros (€5,000,000) per incident requiring replacement or repair.

Excusing Cause: has the meaning ascribed to it in **Article 11.1**.

Execution Date: means the date on which this Contract is validly executed by both Parties.

External Biomass: refers to any biomass other than Internal Biomass.

Factory: has the meaning ascribed to it in Paragraph D of the Recitals.

FM0ABE0000: has the meaning ascribed to it in **Article 10.2**.

FM0ABE0000$_0$: has the meaning ascribed to it in **Article 10.2**.

***Force Majeure* Event:** has the meaning ascribed to it in **Article 24.1**.

Good Operating Practices: means the standard of skill, care and diligence to be expected of a prudent and experienced operator in the operation of plant such as the Plant and undertaking services such as the Services which shall include relevant internationally recognised practices, standards and methods generally accepted by the thermal energy and electricity co-generation industry and shall include (without limitation) in relation to the Plant taking all reasonable steps to ensure that:

(i) adequate materials, resources and supplies are available to meet the Plant's needs under a range of conditions that ought reasonably to be anticipated by an experienced operator;

(ii) sufficient operation, maintenance and safety personnel are available and are adequately experienced, competent and qualified under Applicable Laws and trained to operate and maintain the Plant and provide the Services properly, efficiently and in accordance with the provisions of this Contract, manufacturer's guidelines and specifications; and

(iii) any equipment is operated in a manner consistent with what is expected from a prudent and experienced operator, and safe to workers, the general public and the environment.

Government Authorisations: means any consent, permission, licence, authorisation, approval or certificate issued or to be issued by any Government Entity:

(i) applicable to either Party, for the performance of the Services; or

(ii) required by SVD 19 to own, operate and finance the Plant; or

(iii) required in order to comply with Applicable Laws.

Government Entity: means any national, provincial or local legislature or government of the Republic of France or of the European Union, and any ministry, department, agency, authority or commission of any national, state or local government of the Republic of France or the European Union or such other similar entity.

Hazardous Substances: means any item or substance, including a component thereof, or any preparation or component thereof containing such a substance or combination of any substances, which:

(i) would cause harm to or have a deleterious effect on the environment or the presence of which has to be notified by virtue of any Applicable Law to a regulatory authority either particularly or generally; or

(ii) is categorised or listed under any Applicable Laws as being prescribed or prohibited or restricted or as requiring precautions to be taken in the use or keeping thereof.

ICHTrevTS: has the meaning ascribed to it in **Article 10.2**.

$ICHTrevTS_0$: has the meaning ascribed to it in **Article 10.2**.

Intellectual Property: means all current and future registered or unregistered trademarks, service marks, patents, registered designs, utility models, applications for any of the foregoing, database rights, software, unregistered designs, control systems, rights in inventions, know-how or any other intellectual property subsisting in the Plant or the Services.

Internal Biomass: refers to the biomass supplied by Dalkia to SVD 19 under the SVD 19 Transformation Contract.

Land: means the land on which the Plant is erected and the usufruct of which is granted by SKCP to SVD 19 in accordance with the Usufruct Contract.

Notice of Change: shall have the meaning ascribed to it in **Article 6.1.1**.

Operating Electricity: refers to the difference between (i) the total electrical power generation by the Plant and (ii) the sum of (a) the Transformation Electricity and (b) the electricity considered to be generated using Internal Biomass, in accordance with the formula provided under **Article 10.1**.

Operating Year: means the period of one (1) calendar year commencing from the 1st of January and ending at midnight of 31st of December every calendar year. For purposes of the first Operating Year, the period shall be from the Execution Date until 31st of December of the same calendar year. In relation to the final Operating Year, the period shall be from 1st of January of that calendar year until the date of termination or non renewal of this Contract.

P_0: has the meaning ascribed to it in **Article 10.1**.

Penalties: has the meaning ascribed to it in **Article 12.1**.

Personnel:	refers to the personnel of Dalkia, or of any of its subcontractors or its supplier, in charge of working on the Plant to provide the Services.
Planned Maintenance:	means the shutdown or non-availability of equipment at the Plant used for the production and supply of the Services which has been accounted for by Dalkia in a maintenance program.
Plant:	refers to the Utilities generation facilities and equipment erected on the Site by SVD 19, and owned by SVD 19, with an installed electrical power capacity of 63 MW, consisting, in particular, of the biomass boiler, two steam turbines, and all of their auxiliary equipment. The Plant facilities are described in **Schedule 2**.
Project Contracts:	has the meaning ascribed to it in **Article 3**.
Primary Fluids:	refers to all of the fluids (Black Liquor Steam, Internal Biomass, etc.) delivered by Dalkia to SVD 19 under the SVD 19 Transformation Contract for the purposes of production of the Utilities.
RB:	has the meaning ascribed to it in **Article 10.1**.
RE:	has the meaning ascribed to it in **Article 10.1**.
Real Property Development Contract:	refers to the real property development contract entered into [on the date hereof] between Dalkia and SVD 19, pursuant to which Dalkia has been mandated by SVD 19 to proceed with the execution of the Plant construction program.
Revision Factor M:	has the meaning ascribed to it in **Article 10.2**.
RT:	has the meaning ascribed to it in **Article 10.1**.
Services:	has the meaning ascribed to it in **Article 2**.
Site:	refers to the industrial site of SKCP located at the Facture plant in Biganos (33380) on which the Factory, the Plant and SKCP's administrative offices are located.
SKCDP:	has the meaning ascribed to it in Paragraph D of the Recitals.
SKCDP Biomass Supply Contract:	has the meaning ascribed to it in Paragraph D of the Recitals.
SKCP:	has the meaning ascribed to it in Paragraph C of the Recitals.
SKCP Transformation Contract:	has the meaning ascribed to it in Paragraph D of the Recitals.
Specifications:	refers to the Call for Tender specifications regarding the facilities for electricity generation using biomass, published by the CRE,

	and which are contained in **Schedule 1**.
Suspension Cause:	has the meaning ascribed to it in **Article 11.2**.
Tax or **Taxes:**	means all forms of present or future taxation, duties, imposts, levies, rates, deductions, charges and withholdings imposed, assessed or charged by any Government Entity including any penalties and interest relating thereto, as may be applicable.
SVD 19 Biomass Supply Contract:	refers to the biomass fuel supply contract executed [on the date hereof] by the Parties.
SVD 19 Framework Contract:	has the meaning ascribed to it in Paragraph F of the Recitals.
SVD 19's Representative:	has the meaning ascribed to it in **Article 5.5**.
SVD 19 Transformation Contract:	has the meaning ascribed to it in Paragraph F of the Recitals.
Transformation Electricity:	refers to the electricity generated by the steam flows exchanged pursuant to the SVD 19 Transformation Contract, and determined in accordance with the formula provided under **Article 8.3**
Usufruct Contract:	has the meaning ascribed to it in Paragraph G of the Recitals.
Utilities:	refers to all of the fluids (including the low pressure steam, the medium pressure steam, etc.) delivered under the SVD 19 Transformation Contract.
V30b:	has the meaning ascribed to it in **Article 8.3**.
V13b:	has the meaning ascribed to it in **Article 8.3**.
V4b:	has the meaning ascribed to it in **Article 8.3**.
VEG:	has the meaning ascribed to it in **Article 8.3**.
Waste:	waste including any substance, material, effluent or article that is controlled or otherwise specifically addressed in Applicable Laws or any unwanted or discarded or surplus substance, material, effluent or article.

Article 1.2 Interpretation

In this Contract, except where the context otherwise requires or expressly states:

(i) the expression "*this Contract*" or any similar expression shall comprise the Recitals, Articles, Paragraphs and Schedules of this Contact, to which the Parties hereby attribute contractual value, and includes any supplemental written agreement thereto as may be executed and be in force from time to time or any time;

(ii) terms employed in the plural shall apply both to the whole set of items so defined, as well as to one or more of the items taken individually. The definitions provided for a term in the plural shall also apply when said term is employed in the singular, and *vice versa*;

(iii) definitions which are provided for a noun shall apply *mutatis mutandis* to verbs, adjectives and adverbs that have the same root, and *vice versa*;

(iv) reference to Recitals, Articles, Paragraphs and Schedules are to be construed as references to Recitals, Articles, Paragraphs, and Schedules of this Contract, unless otherwise provided herein;

(v) words applicable to natural persons include any body of persons, company, corporation, firm or partnership incorporated and *vice versa* and that person's or those persons' legal personal representatives, successors and permitted assigns;

(vi) words importing any gender shall include any other gender;

(vii) reference to this Contract or any other agreement or document includes permitted variations, amendments, replacements, novations or supplements to this Contract (including the Schedules) and, as the case may be, such other agreement or document;

(viii) the headings to the Articles of this Contract are for convenience of reference only and shall not affect the interpretation and construction thereof;

(ix) reference to any time of day is a reference to time or calendar day in Paris, France.

ARTICLE 2 PURPOSE OF THE CONTRACT

The purpose of this Contract is to set out the terms and conditions according to which SVD 19 entrust Dalkia with the services described in **Article 4** for the operation and maintenance of the Plant (the "**Services**") and according to which Dalkia guarantees to SVD 19 certain level of performance of the Plant as specified in **Article 8**.

ARTICLE 3 CRE CONTRACT AND PROJECT CONTRACTS

Dalkia acknowledges that it is fully aware of the content of the CRE Contract.

In addition, SVD 19 has in relation to the operation of the Plant entered into the following agreements (the "**Project Contracts**"):

(i) the SVD 19 Framework Contract,

(ii) the SVD 19 Transformation Contract,

(iii) the SVD 19 Biomass Supply Contract,

(iv) the Real Property Development Contract,

(v) the Usufruct Contract,

(vi) the metering service agreement between SVD 19 and RTE EDF Transport, and

(vii) the mirror agreement to the connection grid agreement between SVD 19 and SKCP.

Dalkia and SVD 19 acknowledge that they are fully aware of the content of the Project Contracts.

The Project Contracts mentioned in paragraphs (i) to (v) above were negotiated by Dalkia and KKR, ultimate controlling shareholder of [Bidco] on behalf of SVD 19.

The Project Contracts mentioned in paragraphs (vi) to (vii) were negotiated by SVD 19 while part of the Dalkia Group.

Dalkia represents that it has full knowledge of the Plant, the Site, their technical characteristics as a contractor of the Plant and operator of the Plant since its commissioning and until the Execution Date.

Consequently, Dalkia acknowledges that the CRE Contract, the Project Contracts and the technical specifications of the Plant allow Dalkia to perform its Services in accordance with its obligations under this Contract.

Dalkia liabilities for matters relating to the CRE Contract shall be governed exclusively by the Penalties set forth in **Articles 12** and **14**.

ARTICLE 4 DESCRIPTION OF THE SERVICES

Article 4.1 General obligations

Dalkia shall perform the Services in compliance with:

(i) Applicable Laws;

(ii) Government Authorisations;

(iii) all health, safety and environmental standards with which Dalkia is bound to comply;

(iv) Good Operating Practices;

(v) the CRE Contract;

(vi) the Project Contracts;

(vii) operation and maintenance manuals of the Plant and equipment used to perform the Services, as well as recommendations from suppliers and manufacturer of said Plant and equipment;

(viii) request of insurers, provided that such request is considered as reasonable by Dalkia; and

(ix) reasonable instructions from SVD 19, without prejudice to, and to the extent permitted by, the provisions of **Article 6** below regarding Changes or **Article 9** below regarding Specific Use of the Backup, and provided that such instructions comply with Government Authorisations and Applicable Laws.

Article 4.2 Scope of the Services

The Services shall include the performance by Dalkia of the following services:

(i) routine operation maintenance of the Plant, consisting in performing daily monitoring and supervision and routine maintenance of the Plant;

(ii) major maintenance services, including scheduled and unscheduled maintenance, which cover repair and overhaul operations. Repair and overhaul work shall be performed, at Dalkia's sole election, by repair or replacement with identical items (or, failing that, equivalent items with the same technical performance);

(iii) in the event of a SKCP Factory Closure (as defined in the SVD 19 Framework Contract[1]), discharging waste water and rain water and maintaining corresponding purification and collections systems for assets owned by SVD 19;

(iv) processing and handling of ashes other than ashes resulting from the Internal Biomass supplied under the SVD 19 Transformation Contract;

(v) security *(gardiennage)* and access control for the Plant;

(vi) ensuring compliance with the supply plan approved in connection with the CRE Contract, as regards External Biomass;

(vii) supply of Auxiliary Equipment Electricity necessary for operation of the Plant;

(viii) supply of natural gas necessary for operation of the Plant; and

(ix) more generally, provision of advice and recommendation to SVD 19, considering in particular Good Operating Practices, so as to put SVD 19 in a position to take proper and timely decision on the operation of the Plant.

Unless otherwise provided herein, the Services shall include taking such actions as are necessary to enable SVD 19 to perform its obligations under the Project Contracts and the CRE Contract.

It is agreed that, in the event of SKCP's Factory Closure (as defined in the SVD 19 Framework Contract) the Services shall include operation and maintenance of the SKCP assets made available to SVD 19 under easements granted by SKCP under the Usufruct Contract (e.g. storm basin, gas pipe, 63 Kv switch yard, electric feeding cable and trucks weighing station), but do not extend to any capital or investments costs to be incurred.

The Services shall be performed for the purpose of achieving and maintaining over the term of the Contract the Plant's technical performance characteristics, in a manner which shall be consistent with Dalkia's obligations under this Contract.

The Parties shall cooperate and meet each other on a regular basis in order to allow SVD 19 to optimize the electricity production of the Plant in taking into account relevant concerns expressed by Dalkia with respect to the performance of the Services.

Dalkia shall communicate one (1) day in advance at 9.30 am Paris time at the latest to SVD 19's Representative the previsional plan of electricity production for the day after.

Following receipt of such plan, the SVD 19's Representative shall have six (6) hours to give instructions to Dalkia to change such production plan.

If such instruction is given, any performance by Dalkia of this instruction shall exonerate Dalkia from bearing any Penalty, indemnity or liability whatsoever as a result of the non compliance by SVD 19 with the terms of the CRE Contract and the SVD 19 Transformation Contract, to the extent that such

[1] [Definition of SKCP Factory Closure must remain inserted in the SVD 19 Framework Contract to that end.]

Penaly, indemnity or liability directly results from the application of such instructions and the non compliance is not caused by fault or negligence of Dalkia in implementing the instruction.

Article 4.3 **Exclusions**

The Services shall not include:

(i) any replacement or renewal, as well as any modification of all or part of the Plant justified by a Change in Law, a change in SVD 19's operating parameters and/or in the specifications and/or performance characteristics required by SVD 19;

(ii) any Excluded Items. Should any capital expenditure or increased operating costs be required or result from matters and works falling within the scope of the Excluded Items, such matters and works shall be borne by SVD 19, pursuant to **Article 6.1**, for any portion of the costs which is in excess of five million euros (€5,000,000) with Dalkia being responsible for any portion of the costs up to five million euros (€5,000,000);

(iii) any repair or overhauls in the event of damage, breakdowns or failures that are caused by or result from the actions of SVD 19 or a *Force Majeure* Event, as defined in **Article 24**;

(iv) any repair or overhauls in the event of damage, breakdowns or failures that are caused by a third party (including for the avoidance of doubt SKCP or SKCDP) outside the footprint of the Plant and which affects the Plant or the Land; and

(v) as regards new equipments, any repairs or overhauls further to defects and damage covered by the contractual warranties or legal liability of SVD 19's manufacturers or suppliers other than Dalkia.

Should any cost (whether capital or operating) be required or result from matters and works above, such matters and works shall be borne by SVD 19. If, however, Dalkia performs work in the situations contemplated above, Dalkia shall be entitled to reimbursement by SVD 19 for the expenses incurred in this regard, but only to the extent Dalkia had obtained SVD 19's prior written agreement on such expenses before starting said work.

Article 4.4 **Consumable supplies, spare parts, tools and equipment**

Dalkia shall supply, at its expense, new or reconditioned replacement spare parts and the consumable items necessary for performance of the Services, in the necessary quantities.

Spare parts shall become the property of SVD 19 as from the moment when they are installed on the Plant.

Any part uninstalled and removed or reconditioned shall remain the property of Dalkia, unless otherwise agreed by the Parties.

In light of its experience and the location of the Plant, Dalkia has established and shall maintain a stock of spare parts which shall be suitable in terms of specifications, and sufficient in terms of quantities.

Said parts shall be stored by Dalkia in facilities on the Land. By entering into this Contract, SVD 19 has authorized Dalkia to use such facilities.

The storage of said spare parts owned by Dalkia shall be under Dalkia's supervision, and at its own risk.

Tools and equipment for the dismantling and assembly of facilities or equipment shall be supplied by Dalkia at the time of maintenance service work.

Article 4.5 Government Authorisations

Dalkia represents and warrants that, on the Execution Date, all necessary Governement Authorisations and other consents, licenses, approvals, permits or other authorisations that are required of it pursuant to the Applicable Laws for the provision of the Services have been duly obtained by Dalkia. Dalkia acknowledges that such Government Authorisations when combined with the Government Authorisations held by SVD 19 as of the date hereof allow Dalkia to perform its Services hereunder.

Dalkia shall be responsible for obtaining (and thereafter complying with) any Governement Authorisation and other consent, license, approval, permit or other authorisation that is required pursuant to the Applicable Laws for the purpose of providing the Services and in particular all consent in connection with its capacity as operator under Classified Facilities *(exploitant ICPE)*.

SVD 19 shall provide all reasonably required assistance and co-operation to Dalkia in obtaining all Governement Authorisations and other consents, licenses, approvals, permits or other authorisations required for the purpose of providing the Services.

Dalkia shall be under a duty to follow-up and monitor possible legislative, regulatory developments and relations with Government Entities which could result in a Change in Law:

(i) to the extent it affects the performance of the Services; or

(ii) to the extent it affects Government Authorisations and other consents, licenses, approvals, permits or other authorisations in connection with the Plant.

Consequently, Dalkia shall, in a reasonable timely fashion upon occurrence of such Change in Law notify SVD 19 and provide SVD 19 with the advice and recommendations on the action to be taken in this respect, with the same level of care Dalkia exercises for other plants it owns or operates.

Article 4.6 Dalkia’s Representative

For the purposes of this Contract, Dalkia shall:

(i) designate a competent, qualified and experienced employee to be Dalkia's representative (the “**Dalkia's Representative**”) who shall be authorised and empowered to act for and on behalf of Dalkia in connection with all matters concerning this Contract, including Dalkia’s obligations under it, provided that the Dalkia's Representative shall have no power to amend the terms of this Contract or waive any right, power or privilege of Dalkia under this Contract;

(ii) notify SVD 19 in writing of the designation and particulars of Dalkia’s Representative and any replacement thereof, it being specified that the first Dalkia's Representative shall be [•]; and

(iii) upon request by SVD 19, provide SVD 19 with evidence of the competency, qualification and experience of the Representative.

Article 4.7 Information and reporting requirements

Article 4.7.1 General

Dalkia must keep and maintain in accordance with Good Operating Practices all such information and records necessary to provide accurate and complete information to SVD 19 regarding the Plant and the performance and quality of the Services provided, and shall ensure that all such information and records are so kept for the duration of the Contract. Reporting requirements shall be further agreed by both Parties.

SVD 19 shall be entitled to complete any audit, to the extent that it does not adversely and materially affect the performance of the Services. The interval between two (2) audits by SVD 19 requiring assistance from Dalkia shall not be less than six (6) months.

Article 4.7.2 Operating reports

Within four (4) days following the end of every month, Dalkia shall communicate to SVD 19 the printout of reports generated by the control system.

The printout of reports shall contain all of the data necessary for SVD 19 to prepare invoices pertaining to the performance of the CRE Contract and the SVD 19 Transformation Contract.

Within fifteen (15) days following the end of every month, Dalkia shall prepare and communicate to SVD 19 an operating report that covers the past period, containing in particular figures regarding the Plant's operating time.

The operating report shall also contain all of the data necessary to prepare reports intended for any applicable Government Entity.

Dalkia shall also report to SVD 19 as soon as possible any significant change observed in the Plant's operating and utilization conditions, and any failure or malfunction detected. Any oral communication must be confirmed by a written document as soon as possible.

Article 4.8 <u>Access to the Land</u>

When on the Site, Dalkia's Personnel shall abide by SKCP's internal regulations and rules on health, safety and the environmental applicable on such Site. In this regard, Dalkia acknowledges receipt and being fully aware of said internal regulations and rules.

Dalkia shall provide twenty-four (24) hour per day access to the Plant for:

(i) the SVD 19's authorised employees; and

(ii) any other visitors authorised by SVD 19;

subject, in each case, to SVD 19 (a) giving to Dalkia reasonable prior notice of its intention to access the Plant and allow its visitors to access the Plant, and (b) ensuring that the person accessing the Plant shall comply with the Dalkia's security and safety policies and shall not operate, manipulate any equipment or otherwise interfere with the performance of Dalkia's obligations under this Contract or materially increase the costs of doing so.

All persons exercising such access shall be accompanied by a Dalkia's representative.

A plan of the Land and of the Site and the premises designated to accommodate operating, administrative, technical, and storage teams is contained in **<u>Schedule 8</u>** to the Contract.

Article 4.9 Operator's authority

Notwithstanding the existence of any other right granted to Dalkia under this Contract, Dalkia may in its sole discretion and acting reasonably as a prudent operator (and in way consistent with its obligations under this Contract), for the performance of the Services, and at its own cost:

(i) enter into such contracts for the performance of the Services or purchase of any equipment or asset as it considers necessary for the Plant to be able to meet its obligations under this Contract;

(ii) hire such persons or organisation as it may deem necessary to provide advice with respect to the Plant, including accountants, engineers, lawyers and other professionals and specialists;

(iii) determine the policies with regard to the method of performance of the Plant provided always that such policies do not violate the items listed in **Article 4.1** above; and

(iv) perform such other acts as it considers necessary for Dalkia to meet its obligations under this Contract.

Except as otherwise explicitly authorized under the Contract or approved in writing by a duly authorized representative of SVD 19, Dalkia shall not: (i) sell, lease, pledge, mortgage, encumber, convey, or make any license, exchange or otherwise transfer the Plant, nor any assets, items, parts or components belonging to SVD 19, nor (ii) make, enter into, execute, amend, terminate, modify or supplement any contract or agreement (including any labor or collective bargaining agreement, the CRE Contract and any Project Contracts) in the name or on behalf of SVD 19.

Article 4.10 Notices to be forwarded by Dalkia

Dalkia shall promptly forward to SVD 19 copies of all notices with respect to the Plant issued or received by it from any person after the Execution Date. If such notices require a decision to be made or action to be taken by SVD 19, Dalkia shall together with the copy of the forwarded notice provide related advice and recommendations, in due course on a timely basis, on the action to be taken, considering in particular Good Operating Practices.

This obligation shall not apply to notices received in the normal course of operation, which shall however be mentioned in the operating report.

Article 4.11 Invoicing under the CRE Contract and the SVD 19 Transformation Contract

Dalkia shall provide SVD 19 documents for the preparation by SVD 19 of any invoice under the CRE Contract and the SVD 19 Transformation Contract.

For the avoidance of doubt, SVD 19 shall be responsible for invoicing under the CRE Contract and the SVD 19 Transformation Contract, in accordance with applicable provisions of these contracts.

Article 4.12 Operating utilities

Dalkia shall ensure, for the entire term of this Contract, that there are valid and binding agreements in place for the supply to the Plant of the operating utilities (electricity, gas, water, sewage and telecommunication) so as to allow Dalkia to perform the Services on the Plant and the Land, SVD 19 having, in entering into this Contract, irrevocably authorized Dalkia to use the connections to such operating utilities, to the extent that they have been made available to SVD 19 under the SVD 19 Transformation Contract and/or under the Usufruct Contract.

Article 4.13 <u>Documentation and Information</u>

Dakia acknowledges that on the Execution Date it has in its possession all available technical or operational manuals, instructions, documents and records relating to the Plant. Dalkia shall prompltly remit to SVD 19 such technical or operational manuals, instructions, documents and records upon termination, expiry or cancellation of this Contract for any reason whatsoever.

Article 4.14 <u>Supply of feed water, raw water and telecommunication</u>

In the event of termination of the SKCP Transformation Contract, Dalkia shall be responsible for the supply to SVD 19 of feed and raw water under the characteristics and volumes specified in **<u>Articles 5.6.3</u>** and **<u>5.6.4</u>**, as well as for telecommunication.

ARTICLE 5 <u>COMMITMENTS OF SVD 19</u>

Article 5.1 <u>Consents to be obtained by SVD 19</u>

Subject to Dalkia's compliance with its obligations under **<u>Article 4.5</u>** above, SVD 19 shall be responsible for obtaining and/or renewing (as the case may be) all Government Authorisations and other consents, licences, approvals, permits and authorisations necessary for the performance of its obligations under this Contract and pay all fees associated with same.

Dalkia shall provide all reasonable assistance to SVD 19 in order to obtain and renew such Government Authorisations.

Article 5.2 <u>Access Rights</u>

For the purpose of performing the Services under this Contract efficiently and without disruption, and subject to the Personnel complying with safety rules and Site access control rules, SVD 19 irrevocably authorizes, by entering into this Contract, Dalkia’s Personnel to use all Access Rights.

SVD 19 undertakes not to disturb, interfere or hinder Dalkia's use of Access Rights.

Article 5.3 <u>On-Land facilities</u>

By entering, into this Contract, SVD 19 irrevocably authorizes Dalkia to use free of charge the following on-Land facilities, for the exclusive use of Dalkia, its employees and its subcontractors, representatives or agents, in connection with performance of the Services:

(i) suitable on-Land offices;

(ii) suitable storage space (including, without prejudice to the foregoing generality, storage space for consumables, tools, spares and equipment required in order to perform the Services); and

(iii) sanitary premises for personnel including locker rooms, showers, WC, parkings and washbasins,

to the extent such on-Land facilities exist as of the date hereof.

Dalkia acknowledges that the facilities existing on the Land on the Execution Date are suitable and sufficient so as to allow Dalkia to smoothly perform the Services.

Article 5.4 Notices to be forwarded by SVD 19

SVD 19 shall promptly forward to Dalkia copies of all notices of any kind with respect to the Plant (or that may be relevant to the provision of the Services or the performance of Dalkia's obligations under this Contract) issued or received by it from any person after the Execution Date.

If such notices require a decision to be made or action to be taken by SVD 19, Dalkia shall provide in a timely manner related advice and recommendations on the action to be taken, considering in particular Good Operating Practices.

Article 5.5 SVD 19's Representative

As from the Execution Date, SVD 19 shall appoint a competent, qualified and experienced employee to be SVD 19's representative (the "**SVD 19's Representative**").

SVD 19's Representative shall have full power and authority to:

(i) act on behalf of SVD 19 in connection with all matters concerning this Contract and/or the performance of the Services; and

(ii) give on behalf of SVD 19 any approval, certification or instructions which may be required from SVD 19 under this Contract. Any such approval, certification or instructions shall be binding on SVD 19, provided that SVD 19's Representative shall not have the right or power to reduce amend the terms of this Contract or waive any right, power or privilege under this Contract;

(iii) upon request by Dalkia, provide Dalkia with evidence of the competency, qualification and experience of the SVD 19's Representative.

SVD 19 shall inform Dalkia in writing of the designation and particulars of SVD 19's Representative and any replacement of SVD 19's Representative.

Article 5.6 Primary Fluids

Dalkia's commitments under this Contract are conditional upon SVD 19 maintaining available the Primary Fluids to Dalkia in accordance with the following terms, conditions, and procedures. For the purposes of this Article, SVD 19 shall be considered to have met its obligations of "maintaining available the Primary Fluids" once such Primary Fluids are delivered by Dalkia under the SVD 19 Transformation Contract at the relevant delivery points.

Article 5.6.1 Availability of Black Liquor Steam

a) Characteristics

HP steam supply point	CC80A 80 bar barrel in boiler 9
P & T measuring point	CC80A barrel feed line in boiler 9 (3 meters downstream from the barrel)
Nominal pressure at point of supply	81 bar
Pressure tolerance at point of supply	-5.0 b/+5.0 bar
Nominal temperature at point of supply	435 ° C
Temperature tolerance at point of supply	-5° C/+15° C
Maximum load variation range	25 t/h per minute

The chemical properties of the Black Liquor Steam shall be as follows:

Parameters	Values
Silica	< 0.02 mg/kg
Sodium (Na) + Potassium (K)	< 0.04 mg/kg
Chlorides	< 0.2 mg/kg
Total copper (Cu)	< 0.003 mg/kg
Iron (Fe)	< 0.02 mg/kg
Sulphates and sulphites	< 0.2 mg/kg
Na/PO4	2.3 to 3

b) Volumes

Fixed hourly rate at delivery point	186.7 t/h or 150.3 MW*
Maximum throughput at delivery point	220 t/h
Minimum throughput at delivery point	150 t/h
Black Liquor technical minimum Fuel oil technical minimum	Technical min 1: 100 t/h Technical min 2: 40 t/h

* Thermal power calculated as the difference between the enthalpy of the Black Liquor Steam and the enthalpy of the water output from hot well at 80° C.

Article 5.6.2 Availability of Internal Biomass

a) Characteristics

		SK				
Products		**Barks**	**Screening Fines**	**Paper sludge**	**Bark Particles**	**SK product Mix NCV**
State of preparation of fuels		Prepared	Prepared	Prepared	Prepared	
Immediate analysis						
Average Humidity	% of gross	53.0	51.0	70.0	53.0	**54.5**
Max Humidity	% of gross	58.0	56.0	75.0	58.0	**59.5**
Min Humidity	% of gross	46.0	45.0	50.0	46.0	**46.2**
Average ash content	% dry	9.20	0.80	50.00	28.00	**10.63**
Max ash content	% dry	12.00	1.50	60.00	35.00	**13.50**
Min ash content	% dry	5.00	0.20	40.00	20.00	**7.05**
Average density	kg/m3	280	250	330	280	**276**
Max Density	kg/m3	330	300	380	330	**326**
Min Density	kg/m3	230	200	280	230	**226**
gross average NCV	**MJ/kg of gross**	**7.33**	**8.18**	**0.60**	**5.45**	**6.65**
min gross NCV	MJ/kg of gross	6.05	7.04	-0.29	4.02	**5.42**
max gross NCV	MJ/kg of gross	9.24	9.55	3.41	7.49	**8.70**
Max N	% dry	< 0.500	< 0.600	< 1.000	< 0.600	**< 0.585**
Nominal S	% dry	0.036	0.009	0.535	0.026	**0.068**
S Max	% dry	< 0.050	< 0.030	< 1.000	< 0.050	**< 0.124**
Nominal Cl	% dry	0.015	0.005	0.024	0.015	**0.012**
Max Cl	% dry	< 0.030	< 0.010	< 0.050	< 0.030	**< 0.024**
Si	% dry	2.9	0.2	7.0	11.0	**2.699**
Na + K	% dry	0.17	0.07	0.87	0.11	**0.190**
Grading according to ISO 3310-2						
▫ Ratio of fines < 3.5 mm	% of gross					**< 35%**
▫ Particles < 63 mm	% of gross					**> 90%**
Maximum dimensions	mm					**200x50x25**

The delivery points and supply limits between the Parties are specified in **Schedule 11**.

b) Volumes

Products		SK Barks	Screening Fines	Paper sludge	Bark particles	SK product
State of preparation of fuels		Prepared	Prepared	Prepared	Prepared	
Annual Qty	t/year	110000	79000	30000	12200	**231 200**
Annual Qty	MWh/year	223 954	179 594	5 037	18 468	**427 053**
Average NCV	MWh/t	**2.04**	**2.27**	**0.17**	**1.51**	**1.85**

c) Return of Ash Produced by the Internal Biomass

Dalkia shall take direct responsibility under this Contract for the elimination of any ash for which SVD 19 is responsible under the SVD 19 Transformation Contract, in a manner which shall be consistent with the provisions of the SVD 19 Transformation Contract.

Article 5.6.3 Availability of feed water

SVD 19 shall maintain available to Dalkia a mixture of demineralized water and condensates. This water is intended as feed water for the biomass boiler, the Backup, and the injection desuperheaters.

a) Characteristics

The required characteristics for the aforementioned mixture are as follows:

measuring point for T and characteristics	Water feed line under the mixing tank (3 meters downstream of the tank)
Nominal temperature at point of supply	80 ° C
Temperature tolerance at point of supply	-5° C/+5° C
pH	8.5 to 9.5
Cationic conductivity of the mixture after processing	< 0.8 µS/cm as a monthly average
Dissolved oxygen	2.5 PPM before the de-aerator
Iron	< 0.02 mg /l
Silica (in SiO2)	< 0.02 mg/l
Copper	< 0.003 mg/l
Sodium + Potassium	< 0.04 mg/l before the de-aerator
Total hardness	0.02° F
TOC	<0.2 mg/l
Grease & oil	0 mg/l

b) Volumes

Nominal throughput at delivery point	85 t/h or 7.9 MW* (1)
Maximum throughput at delivery point	170 t/h
Minimum throughput at delivery point	4 t/h

* Thermal power calculated as the difference between the enthalpy of the mixture of demineralized water and condensates at 80° C (1) subject to the balancing of the exchanges of boiler water and steam.

Article 5.6.4 Availability of raw water

SVD 19 shall maintain raw water available to Dalkia. Said water is designated for use in:

(i) the cleaning of floors;

(ii) the cooling of effluents; and

(iii) the cooling of certain equipment that cannot be cooled by a closed circuit.

a) Characteristics

Volume measuring points	Meter on entry to the Plant
Average temperature at point of supply	15 ° C
Temperature tolerance at point of supply	-10° C/+20° C
pH	Comprised between 6.5 and 7.5
Suspended matter (SM)	<30 mg/l

b) Volumes

Average throughput at delivery point	3 m3/h
Maximum throughput at delivery point	35 m3/h
Annual volume	25,000 m3

Article 5.7 <u>Connection of the Auxiliary Equipment Electricity to the Plant</u>

SVD 19 shall maintain available the necessary electrical connection of the Plant's auxiliary equipment.

For the purposes of optimal cost-effectiveness, SVD 19 shall maintain available the connection of the auxiliary equipment of the Plant on the Site's internal network.

The purchase of Auxiliary Equipment Electricity through the aforementioned connection shall be borne by Dalkia.

a) Characteristics

- Power consumed: approximately 4.4 MW;

- Connection point: 63 kV bus bar (main connection) and 13.5 kV bus bar (final backup).

b) Volumes

Average power at delivery point	4.4 MWel
Maximum power at delivery point	5.4 MWel
Minimum power at delivery point	0 MWel

Article 5.8 <u>Electrical power transmission</u>

SVD 19 shall maintain electrical power transmission facilities available to Dalkia.

Article 5.9 <u>Metering</u>

A connection and metering plan is attached as **Schedule 4**[2] to the Contract.

Article 5.10 Stocks of spare parts

Upon termination of the Contract, for any reason whatsoever, SVD 19 undertakes to buy out Dalkia's spare parts stock at its net book value.

Article 5.11 Change in perimeter

In the event of termination of the SVD 19 Transformation Contract, for any reason whatsoever, the provisions of **Article 5.6** shall be terminated.

Article 5.12 Manufacturer and supplier warranties and guarantees

As regards new equipments installed after the Execution Date and to the extent (i) pertaining to matters falling within the scope of the Services and (ii) of the amounts for which Dalkia is liable under this Contract, SVD 19 shall hold the benefit of any and all manufacturers and suppliers warranties and guarantees for the sole benefit of Dalkia and shall:

(i) take such action and provide such assistance to Dalkia as may be reasonably requested by Dalkia in relation to the enforcement of such warranties and/or guarantees, which may include the making of claims and/or the raising of formal proceedings;

(ii) diligently and expeditiously raise and pursue a claim under the warranty or guarantee and keep Dalkia properly informed as to the progress of such claim; and

(iii) settle any claim under the warranty or guarantee only with the prior written consent of Dalkia, which shall not be unreasonably withheld or delayed.

ARTICLE 6 CHANGES TO THE PLANT OR THE SERVICES

Article 6.1 Changes proposed by SVD 19

Article 6.1.1 Notice of Change

SVD 19 may, at any time, issue to Dalkia a Change instruction (the "**Notice of Change**") requiring Dalkia to implement a Change.

A Notice of Change shall be accompanied by sufficient explanation and information to permit Dalkia to price the impact of the Change.

[2] Clause to be included in Schedule 4: « *In the event of failure of a meter, the invoiced quantity for the period from the date of the last meter reading before the failure and the date on which the meter is returned to proper working order shall be based upon the Plant and/or the Factory's consumption history, taking into account the seasonality of the Plant and/or the Factory's production levels.* »

Dalkia shall not be required to implement a Change where the implementation would:

(i) be contrary to any Applicable Laws, relevant health, safety and environmental standards, the Contract, the CRE Contract or any Project Contracts;

(ii) cause any consent, permit or Government Authorisation to be revoked or breached or require any additional consent, permit or Government Authorisation (or amendment to an existing consent, permit or Government Authorisation) which cannot be obtained;

(iii) be technically impossible or create material technical operational risks; or

(iv) render the insurances void, voidable or non applicable save where the relevant insurers agree to adjust the insurances.

In the cases listed in (i) to (iv) above, Dalkia shall give advice and recommandations to SVD 19 on the most appropriate actions to be taken in order to achieve the required Change in compliance with the above constraints.

Article 6.1.2 Change Report

Dalkia shall, as soon as reasonably practicable following receipt of a Notice of Change issued by SVD 19, supply SVD 19 with a report containing the following information (the "**Change Report**") together with, where appropriate, an explanation of the reasons:

(i) the capital costs which Dalkia reasonably expects to incur and the change in operational costs which Dalkia reasonably expects to incur should SVD 19 Change be implemented (providing with such estimate all necessary supporting calculations and information including detailed particulars of additional sums to be paid to Dalkia's sub-contractors and suppliers);

(ii) the proposed change to the Compensation to reflect any additional operational costs associated with the maintenance and repair of the Plant or performance of Dalkia's obligations under this Contract, or to reflect any change in Dalkia's risk profile;

(iii) proposals for mitigating the cost of the Change to SVD 19;

(iv) any impact that the carrying out of the Change may have on the performance of the Services;

(v) any relief from performance by Dalkia of its obligations under this Contract required during or as a result of implementation of the Change; and

(vi) any relevant advice and recommendations on the opportunity of the Change considering in particular Good Operating Practices.

Should SVD 19 agree with the terms of the Change Report, it shall within thirty (30) days of receipt of such report:

(i) notify its agreement to Dalkia; and

(ii) reimburse Dalkia for all increased operational costs incurred as a consequence of carrying out the Change as such costs are incurred to the extent and within the limits indicated in the Change Report and provided such costs are not included in the change in Compensation proposed pursuant to (ii) above and so as to ensure that Dalkia is not required to provide working capital in relation to the undertaking of the Change.

The Parties shall each acting in good faith use all reasonable endeavours to agree on the terms of the Change Report and, in particular, the proposed modifications of the Compensation.

Dalkia shall have no obligation to begin implementation of any Change proposed by SVD 19 (or pursuant to **Article 6.2**) until such time as the contents of the Change Report have been agreed or determined.

Any possible operational cost of the implementation of such Change shall be borne by SVD 19 to the extent and within the limits indicated in the Change Report; it being agreed that Dalkia shall pay back to SVD 19 any decrease of operational costs which would result from the Change.

For the avoidance of doubt, any capital cost incurred as a result of the Change proposed by SVD 19 shall be exclusively borne by SVD 19.

Article 6.2 Changes proposed by Dalkia

As part of its duty to advise SVD 19 on the operation of the Plant, Dalkia may propose any alteration, modification or extension of the Plant (whether by the addition of plant or alteration of existing plant or processes or otherwise) which would increase the productivity of the Plant and/or improve its efficiency or reliability.

Where Dalkia proposes such alteration, modification or extension, Dalkia shall, in making the proposal to SVD 19, provide details of the improvements that are anticipated to be achieved with the information referred to in **Article 6.1.2** (as if a Notice of Change had been issued by SVD 19).

Upon receipt of SVD 19's written consent to the proposal (which SVD 19 may refuse, in its absolute discretion, to give), Dalkia shall carry out the necessary expansion, capacity upgrading, alteration, modification or extension of the Plant.

SVD 19 shall bear all the capital and operational costs of such alteration, modification or extension to the extent and within the limits indicated in the Change Report; it being agreed that Dalkia shall pay back to SVD 19 any decrease of capital and operational costs which would result from the Change.

Article 6.3 Change in Law

Dalkia shall be under a duty to follow-up and monitor any possible legislative and regulatory developments which could result in a Change in Law affecting the Plant and/or the performance of the Services and keep SVD 19 informed of such possible developments on a regular basis through the operating reports. If such Change in Law occurs, Dalkia shall, in a timely fashion, notify it to SVD 19 and send to SVD 19 a Change Report in this regard.

In case of Change in Law, SVD 19 shall either take such action as it is necessary to comply with the Change in Law, or instruct Dalkia to do so. SVD 19 shall bear any cost related to work done to bring the Plant into compliance as a result of a Change in Law and any increased operating cost resulting from the Change in Law, and such costs can be reflected in the Compensation or financed directly by SVD 19, depending on the circumstances.

ARTICLE 7 EXCLUSIVITY GRANTED TO DALKIA

SVD 19 grants Dalkia, throughout the entire term of the Contract, an exclusivity with respect to (i) the operation of the Plant and (ii) the supply of the fuels or energy sources necessary to operate the Plant (including the External Biomass) and which are not supplied pursuant to the SVD 19 Transformation Contract, within the limit of the volumes guaranteed by Dalkia.

During the entire term of the Contract, SVD 19 shall not, without the prior written consent of Dalkia:

(i) perform itself (or through its Affiliates) the Services or any substantially similar services;

(ii) permit any third party to perform the Services or any substantially similar services.

In case of termination of the Contract, SVD 19 shall be entitled to appoint a new operator without breaching its obligations under this **Article 7**, provided that such new operator shall begin its duties as new operator upon expiry of the notice period set forth in **Article 23**.

ARTICLE 8 COMMITMENTS OF DALKIA

Article 8.1 Compliance with the terms of the CRE Contract

Dalkia undertakes that the following obligations assumed by SVD 19 under the CRE Contract, a copy of which is contained in **Schedule 1**, are performed in connection with the operation of the Plant, throughout the entire term of the CRE Contract.

Article 8.1.1 Compliance with the maximum percentage of fossil fuels

Dalkia guarantees that the portion of the incoming energy from fossil fuels will be in compliance with the CRE Contract and article 6.4 of the Specifications.

Article 8.1.2 Compliance with the Biomass supply plan

In compliance with the CRE Contract and article 6.4 of the Specifications, Dalkia undertakes that SVD 19 complies with the Biomass supply plan, submitted by SVD 19 pursuant to the Call for Tender (as amended from time to time) and approved by the local authority (*Préfet*), a copy of which is contained in **Schedule 5**.

Article 8.1.3 Compliance with the CRE efficiency and availability commitments

Dalkia undertakes that SVD 19 complies with the efficiency and availability commitments, in compliance with the CRE Contract and articles 6.3 and 6.5 of the Specifications.

Article 8.2 Compliance with the terms of the SVD 19 Transformation Contract

Article 8.2.1 Transformation commitment

As from the Execution Date Dalkia shall operate the Plant so as to cause it to transform the Primary Fluids made available by SVD 19 into Utilities under the following conditions.

a) Characteristics of Utilities

- Sweeping Steam

Process steam delivery point	CH10 50 bar sweeping steam collection vessel in boiler building 10
P & T measuring point	CH10 50 bar sweeping steam collection vessel in boiler building (3 meters before the barrel)
Nominal pressure at delivery point	25 bar abs

Pressure tolerance at delivery point	-1.0 b/+5 b
Nominal temperature at delivery point	325 ° C
Temperature tolerance at delivery point	-0° C/+75° C

The sweeping steam must conform to the feed water characteristics and be free of solid or liquid foreign bodies.

- 13 Bar steam

The 13 bar steam is consumed by the Factory and supplies mainly the MAP 5 and MAP 6 paper production machines and the digester.

Steam delivery point	CC13 12 bar barrel at the existing Plant turbine
P & T measuring point	CC13 barrel feed line (3 meters before the barrel)
Nominal pressure at delivery point	13 bar abs
Pressure tolerance at delivery point	-1.0 b/+1.0 b
Nominal temperature at delivery point	220 ° C
Temperature tolerance at delivery point	-20° C/+20° C
Maximum load variation range	20 t/h per minute

The 13 bar steam must conform to the feed water characteristics and be free of solid or liquid foreign bodies.

- 4 Bar steam

The 4 bar steam is consumed by the Factory and mainly supplies the digester and the evaporator.

Steam delivery point	CC3 3 bar barrel at the existing Plant turbine
P & T measuring point	CC3 barrel feed line (3 meters before the barrel)
Nominal pressure at delivery point	3.8 bar abs
Pressure tolerance at delivery point	-0.2 b/+0.2 b
Nominal temperature at delivery point	160 ° C
Temperature tolerance at delivery point	-10° C/+20° C
Maximum load variation range	10 t/h per minute

The 4 bar steam shall comply with the feed water characteristics and be free of solid or liquid foreign bodies.

- Wastewater

Wastewater specifically consists of washing water, cooling water, and blowdown discharge water.

Wastewater, to the extent that it complies with applicable environmental regulations, shall be discharged, with a limit of 60,000 cubic meters per year, excluding rainwater, into the Site's general collection system (unitary system) so that it can be treated at the Site's wastewater purification plant.

In this regard, Dalkia undertakes, at all times during the term of the Contract, to take the necessary action to ensure the wastewater's conformance to the acceptance criteria of the aforementioned wastewater purification plant. SVD 19 shall maintain available the system and the wastewater purification plant, as long as available under the SVD 19 Transformation Contract.

The wastewater discharge restrictions are specified below:

- pH: between 6 and 9
- Temperature: less than 60° C
- COD: less than 180 mg/l
- BOD: less than 75 mg/l
- SM: less than 75 mg/l
- Hydrocarbons: less than 5 mg/l

- Rainwater

Rainwater collected on the roofs shall be discharged directly into the natural environment by Dalkia. SVD 19 shall make available the separation system, which currently makes it possible, in the event of fire, to send the roof rainwater to the Site's collection system.

Dalkia shall discharge the rainwater collected from roads into the Plant's oil separation and sedimentation system, into the Site's collection system (which is SVD 19's responsibility).

The restrictions for discharge into the Site's collection system are as follows:

- pH: between 6 and 9
- Temperature: less than 60° C
- COD: less than 180 mg/l
- BOD: less than 75 mg/l
- SM: less than 75 mg/l
- Hydrocarbons: less than 5 mg/l

- Electricity transmitted through the Site's networks

The quality criteria to be met at the delivery points are as follows (values valid in island mode):

- Voltage, 13.5 kV network (minimum 13.2 kV and maximum 13.8 kV);
- Voltage, 63 kV network (minimum 63 kV and maximum 66 kV);
- Factory network COS phi: greater than or equal to 0.92;
- Frequency, Factory 13.5 and 63 kV networks: minimum of 49.5 Hz and maximum of 50.5 Hz.

The single-line diagram is contained in **<u>Schedule 12</u>** to the Contract.

b) Availability of Utilities

- Sweeping steam

Fixed hourly rate at delivery point	13 t/h or 9.8 MW *
Max output at delivery point	20 t/h
Min output at delivery point	0 t/h

* Thermal power calculated as the difference between the enthalpy of the sweeping steam and the enthalpy of the water from the mixing tank at 80° C.

- 13 Bar steam

Fixed hourly rate at delivery point	157 t/h or 110 MW*
Max output at delivery point	200 t/h
Min output at delivery point	50 t/h

* Thermal power calculated as the difference between the enthalpy of the 13 bar steam and the enthalpy of the water from the mixing tank at 80° C.

- 4 Bar steam

Fixed hourly rate at delivery point	92.2 t/h or 62.8 MW*
Max output at delivery point	110 t/h
Min output at delivery point	60 t/h

* Thermal power calculated as the difference between the enthalpy of the 4 bar steam and the enthalpy of the water from the mixing tank at 80° C.

- Non-eligible electricity

Fixed hourly rate at delivery point	11 MWel
Max output at delivery point	15 MWel
Min output at delivery point	0 MWel

c) Availability of Utilities

Annual steam availability commitment:

Dalkia undertakes to supply steam 99.7% of the time, except during scheduled Site maintenance periods or Planned Maintenance, and subject to the supplying of Black Liquor Steam (BLS).

Article 8.2.2 Other commitments of Dalkia

a) Reactive energy

Dalkia undertakes not to degrade the Site's situation with respect to reactive energy and undertakes to compensate cost overruns related to any Site reactive energy consumption discrepancies due to the operation of the Plant, calculated in relation to the reference situation indicated in **Schedule 8**, updated as necessary.

b) Management of the Site's electrical islanding

Dalkia undertakes to implement islanding at the 13.5 KV bus bar in order to protect and safeguard the Site's priority consumptions.

Dalkia shall carry out the islanding at the 63 KV bus bar.

c) Backup

Dalkia undertakes to maintain and place in service the Backup that makes it possible to replace the steam supplied from the biomass boiler in the event of the latter's shutdown or failure, and to bring the Backup on line in such circumstances, except during Planned Maintenance.

Article 8.3 Compliance with the annual electrical power generation volume

Dalkia guarantees that the Plant will generate a minimum annual electrical power volume ("**VEG**") determined in the following manner:

$$VEG = 340 \text{ GWh} + ETR$$

where:

"**ETR**" refers to theoretical electrical power generation by taking into account the steam flows exchanged with the SKCP Factory:

ETR = 0.28534 x BLS – 0.24097 x V30b – 0.19299 x (V13b – VBB) - 0.16121 x V4b[3]

where:

- "**VBB**" means additional steam due to the Backup Specific Use under instructions from SVD 19;
- "**BLS**" refers to the quantity of heat provided by Black Liquor Steam (in MWh);
- "**V30b**" refers to the quantity of heat provided by 30 bar steam supplied by the Plant under the SVD 19 Transformation Contract (in MWh);
- "**V13b**" refers to the quantity of heat provided by 13 bar steam supplied by the Plant under the SVD 19 Transformation Contract (in MWh); and
- "**V4b**" refers to the quantity of heat provided by 4 bar steam supplied by the Plant under the SVD 19 Transformation Contract (in MWh).

Numerical Applications:

- Calculation of ETR

Considering the following average annual supplies:

	t/h	MW	Availability
Black Liquor Steam	186.7 t/h	150.3 MW	99.7%
25 bar steam	13.0 t/h	9.8 MW	99.7%
13 bar steam	157.0 t/h	110.0 MW	99.7%
4 bar steam	92.2 t/h	62.7 MW	99.7%

On the basis of a facilties opening time of 8580 hours, the ETR is as follows:

	MWh	Coefficient
Black Liquor Steam	1 285 705	0.28534
25 bar steam	83 832	0.24097
13 bar steam	940 969	0.19299
4 bar steam	536 352	0.16121

ETR = 78,6 GWh

- Calculation of the VEG

VEG = 340 GWh + ETR
VEG = 418.6 GWh

Article 8.4 Corrective Plan

[3] Exact conversion coefficients to be determined by the Parties on the basis of the tests by year-end.

In the event of non-compliance with the commitments stipulated in **Article 8.1**, that requires SVD 19 to file a corrective plan with the local authority (*Préfet*), Dalkia shall:

(i) prepare a proposal of such corrective plan for SVD 19's approval, and

(ii) once approval of SVD 19 on the corrective plan has been obtained, assist SVD 19 in submitting such plan to the local authority (*Préfet*).

Both Parties shall cooperate in a diligent manner so that the corrective plan be submitted to the local authority (*Préfet*) within the deadlines set out by the CRE Contract and the Specifications.

Article 8.5 Change in perimeter

In the event of the termination of the SVD 19 Transformation Contract, for any reason whatsoever, Dalkia's commitments under **Article 8.2** shall be terminated.

ARTICLE 9 BACKUP SPECIFIC USE

Article 9.1 Principle

At any time, SVD 19 may request Dalkia to make a use of the Backup, other than as contemplated under the SVD 19 Transformation Contract, so as to supply steam to SKCP through the Backup and to use accordingly the 42MW turbine as a pure condensing turbine (the "**Backup Specific Use**").

To this end, SVD 19 shall serve to Dalkia a notice requesting the Backup Specific Use and the period contemplated for such Backup Specific Use.

Dalkia shall make its best efforts to perform the Backup Specific Use for the period requested by SVD 19, subject to a minimum notice of eight (8) hours as from the notification served by SVD 19.

In the event that the request of Backup Specific Use from SVD 19 shall conflict with the commitments towards SKCP under the SKCP Transformation Contract or towards Dalkia under the SVD 19 Transformation Contract (notably as regards the use of the Backup), such commitments shall prevail.

Article 9.2 Additional Payment

Should the Backup Specific Use be performed by Dalkia upon SVD 19's request, SVD 19 shall pay to Dalkia an additional payment (the "**Additional Payment**") amounting to:

(i) the Gas Cost of any gas consumed (excluding connection fee), as a result of the Backup Specific Use;

plus

(ii) any CO_2 related costs (0.2052 K per kWh NCV of gas)[4];

plus

(iii) RB

Where:

[4] To be confirmed.

"**Gas Cost**" means the gas cost proposed by Dalkia to SVD 19 before the beginning of each calendar quarter and valid for such calendar quarter (such gas cost taking account of a maximum volume of gas to be freely proposed by Dalkia at its sole discretion), provided such cost does not exceed **[●]**% of the market price as determined pursuant to the **[●]** index.

"**RB**" means thirty percent (30%) of the incremental revenue generated or received by SVD 19 (excluding VAT) as a result of the Backup Additional Use, after deduction of the costs referred to in paragraphs (i) and (ii) above.

For the purposes of this **Article 9**, SVD 19 agrees that the selling price of the electricity produced thanks to the Backup Specific Use shall not be less than **[●]**% of the the market price as determined pursuant to the **[●]** index, unless otherwise agreed between the Parties.

The Additional Payment shall be invoiced by Dalkia and paid by SVD 19 in accordance with the provisions of **Article 10.3**.

Article 9.3 Exemption

Any performance by Dalkia of the Backup Specific Use under the terms of this **Article 9** shall exonerate Dalkia from bearing any Penalty, indemnity or liability whatsoever as a result of the non compliance by SVD 19 with the terms of the CRE Contract (e.g. the efficiency commitment or the maximum percentage of fossil fuels commitment), to the extent that such Penalty, indemnity or liability directly results from recourse to the Backup Specific Use and the non-compliance is not caused by fault or negligence of Dalkia in the implementation of the Backup Specific Use.

ARTICLE 10 FINANCIAL PROVISIONS

Article 10.1 Compensation

As compensation for the performance of the Services, SVD 19 shall pay Dalkia the sole comprehensive monthly compensation P (the "**Compensation**"), determined in the following manner:

$$P = P_0 \times M + RB$$

where:

P_0 indicates the following amount:

$$P_0 = (65 \times EE) + ((RE + RT) / 12)$$

where:

- **"EE"** indicates the Operating Electricity volume stated in MWh, equal to:

$$EE = ETotal - ETR - 0.2555 \times BI$$

- **"ETotal"** refers to total monthly electrical power generation by the Plant (stated in MWh);
- **"ETR"** refers to Transformation Electricity, as calculated monthly by applying the formula provided under **Article 8.3** (stated in MWh), it being understood that the Parties agree, if necessary, to consider the changes necessary in order to take into account the Plant's actual operating modalities, as envisaged in the SVD 19 Transformation Contract;

- **"BI"** refers to the Internal Biomass volume consumed monthly by the Plant (stated in MWh NCV);

- **"RB"** as defined in **<u>Article 9.2</u>**;

- **"RT"** is the transformation compensation which is three million six hundred twenty-five thousand euros (€3,625,000) per annum, it being understood that, if the Factory is closed down or the SVD 19 Transformation Contract terminated or not renewed, RT shall be equal to 0.

- **"RE"** is the operation compensation which is one million five hundred fifty thousand euros (€1,550,000) per annum.

- **"EE"** may have a negative annual volume, but cannot be less than minus seventy-nine thousand six hundred and fifteen (-79,615) MWh per annum.

The Compensation is without prejudice to the specific compensation provided hereabove in **<u>Article 9.2</u>**, as applicable.

All Compensation amounts are exclusive of VAT.

Article 10.2 <u>Revision</u>

- Revision Factor M

The Compensation shall be determined on the basis of prevailing economic conditions as of January 1, 2007. The Compensation shall be revised on a monthly basis by applying the revision factor M (the "**Revision Factor M**") calculated in accordance with the following formula:

$$M = (0.43 \text{ x } ICHTrevTS / ICHTrevTS_0 + 0.57 \text{ x } FM0ABE0000/FM0ABE0000_0)$$

where:

- **"ICHTrevTS"** is, as of the Compensation determination date concerned, the value for the most recent known definitive value as of the 1st January of year N of the ICHTrevTS index, which has replaced the ICHTTS1 index "hourly labor cost - all salaried employees in the mechanical and electrical industries" as from July 3, 2009, as defined in the CRE Contract;

- **"FM0ABE0000"** is, as of the Compensation determination date concerned, the value for the most recent known definitive value as of the 1st of January of year N of the FM0ABE0000 index, which has replaced the PPEI index "industrial production index - French market (PVIS000100)", as from April 2, 2009, as defined in the CRE Contract;

- **"$ICHTrevTS_0$"** and "**$FMABE0000_0$**" are the definitive values for the most recent known values of the aforementioned ICHTTS1 and PPEI indexes as of January 1, 2007, to wit:

  - $ICHTrevTS_0$ = 93.9 = 134.3 (ICHTTS1 as of August 2006) / 1.43

  - $FMABE0000_0$ = 105.3 = 112.0 (PPEI as of August 2006 / 1.064

<u>Numerical applications</u>:

Assumptions:

- Economic conditions as of January 1, 2007, which means M = 1;
- Amount of time the Factory was open during the month in question 744 hours;
- ETotal = 35,000 MWh in a month;

- Following volumes exchanged:

	t/h	MW	Availability
Black Liquor Steam	186.7 t/h	150.3 MW	99.7%
25 bar steam	13.0 t/h	9.8 MW	99.7%
13 Bar steam	157.0 t/h	110.0 MW	99.7%
4 bar steam	92.2 t/h	62.7 MW	99.7%
Internal Biomass	26.9 t/h	49.7 MW	99.7%

- Calculation of the ETR for the Period

	MWh	Coefficient
Black Liquor Steam	111 488	0.28534
25 bar steam	7 269	0.24097
13 Bar steam	81 594	0.19299
4 bar steam	46 509	0.16121

ETR = 6.816 GWh

- Calculation of EE

EE = ETotal – ETR – 0.2555 x BI.
EE = 35 000 – 6 816 – 0.2555 x 36 866
EE = 18 765 MWh

- Calculation of P

$P = P_0$ x M
$P = P_0$ x 1
P = (65 x EE) + ((RE + RT) / 12)
P = €1,734,319 for the month in question

Article 10.3 <u>Invoicing and payment</u>

Dalkia shall invoice SVD 19 on a monthly basis. Provided Dalkia invoices SVD 19 for the Services related to the previous calendar month (N) by the 20^{th} day of the following month (N+1), SVD 19 shall pay such invoice no later than the 20^{th} day of the month following issuance of Dalkia's invoice. If Dalkia invoices SVD 19 after the 20^{th} day of a given month, the payment terms shall be extended by an equal number of days.

Any delay in the payment of invoices shall automatically and *ipso jure* result in the payment of late payment interest charges computed at the one (1) month EURIBOR rate, increased by three (3) points or, if higher, the minimum default interest applicable under French Law.

In the event of delay by SVD 19 in the payment of invoices, and independently of late payment interest charges, Dalkia may suspend the performance of its Services, fifteen (15) days following formal payment demand sent by registered letter with return receipt that has remained unremedied, unless such retention of payment by SVD 19 is made in accordance with the last paragraph of this **<u>Article 10.3</u>**.

Likewise, Dalkia shall be entitled to suspend its Services, failing SVD 19's payment of the amounts necessary to bring into compliance the Plant or its operating conditions.

In the event of a dispute relating to any invoice issued by Dalkia, SVD 19 shall pay any undisputed portion and shall only be entitled to withhold or reduce payment to Dalkia in respect of any disputed portion in good faith for which it has issued a notice to Dalkia detailing the nature of and the amount in dispute within thirty (30) days of the receipt of the invoice and only until such time as the matter is agreed or determined, provided that SVD 19 shall pay the amount agreed or determined to be due and payable within fifteen (15) days of such agreement or determination.

ARTICLE 11 EXCUSING CAUSES AND SUSPENSION CAUSES

Article 11.1 Excusing Causes

An "**Excusing Cause**" shall mean any of the following events:

(i) any unforeseen leakage, breakage or damage which is caused by a third party (including for the avoidance of doubt SKCP or SKCDP) outside the footprint of the Plant and which affects the Plant or the Land;

(ii) any failure of SVD 19 to perform its obligations under the Contract or any material breach by SVD 19 of the Contract, including any failure by SVD 19 to pay the Compensation or the Additional Payment on the due date for payment, fault or negligence of SVD 19's employees, subcontractors or agents that prevents or impedes Dalkia from performing the Services in accordance with the agreed performance standards, it being specified that retention of payment in compliance with the last paragraph of **Article 10.3** shall not be considered as a material breach;

(iii) any material breach by SKCP of its obligations under the SKCP Transformation Contract, the SKCP Framework Contract or the Usufruct Contract or any material breach by SKCDP under the SKCDP Biomass Supply Contract, that prevents or impedes Dalkia from performing the Services in accordance with the agreed performance standards;

(iv) any failure in Dalkia's performance of the Services directly resulting from the application of an instruction from SVD 19 in accordance with **Article 4.2** above;

(v) any *Force Majeure* Event;

(vi) any failure of gas supply; or

(vii) any Construction Defect.

It is agreed that SVD 19's ownership whether permanent or temporary of the Plant, Primary Fluids, Utilities, equipment, parts or components shall not by itself be considered as an Excusing Cause.

Dalkia shall not be in breach of this Contract nor shall bear any Penalty under **Article 12**, liability or indemnity whatsoever under **Article 13** and **14** to SVD 19, (i) if and to the extent that such breach is due to an Excusing Cause, and (ii) then to the extent that the events giving rise to the Excusing Cause do not have their origin in an act or circumstance which is attributable to Dalkia.

Article 11.2 Suspension Causes

A "**Suspension Cause**" shall mean any of the following events:

(i) a situation of emergency, defined as circumstances involving an imminent or serious threat to human life, health or safety, to property or to the environment of the Plant, and including, for the purposes of this **Article 11**, the measures taken to avoid or respond to such emergency;

(ii) any failure of SVD 19 to perform its obligations under the Contract or any material breach by SVD 19 of the Contract, including any failure by SVD 19 to pay the Compensation or the Additional Payment on the due date for payment, fault or negligence of SVD 19's employees (if any) subcontractors or agents that prevents or impedes Dalkia from performing the Services in accordance with the agreed performance standards, it being specified that retention of payment in compliance with the last paragraph of **Article 10.3** shall not be considered as a material breach;

(iii) any material breach by SKCP of its obligations under the SKCP Transformation Contract, the SKCP Framework Contract or the Usufruct Contract that prevents or impedes Dalkia from performing the Services in accordance with the agreed performance standards;

(iv) any violation of an Applicable Law or Government Authorisations by Dalkia, which would result from the performance of the Services to the contractually agreed performance standards (including environmental laws);

(v) any *Force Majeure* Event;

(vi) prolonged electrical outages materially impacting the Performance of the Services;

(vii) any failure of gas supply;

(viii) any Construction Defect; or

(ix) any Dalkia's election to curtail or suspend Services in whole or in part, pursuant to one of the cases mentioned from (i) to (viii) above.

In the event of a Suspension Cause, Dalkia shall be entitled to suspend performance of the Services under the Contract (subject to maintaining the safety of the Plant).

Dalkia shall not be in breach of this Contract, nor shall bear any Penalty under **Article 12**, liability or indemnity whatsoever under **Article 13** and **14** to SVD 19 as a result of the suspension of the Services, to the extent the events giving rise to the Suspension Cause do not have their origin in an act or circumstance which is attributable to Dalkia.

ARTICLE 12 PENALTIES

Article 12.1 Non-compliance by Dalkia

The penalties payable by Dalkia (the "**Penalties**") to SVD 19 cover the defaults under **Articles 8.1**, **8.2** and **8.3**, as described hereinafter.

Article 12.1.1 Non-compliance with the terms of the CRE Contract

a) Principle

Dalkia undertakes to indemnify SVD 19 for any damage (including any CRE penalty) suffered by SVD 19 resulting from non-compliance with the commitments set forth in **Article 8.1**.

Dalkia shall be under an obligation to pay the Penalties, only provided that:

(i) the non-compliance causes SVD 19 to make an actual payment under the CRE Contract and the Specifications; and

(ii) SVD 19 has filed a corrective plan with the local authority (*Préfet*), if applicable, within applicable deadlines.

The total amount of Penalties payable by Dalkia to SVD 19 under this Article may not exceed the amount of twelve million euros (€12,000,000) per annum, to the exclusion of any other damages. Notwithstanding the foregoing, the cap shall be reduced to three (3) million per annum if (a) SVD 19 has not complied with item (ii) above, (b) Dalkia has not been consulted by SVD 19 on the preparation of the corrective plan, (c) Dalkia has not been involved by SVD 19 in the discussions with the local authority (*Préfet*) on the corrective plan or (d) Dalkia has not been in a position to implement the corrective plan.

b) <u>Exemptions in case of non compliance with the maximum percentage of fossil fuel</u>

Dalkia shall be exempted from payment of the Penalties if the non-compliance with the commitments stipulated in **<u>Article 8.1.1</u>** (*Compliance with the maximum percentage of fossil fuel*) results from any of the following circumstances to the extent not attributable to Dalkia:

(i) a default, negligence or material breach of this Contract by SVD 19; and

(ii) an event considered as an Excusing Cause, with the exception of the Excusing Cause provided for in **<u>Article 11.1 (iii)</u>**.

c) <u>Exemptions in case of non compliance with the biomass supply plan</u>

Dalkia shall be exempted from payment of the Penalties if the non-compliance with the commitments stipulated in **<u>Article 8.1.2</u>** (*Compliance with the biomass supply plan*) results from any of the following circumstances to the extent not attributable to Dalkia:

(i) a default, negligence or material breach of this Contract by SVD 19;

(ii) an event considered as an Excusing Cause, with the exception of Excusing Cause provided for in **<u>Article 11.1 (iii)</u>**;

(iii) the performance or non performance by SKCP of the SKCP Transformation Contract, whether such performance or non performance is breaching or not such contracts;

(iv) the non performance by SKCDP of the SKCDP Biomass Supply Contract; or

(v) the termination or non renewal by SKCP of the SKCP Transformation Contract or by SKCDP of the SKCDP Biomass Supply Contract, until the corrective plan has been approved by the local authority (*Préfet*).

d) <u>Exemptions in case of non compliance with the CRE efficiency and availability commitments</u>

Dalkia shall be exempted from payment of the Penalties if the non-compliance with the commitments stipulated in **<u>Article 8.1.3</u>** (*Compliance with the CRE efficiency and availability commitments*) results from any of the following circumstances to the extent not attributable to Dalkia:

(i) a default, negligence or material breach of this Contract by SVD 19;

(ii) an event considered as an Excusing Cause, with the exception of Excusing Cause provided for in **<u>Article 11.1 (iii)</u>**;

(iii) the performance or non performance by SKCP of the SKCP Transformation Contract, whether such performance or non performance is breaching or not such contracts;

(iv) the non performance by SKCDP of the SKCDP Biomass Supply Contract; or

(v) the termination or non renewal by SKCP of the SKCP Transformation Contract or by SKCDP of the SKCDP Biomass Supply Contract, until the corrective plan has been approved by the local authority (*Préfet*).

Article 12.1.2 Non-compliance with the SVD 19 Transformation Contract

In the event of non compliance with the commitments set forth in **Article 8.2**, Dalkia shall undertake to pay Penalties to SVD 19 under the following terms and conditions.

- Principle

a) Definition of supply interruption

A supply interruption shall be determined as from the moment when the characteristics of the 13 bar steam or the 4 bar steam no longer comply with the conditions specified in **Article 8.2.1 a)** for more than three (3) consecutive minutes.

b) Measurements

Measurements shall be performed at the Utilities delivery points.

c) Amount of hourly penalties and annual maximum limit

- Hourly penalty

The total amount of the hourly penalty in the event of an interruption is set at nine thousand euros (€9,000) per hour of interruption.

- Annual penalty maximum limit

The total amount of penalties due per contractual year shall be capped at four hundred thousand euros (€400,000) per annum, indexed according to the formula established in the SVD 19 Transformation Contract.

d) Annual exemption

Penalties shall be triggered above the 26th hour of cumulative interruption or beyond the sixth supply interruption within the meaning of **Article 12.1.2 a)** hereinabove, within the year, excluding Plant's Planned Maintenance.

e) Nature of the Penalties

The Penalties under **Article 12.1.2** provide a full discharge and consequently are exclusive of any other indemnification of SVD 19 by Dalkia for the matters refered to in **Article 12.1.2** and **Article 8.2**, with the express condition that the Backup is brought on line as soon as necessary and as soon as possible, all for the purpose of avoiding any interruption in the operation or reduction in the activities of the Factory.

f) Specific Penalty for failure to bring the Backup on line

Notwithstanding the provisions of paragraphs (c) and (e) hereinabove, the Parties agree that in the event of the failure to bring the Backup on line within a period of twelve (12) hours following the shutdown, breakdown, or failure of the biomass boiler, Dalkia shall be liable for a penalty in addition to those provided under paragraph (c) hereinabove, in the amount of fifty thousand euros (€50,000) per day of delay, capped at two million euros (€2,000,000) per annum.

In order to avoid the need for set off between any Penalties owed by Dalkia pursuant to **Article 12.1.2** against penalties due by SVD 19 under article 5.3 of the SVD 19 Transformation Contract, no Penalties shall be due or payable under this **Article 12.1.2** as long as no penalties are claimed by Dalkia under article 5.3 of the SVD 19 Transformation Contract. If such penalties are claimed by Dalkia under the SVD 19 Transformation Contract, the Parties shall set off the amounts so claimed by Dalkia against the amount due under this **Article 12.1.2**. In such a case, notwithstanding the proposed offset, the Parties shall issue invoices as required by applicable Tax legislation.

- Exemptions applicable in case of non compliance by Dalkia as operator with the SVD 19 Transformation Contract

Dalkia shall be exempted from payment of the Penalties if the non-compliance with the commitments stipulated in **Article 8.2** (*Compliance with the terms of the SVD 19 Transformation Contract*) results from any of the following circumstances to the extent not attributable to Dalkia:

(i) a default, negligence or material breach of this Contract by SVD 19;

(ii) an event considered as an Excusing Cause, with the exception of Excusing Cause provided for in **Article 11.1 (iii)**; or

(iii) non performance by SKCP of the SKCP Transformation Contract, whether such non performance is breaching or not such contracts.

Article 12.1.3 Non-Compliance with minimum annual electrical power volume

a) Principle

In the event of non-compliance with the undertaking stipulated in **Article 8.3** above, Dalkia shall undertake to indemnify SVD 19 up to an amount of twenty-eight euros (€28) for every MWh below the VEG threshold (determined on the basis of prevailing economic conditions as of January 1, 2007 to be revised on a monthly basis by applying Revision Factor M) capped to twelve million euros (€12,000,000) per annum, to the exclusion of any other damages in this regard.

Any possible non-performance by Dalkia of its External Biomass supply obligations under the Contract shall not result in Dalkia's payment of Penalties or indemnification to SVD 19, because any possible damage resulting for SVD 19 is covered by the Penalties under this **Article 12.1.3**.

b) Exemptions applicable in case of non compliance with the minimum annual electrical power volume

Dalkia shall be exempted from payment of the Penalties if the non-compliance with the [guarantees] stipulated in **Article 8.3** (*Compliance with the minimum annual electrical power volume*) results from any of the following circumstances to the extent not attributable to Dalkia:

(i) a default, negligence or material breach of this Contract by SVD 19;

(ii) an event considered as an Excusing Cause, with the exception of Excusing Cause provided for in **Article 11.1 (iii)**; or

(iii) the non performance by SKCP of the provisions of articles 6.3, 6.4 or 6.5 of the SKCP Transformation Contract or any provision of the Usufruct Contract, to the extent that such non performance affects Dalkia's ability to achieve VEG.

Article 12.2 <u>Exclusive remedy</u>

The Penalties shall be the exclusive remedy of SVD 19 against Dalkia in respect of any breach or non compliance under **<u>Articles 8.1</u>**, **<u>8.2</u>** and **<u>8.3</u>** and, save the case of fraud, SVD 19 hereby waives any other rights it may have in this respect.

Article 12.3 <u>Invoicing and payment of Penalties</u>

Penalties shall be invoiced on a monthly basis.

Penalty invoices shall be payable at earliest of (i) sixty (60) days end of the month following the issuance date or (ii) ten (10) days following the date of which CRE penalties become due by SVD 19 to EDF under the CRE Contract.

ARTICLE 13 <u>INDEMNITY AND LIABILITY</u>

Article 13.1 <u>Principle</u>

In the event of any damage caused to a Party (the "**Indemnified Party**") that is attributable to the other Party (the "**Indemnifying Party**") and results from an event other than those covered by (i) the Penalties or (ii) liabilities incurred by Dalkia under **<u>Article 17</u>**, such Indemnifying Party may be held liable *vis-à-vis* the Indemnified Party only on condition that proof be provided of:

(i) the Indemnifying Party's commission of a breach of this Contract; and

(ii) the existence of damage suffered by the Indemnified Party,

to the extent, in each case, that such losses, damages, claims, actions, judgements, suits, costs, expenses and disbursements (except consequential damages as set forth in **<u>Article 13.2</u>** below) arise out of or by reason of any negligence or default, of the Indemnifying Party, its consultants, contractors, employees or agents.

Any Party suffering a damage in connection with this Contract and/or alleging a breach of Contract, fault or right to be indemnified in accordance with the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or cost.

Article 13.2 <u>Consequential damage</u>

No Party shall be liable to any other Party by way of indemnity or by reason of any breach of this Contract or of statutory duty or by reason of tort (including negligence), strict liability or otherwise for any incidental, consequential, punitive, special damages or consequential damages including, but not limited to, any loss of profit, use, opportunity or other indirect or consequential loss that may be suffered by that other Party.

Such limitation shall apply to Affiliates, directors, officers, employees, agent and subcontractors of each Party but shall not apply to Penalties set forth in **<u>Article 12.</u>**

It is agreed that this **<u>Article 13.2</u>** shall not apply to liabilities incurred by Dalkia under **<u>Article 17</u>**.

Article 13.3 <u>Control of claims</u>

If the Indemnified Party becomes aware of any claim from a third party, the Indemnified Party shall, as soon as reasonably practicable and in any event within ten (10) days, give written notice to the Indemnifying Party of the matter which might give rise to a claim under or pursuant to a covenant (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed).

The Indemnified Party shall consult with the Indemnifying Party with respect to the matter.

If the matter has become the subject of any proceedings, the Indemnified Party shall (so far as it is able) give the notice within sufficient time to enable the Indemnifying Party to contest the proceedings before any first instance judgment in respect of such proceedings is given.

The Indemnified Party shall:

(i) take such action and institute such proceedings and give such information and assistance as the Indemnifying Party or its insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against any person (other than the Indemnifying Party) the rights of the Indemnified Party or its insurers in relation to the matter;

(ii) in connection with any proceedings related to the matter (other than against the Indemnifying Party) use professional advisers nominated by the Indemnifying Party or its insurers and, if the Indemnifying Party or its insurers so request, allow the Indemnifying Party or its insurers the exclusive conduct of the proceedings in each case on the basis that the Indemnifying Party shall fully consult with the Indemnified Party and keep the Indemnified Party fully informed and the Indemnifying Party shall fully indemnify the Indemnified Party for all costs incurred as a result of any such request or nomination by the Indemnifying Party or its insurers;

(iii) not admit liability in respect of the matter; and

(iv) not settle the matter without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed provided that the Indemnified Party shall (in circumstances where the Indemnifying Party withholds such consent) be free to settle any claim in circumstances where it agrees in writing to waive any right to be indemnified pursuant to this **<u>Article 13</u>**.

If the Indemnifying Party has knowledge of any actual or potential third party claim, it shall inform the Indemnified Party and, if the Indemnifying Party has conduct of any litigation and negotiations in connection with a claim, the Indemnifying Party shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Indemnified Party's interests to be materially prejudiced.

If the Indemnifying Party does not elect to have conduct of any litigation and negotiations in connection with a claim by notice in writing to the Indemnified Party within ten (10) days of the Indemnified Party giving notice of the matter, the Indemnified Party shall be free to take such action in relation to that matter as it considers expedient to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter in question subject to a duty to use all reasonable endeavours to mitigate the liability of the Indemnifying Party in respect of that claim.

The failure by the Indemnified Party to comply with the provisions of this **<u>Article 13.4</u>** shall not release the Indemnifying Party from its obligations of indemnification, but shall result in a reduction of the indemnification due up to the amount of the actual damage caused to the Indemnifying Party by such delay.

This **Article 13.3** shall expressly apply to liabilities incurred by Dalkia under **Article 17**.

ARTICLE 14 OVERALL CAP FOR PENALTIES, INDEMNITIES AND LIABILITIES

Article 14.1 Cap

The total amount of Penalties, liabilities and indemnities owed by Dalkia to SVD 19 under **Articles 12**, **13** or **17** or under any other provision of this Contract (whether such amount result from a contractual failure of a Party or from its liability in tort in relation to this Contract) may not, in any case, exceed a maximum limit of (i) twelve million euros (€12,000,000) per annum, and (ii) forty eight million euros (€48,000,000) over the cumulative terms of (a) the Contract and (b) the SVD 19 Biomass Supply Contract.

Article 14.2 Waiver

As a consequence of **Article 14.1** SVD 19:

(i) waives all legal actions above the maximum limit of fourty eight million euros (€48,000,000) established hereinabove, with respect to any possible direct and material damage relating to this Contract; and

(ii) waives, all legal actions for any indirect and consequential or subsequent damage as defined in **Article 13.2** relating to this Contract.

Article 14.3 Right to terminate

Should the total amount of indemnification owed by Dalkia under **Article 12** (Penalties) exceed an amount of twenty million euros (€20,000,000) over the term of this Contract (including any amount already paid by Dalkia pursuant ot this Contract), SVD 19 shall be entitled to terminate this Contract subject to a minimum six (6)-month prior notice period.

The balance of liability cap (i.e the difference between (a) €48,000,000 corresponding to the overall cap provided in **Article 14.1** and (b) any liability (including any Penalty) effectively incurred under this Agreement up to its termination) shall then apply (i) to this Contract during the notice period and (ii) subsequently to the SVD 19 Biomass Supply Contract after effective termination of this Contract.

Article 14.4 No double recovery

Neither Party shall be entitled to recover damages more than once, in particular as regards any Penalty, indemnity or liability received under the Real Property Development Contract.

ARTICLE 15 MATERIAL EVENT

Each Party shall promptly notify to the other Party as from such Party becomes aware of the occurrence of the following events:

(i) potential renewal or modification of Government Authorisation;

(ii) evidence of actual or potential significant decrease in Biomass fuel supply;

(iii) any Changes implemented pursuant to **Article 6**;

(iv) any Change in Law (in respect of the impact prior to implementation of the Change pursuant to **Article 6**); and

(v) any *Force Majeure* event.

In case of such event, the Parties shall discuss in good faith the opportunity to change the relevant terms and conditions of the Contract.

ARTICLE 16 CONSTRUCTION DEFECTS

Under this Contract, Dalkia shall not be liable for any Construction Defect in the Plant.

Upon any Construction Defect becoming apparent, Dalkia shall notify SVD 19 and shall take all reasonable measures to mitigate such Construction Defect from becoming more severe or serious.

SVD 19 shall indemnify Dalkia against all cost and expense incurred in undertaking such mitigation measures, provided that Dalkia shall provide supporting documents, receipts and/or invoices as requested by SVD 19.

The occurrence of a Construction Defect shall be treated as a Change issued by SVD 19 requiring Dalkia to remedy same and the provisions of **Article 6.3** shall apply in relation to the cost of undertaking such Change.

ARTICLE 17 COMPLIANCE WITH ENVIRONMENTAL REGULATIONS

Without prejudice to the provisions of **Article 8**, Dalkia shall ensure that the Plant is maintained and operated in compliance with all environmental regulations and updates thereto including Applicable Laws and Government Authorisations in relation to noise, water intake, waste water discharge, solids disposal, wastes, Hazardous Substances and/or emission.

Dalkia shall remove all surplus materials, debris, wastage, discharge, wastes, Hazardous Substances or rubbish (to the extent arising from the performance of the Services) at its own cost to the approved dumping ground and in accordance with regulations imposed by the relevant Government Entity responsible for environmental matters and all other applicable environmental laws and regulations.

It is agreed that the Excusing Causes and the Suspension Causes shall not apply to the obligations of Dalkia under this **Article 17**.

Dalkia shall be obliged at its own cost to undertake rectification works arising directly as a consequence of its failure to comply with this **Article 17** and applicable environmental laws and regulations unless such failure results from:

(a) any unforeseen leakage, breakage or damage which is caused by a third party (including for the avoidance of doubt SKCP or SKCDP) outside the footprint of the Plant and which affects the Plant or the Land;

(b) any failure of SVD 19 to perform its obligations under the Contract or any material breach by SVD 19 of the Contract.

For the avoidance of doubt, Dalkia has no liability whatsoever in relation to any contamination pre-existing Execution Date, Hazardous Substances or Waste on or under the Land or any pre-existing failure of the Plant to meet the requirements of this **Article 17**.

Unless resulting from a Change in Law, or matters addressed in items (a) or (b) above or the immediately preceeding sentence, if Dalkia is, at any time, obliged by any Applicable Laws or is otherwise bound in any way to:

(i) remove or otherwise deal with any pre-existing contamination, Hazardous Substance or Waste from the Land; or

(ii) upgrade or alter the Plant to ensure compliance with the requirements of this **Article 17**;

then, the required removing, remedying, upgrading or alteration (as appropriate) shall be completed at Dalkia's costs.

ARTICLE 18 CO_2, QUOTAS AND RELATED GREEN CERTIFICATES

Dalkia shall be the owner of free credit allocation in connection with the operation of the Plant.

SVD 19 shall be the owner of any green certificates possibly associated with electricity generation or any other valuation system related to the use of renewable energy or the generation of green electricity.

ARTICLE 19 INSURANCE

Article 19.1 Dalkia insurance coverage

Dalkia represents that it has taken out a civil liability insurance policy to provide coverage with respect to its liabilities arising from the performance of this Contract. Dalkia undertakes to keep in force a policy that is equivalent in terms of level of coverage throughout the entire term of the Contract. In addition, Dalkia agrees to have SVD 19 as an additional name insured for the purposes of such policy.

Dalkia submitted to SVD 19, on the date hereof, a civil liability insurance certificate with respect to the policy that is in force, a copy of which is contained in **Schedule 14**.

The insurance coverage shall be underwritten in the amount of thirty million euros (€ 30,000,000) per claim per year for all bodily and material damages.

Article 19.2 SVD 19 insurance coverage

Dalkia undertakes to take out, both for its own account and on behalf of SVD 19, a damage guarantee insurance (*garantie assurance dommage*) intended to cover the material damage suffered by the Plant and the financial losses consequential to an insured material damage under the conditions and within the limitations provided for by the "Direct Damage and Operating Losses" insurance policy (*Dommages directs et pertes d'exploitation),* a summary of which is attached in **Schedule 13** to this Contract.

In addition, Dalkia agrees to have SVD 19 as an additional name insured for the purpose of such policy.

This insurance policy shall include a waiver of remedy clause on the part of Dalkia and its insurers against SVD 19 and its insurers for any damage insured under this insurance policy, except for willful or wrongful misconduct (*faute intentionnelle ou dolosive*).

SVD 19 shall take responsibility for declaring its financial losses to Dalkia and shall be in charge of updating the premiums basis (*assiettes de primes*) during the entire term of the guarantee.

Subject to the other provisions of this Article 19.2, this insurance policy on behalf of a third party (*assurance pour compte*) shall be maintained as from the Execution Date for the entire term of the Contract, it being however specified that the commitment to take out an insurance policy on behalf of a third party (*engagement d'assurance pour compte*) undertaken by Dalkia shall not exceed the effective duration of this Contract. Consequently, it shall rest with SVD 19, where applicable, upon early termination of this Contract for any reason whatsoever, to take out a damage insurance policy (*assurance dommage*) for its own account.

Dalkia undertakes to bear the entire insurance premium taken out both for its own account and on behalf of SVD 19 during a two (2)-year period of as from the Execution Date.

Beyond this period, SVD 19 has the right terminate the said damage guarantee insurance by serving to Dalkia a notice to this effect at the latest sixty (60) days prior to the second anniversary of the Execution Date. For the sake of clarity, it is specified that in case of such termination by SVD 19, SVD 19 will no longer be covered by the damage guarantee insurance.

If SVD 19 does not terminate the damage guarantee insurance according to the above, the amount of the insurance premium taken out on behalf of SVD 19 shall be charged by Dalkia to SVD 19 on a *prorata* basis of the risk insured on its behalf with respect to the consequential financial losses (electric losses) beyond the two (2)-year period as from the Execution Date.

In any event, the amount of deductibles due upon any damage resulting from a natural event, an act of vandalism or any act beyond the control of Dalkia shall be charged to SVD 19 in its entirety.

Article 19.3 <u>Provisions of policies</u>

Each Party shall inform the other Party of any cancellation, non-renewal or modification of any such policy as soon as they have knowledge of it.

Each Party shall procure that its insurers waive all express and implied rights of subrogation against the other Party.

Article 19.4 <u>Avoidance of policies</u>

Neither Party shall take or fail to take any reasonable action which will entitle any insurer to refuse to pay any claim under any insurance policy maintained under or pursuant to this Contract.

ARTICLE 20 PERSONNEL AND SUBCONTRACTING

Article 20.1 <u>Personnel</u>

Dalkia's Personnel assigned to the performance of the Services provided by this Contract shall be and shall remain subject to the hierarchical and disciplinary structure of Dalkia, which shall take direct responsibility for the employment relationship with same and shall assume full responsibility for the hiring, training, and management of said Personnel, as well as all (legal, regulatory, and contractual) rights and obligations attached to the employment relationship with said Personnel.

This Contract cannot be interpreted in such a way as to make Dalkia or its Personnel employees or agents of SVD 19.

Dalkia shall provide to its Personnel the equipment necessary for their individual and group safety, as well as the equipment necessary for compliance with the applicable safety rules.

SVD 19 shall not give orders or instructions directly to Dalkia's Personnel and shall contact solely the managers designated by Dalkia. If, in an emergency situation, the Personnel would be contacted directly by SVD 19, the Personnel shall then report that fact to their supervisors and would in any case remain subject to Dalkia's supervision pursuant to their employment relationship.

Article 20.2 Subcontracting

Subject to the provisions of the following paragraph, Dalkia may, under its sole responsibility and liability, entrust performance of all or part of the obligations it has assumed under this Contract to any subcontractor of its choice. Dalkia undertakes to comply with the provisions of law applicable to subcontracting, as well as with SVD 19's health and safety rules, which are contained in **Schedule 10**.

Dalkia shall make its subcontractors responsible for performing obligations of the same nature as those it has assumed *vis-à-vis* SVD 19 under the terms of the Contract. It also undertakes to ensure that its subcontractors properly perform the obligations provided by the Contract.

In regard to its subcontractors, Dalkia shall undertake the overall task of the organization and management of all the activities entrusted to them.

SVD 19 reserves the right to prohibit access to the Plant and the Land by Dalkia's subcontractors due to non-compliance with the safety rules applicable on the Plant and the Land.

Under all circumstances, Dalkia shall retain responsibility for performance of the Contract, particularly in terms of quality, safety, and time frames, and shall guarantee compliance with same by its subcontractor or subcontractors. Dalkia shall also be specifically responsible for taking any necessary action with its subcontractors in the event of non-performance by the latter, for any reason whatsoever.

Article 20.3 Enticement

To the extent permitted under Applicable Laws, as from the Execution Date and for a period of two (2) years following the date of termination of this Contract, neither of the Parties is, directly or indirectly, to solicit or offer a job or engagement, attempt to persuade or hire for its own account or on behalf of any other person or organization, members of the Personnel or the subcontractors of the other Party that were assigned responsibility for the Services under this Contract, without obtaining the prior written consent of the other Party.

In the event that either of the Parties should violate the aforementioned obligations, the other Party would be entitled to receive liquidated damages representing one year salary of the employee hired in the above manner by the other Party.

Article 20.4 Prevention of concealed work and illegal recourse to foreign workforce

In compliance with Articles L. 8222-1, Article D. 8222-5, Article L. 8254-1, D. 8254-2 and D. 8254-4 of the French Labor Code regarding undeclared work and illegal recourse to foreign workforce, Dalkia must be able to prove to SVD 19 the regularity and legality of the employment contract of its Personnel.

Consequently, Dalkia undertakes to provide, no later than at the signing of the Contract and subsequently every six months throughout the entire term of the Contract, the following documents:

(i) an attestation of filing of social security declarations, issued by the social security agency (URSSAF) responsible for collecting social security contributions, dated less than six (6) months;

(ii) a sworn affidavit, certifying that all tax declarations imposed by French law have been duly and timely filed with the tad administration,

(iii) a certificate of registration with the Clerck's office of the Commercial Tribunal (*extrait K-bis*),

(iv) a sworn affidavit, prepared every [six (6)] months until completion of the performance of the Contract, certifying that the work shall be performed by salaried employees who are regularly employed under Articles L. 1221-10 and L. 1221-12, L. 3243-1, L. 3243-2 and L. 3243-4, and R. 3243-1 through R. 3243-6 of the French Labor Code, and

(v) a list of its foreign employees subject to the obligation to hold a work permit in compliance with Article L. 5221-2 of the French Labor Code, mentioning, for each employee, his/her name, hiring date, nationality, type of work permit and registration number of work permit.

ARTICLE 21 INTELLECTUAL PROPERTY

Article 21.1 Dalkia's Intellectual Property

Any Intellectual Proprerty created, produced, or ordered by Dalkia and pertaining to the performance of the Services, and the copyrights pertaining thereto as well as all the Intellectual Property rights that Dalkia holds, are, shall be, and shall remain the property of Dalkia.

Furthermore, any Intellectual Property right pertaining to the methods, know-how, and equipment installed or developed by Dalkia for the purposes of operation of the Plant is, shall be, and shall remain the property of Dalkia.

SVD 19 expressly undertakes not to disclose all or part of the aforementioned Intellectual Property to any third parties whatsoever, nor the knowledge it has acquired of said Intellectual Property.

SVD 19 shall indemnify Dalkia against any loss, injury or damage suffered by Dalkia as a consequence of Dalkia's use of any SVD 19's Intellectual Property of which SVD 19 has mandated the use in accordance with this **Article 21.1**.

Article 21.2 Files - Data

The reproduction or use by one Party, for purposes other than performance of the Contract, of information conveyed by the other Party (data, files, documents or information of any nature) is prohibited without the prior written authorization of the other Party.

Article 21.3 Trademarks

By express agreement, if one Party intends to use the trademark and/or figurative trademark of the other Party in order to have it appear on its business documents, it must first obtain authorization for use, and not for commercial utilization, on a case-by-case basis, which shall necessarily be the subject of prior written approval.

ARTICLE 22 TERM AND EFFECTIVE DATE OF THE CONTRACT

The Contract shall enter into effect on the Execution Date and shall expire on the current expiry date of the CRE Contract, i.e. June 12, 2030.

ARTICLE 23 <u>TERMINATION</u>

Article 23.1 <u>Termination Events</u>

The Contract may be early terminated either under the following conditions and circumstances:

(i) by SVD 19, after the three (3)-month notice period as set forth below, in the event of Dalkia's material breach (which shall include non payment of amounts due but not contested by Dalkia), which has not been remedied within a period of sixty (60) days following receipt of a written notification sent to Dalkia by SVD 19 for such purpose, and which has caused a loss to SVD 19 that is not compensated by payment of the Penalties;

(ii) by Dalkia, after the three (3)-month notice period as set forth below, in the event of SVD 19 material breach (which shall include non payment of amounts due but not contested by SVD19) which has not been remedied within a period of sixty (60) days following receipt of a written notification sent to Dalkia by SVD 19 for such purpose;

(iii) by either Party in the event of the occurrence of a *force majeure* event, if a Party proves to be impossible to restore the situation, and said *force majeure* event persists for more than a period of three (3) consecutive months; in such case no indemnification will be due by either Party; or

(iv) by SVD 19 after the three (3)-month notice period as set forth below, should the total amount of Penalties owed by Dalkia exceed an amount of twenty million euros (€20,000,000) over the term of the Contract (including any amount of Penalties already paid by Dalkia pursuant to the Contract).

A termination for any cause whatsoever shall be effective upon the expiration of a three (3)-month advance notice period commencing on the date of the termination notification (except for *force majeure event* for which the period of the three (3) consecutive months of persistence of such event shall be deemed to be the advance notice period). The provisions of the Contract shall continue to apply during the notice period.

During the notice period, Dalkia shall cooperate with SVD 19 and any subcontractor of SVD 19 so as to ensure a smooth transition with any new operator to be appointed by SVD 19. Any additional cost incurred by reason of this cooperation shall be borne by SVD 19.

The cooperation between Dalkia and SVD 19 shall not adversely affect the performance of the Services or of any obligation of Dalkia under this Contract.

During the notice period, Dalkia shall remain the sole provider of the Services. The new operator's functions shall take effect only as from the expiry of the notice period.

In the event of a termination of the Contract pursuant to **<u>Article 23.1 (ii)</u>**, SVD 19 shall prepay Dalkia for any cost in connection with this cooperation obligation.

Article 23.2 <u>Consequences of termination</u>

In all termination events:

(i) the amounts that remain due between the Parties under this Contract shall become immediately due and payable as of the effective termination date of the Contract; and

(ii) SVD 19 shall purchase Dalkia's spare parts stock at its net book value.

In the event of termination other than for a material breach from SVD 19, SVD 19 shall be entitled to implement the SVD 19 Biomass Supply Contract, under which which Dalkia undertakes to supply Biomass to SVD 19. SVD 19 must indicate its decision to implement the SVD 19 Biomass Supply Contract, in the Contract termination notification letter. Failing that, the SVD 19 Biomass Supply Contract shall be considered to have lapsed.

Article 23.3 Continuation in case of event of default

Notwithstanding any breach, default or omission by one Party, the other Party may elect to maintain this Contract in full force and effect and to enforce its rights hereunder.

Failure of either Party to exercise any right hereunder including the right of termination shall not be deemed a waiver of such right for any continuing or subsequent default.

Article 23.4 Survival of rights on termination

The provisions of this Contract set forth in **Article 20.3** (enticement), **Article 27** (confidentiality), and **Article 33** (settlement of disputes), as well as any rights or obligations which may have accrued prior to termination, including any antecedent breach, shall survive the termination of this Contract.

ARTICLE 24 FORCE MAJEURE – RESTRICTION ON OPERATION OF THE PLANT

Article 24.1 Force majeure

"***Force Majeure* Event**" shall mean any event or circumstances which has the characteristics of *force majeure*, pursuant to Article 1148 of the French Civil Code, including, in particular those events customarily considered by case law to be *Force Majeure* Events, shall be considered as exonerating causes releasing each of the Parties from its liability or its obligations under this Contract; these events shall include, but are not limited to the following:

(i) wars, riots, revolutions, sabotage, acts of terrorism;

(ii) natural disasters such as storms, hurricanes, earthquakes, tidal waves, floods, destruction by lightning, epidemics; or

(iii) a national strike that affects both Parties and SKCP, its successors or assignees.

Neither Party shall be entitled to bring a claim for a breach of obligations (other than a payment obligation) under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a *Force Majeure* Event occurs and it is prevented from carrying out its obligations by that *Force Majeure* Event or its consequences.

If any Party shall rely on the occurrence of a *Force Majeure* Event as a basis for being excused from performance of its obligations under this Contract, then the Party relying on the event or condition shall:

(i) provide prompt notice to the other Party of the occurrence of the event within (5) days following the occurrence of said *Force Majeure* Event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder;

(ii) exercise all reasonable efforts to continue to perform its obligations hereunder;

(iii) expeditiously take action to correct or cure the event or condition excusing performance;

(iv) exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests; and

(v) provide periodic notices to the other Party with respect to its actions and plans for actions in accordance with Paragraphs (ii), (iii) and (iv) above and prompt notice to the other Party of the cessation of the event or condition giving rise to it being excused from performance.

Once the Parties had been informed of the *Force Majeure* Event, the Parties shall meet to study the impact of the situation and the possible solutions to remedy same, or minimize the consequences thereof, when that is possible.

If it should prove impossible to restore the situation while maintaining the financial terms of the Contract, and said *Force Majeure* Event persists for more than a period of three (3) consecutive months, the Contract may be automatically terminated, at the initiative of either of the Parties, without indemnification by either Party.

Article 24.2 Restrictions on the normal operation of the Plant

In instances of total or partial strikes (or occupations of plants or premises, or work stoppages, etc.), or also, for example, a temporary withdrawal of one or more administrative authorizations which makes it impossible for either of the Parties to perform its obligations under the Contract, the Parties undertake to meet as soon as possible for the purpose of discussing solutions that will make it possible to remedy said events in the interest of both Parties.

ARTICLE 25 TITLE TO THE PLANT

Article 25.1 Ownership -Title

Title to the Plant shall remain with SVD 19.

Article 25.2 Passing of title and risk

Title to any material, equipment or other item supplied or procured by Dalkia and incorporated into the Plant for the purposes of this Contract shall vest with SVD 19.

Article 25.3 Alteration to the Plant

Dalkia shall not (other than in accordance with the provisions of this Contract):

(i) erect on, construct on or remove from the Land any building or construction; or

(ii) directly or indirectly compromise, compound or abandon any action, right or remedy in connection with the Plant to which SVD 19 is or may be entitled to,

in each case without the written consent of SVD 19.

ARTICLE 26 ASSIGNMENT

Since the Contract is executed *intuitu personae*, i.e. in consideration of the personality of the Parties involved, neither of the Parties may transfer or assign, in all or in part, its rights and obligations under the Contract, for valuable consideration or without a consideration, in any manner whatsoever, without having obtained the other Party's prior written approval. The foregoing shall not apply to transfers to the benefit of Affiliates of a Party, provided that such Party gives appropriate guarantees in respect of the obligations of its affiliate under the Contract.

Nevertheless:

(i) Dalkia may assign, transfer, or contribute the Contract to an Affiliate, provided that it informs SVD 19 thereof within a period of fifteen (15) days prior to the transfer or contribution;

(ii) SVD 19 may assign, transfer, or contribute the Contract to an Affiliate, provided that it informs Dalkia thereof within a period of fifteen (15) days prior to the transfer or contribution.

A transfer may be contemplated pursuant to a sale of an entire business or a part thereof, or the transfer of a business division to which the Contract is attached.

ARTICLE 27 CONFIDENTIALITY

Article 27.1 Technical information

The Parties are prohibited from disclosing, directly or indirectly, any technical, commercial, financial or other information obtained pursuant to the contractual relationship under this Contract, without the written approval of the concerned Party.

The Parties recognize and acknowledge that any disclosure, of any of the confidential information to third parties, even in part, without the prior written consent of the other Party, and/or any use of said information for purposes other than those contemplated by this Contract, shall be seriously detrimental to the interests of the other Party.

The confidentiality obligations provided hereinabove shall survive termination of the Contract, for a period of two (2) years.

This confidentiality obligation shall not apply:

(i) to the disclosure of information to SKCP or its Affiliates (except as regards Biomass prices which shall in no event be disclosed to SKCP or its Affiliates);

(ii) to the information needs and requirements of the personnel of each of the Parties or their Affiliates, to the extent that they are bound by the same confidentiality obligations;

(iii) to information disclosed to judicial, Tax, or governmental authorities pursuant to a requirement imposed by law or regulations, or by a market authority;

(iv) to information that is in the public domain, or which shall fall into the public domain after the date of this Contract, without that fact being (directly or indirectly) attributable to any action or omission on the part of the Party concerned;

(v) to the consultants and advisors of the Parties, to the extent that the latter are bound by the same confidentiality obligations;

(vi) to the internal marketing communication and commercial needs and requirements of each of the Parties, for the purpose of deriving benefit from the performance, including the ecological performance, of their processes; and

(vii) information, the disclosure of which is required by Applicable Laws or a final court decision.

The Parties shall refrain from making negative comments about and/or denigrating the other Party, its products and its employees.

Article 27.2 Contract

Each of the Parties undertakes not to disclose the content of this Contract on any basis whatsoever, without the prior written approval of the other Party. The text of any public announcement that either of the Parties should wish to make, as the case may be, regarding the performance of the Services covered by this Contract must be the subject of prior written approval by the other Party.

The confidentiality obligation provided hereinabove is not applicable, however:

- to the information that is necessary to disclose to third parties for the purposes of the performance of the Services covered by this Contract or in order to comply with applicable laws and regulations and decisions of any nature to which the Parties or their Affiliates are subject, and the Parties in such instances undertake to make their best effort to negotiate so as to agree in advance on the terms of the disclosure which has become necessary;

- with respect to the attorneys, financial advisers, employees, and executives of the Parties, in connection with the performance of the Services covered by this Contract, as well as the statutory auditors of the Parties, provided that the latter are bound by an obligation, commitment, or a general duty of confidentiality; and

- to the disclosures of information made (a) in performing decisions of administrative or judicial authorities and/or (b) to the competent court for the purposes of the performance of this Contract.

ARTICLE 28 PRIMACY, AMENDMENT AND RENEGOTIATION OF THE CONTRACT

This Contract shall prevail over all general or special terms and conditions.

This Contract may be amended only by prior written approval of both Parties, represented by authorized representatives.

ARTICLE 29 VALIDITY OF THE CONTRACT

The invalidity or unenforceability of any of the clauses of this Contract shall not affect in any way the validity of the other provisions of the Contract. The Parties shall in such instances make their best effort to negotiate to achieve the replacement of said clause with a new provision or new provisions that have an equivalent effect and/or that make it possible to maintain the equilibrium and financial terms of the Contract, in accordance with the Parties' intent.

The Schedules may be updated and amended by the Parties during the term of the Contract. In order for an Schedule to be considered as a contractual document, it must be initialed by both Parties and must indicate the date of the update.

ARTICLE 30 ABSENCE OF WAIVER

The fact that either of the Parties has tolerated the total or partial non-performance of any of the clauses and obligations of the Contract, for any period of time whatsoever, shall not under any circumstances affect the validity of any of said clauses and obligations, and under no circumstances shall it constitute a waiver on its part as to requiring at any time in the future strict performance of the other Party's obligations, nor a waiver of legal action to defend its rights.

ARTICLE 31 NOTIFICATIONS

Any notification pursuant to this Contract must be made in French and by hand, via fax, via registered letter, or in an envelope delivered by an internationally recognized carrier. Notification shall be valid as of the receipt of same, and shall be deemed to have been received (i) as of the date of receipt when delivered by hand, (ii) as of the date of the first delivery attempt, when it was made by registered letter or via a carrier, or (iii) as of the date of transmission, when it is made by fax.

The Parties' addresses and fax numbers for the purposes of this Article are as follows:

SVD 19	Address:	Fax:
	[•]	[•]
To the attention of:	[•]	
Dalkia	Address:	Fax:
	[•]	[•]
To the attention of:	[•]	

Each Party must diligently notify the other Party of any change in name, addressee, address, or fax number.

ARTICLE 32 MISCELLANEOUS

Article 32.1 Language

This Contract and each document or notice referred to in this Contract or to be delivered under this Contract shall be in the English language, except for the requirements set forth in **Article 4.7** (*Information and reporting requirements*) which shall be provided in English and French.

Article 32.2 Amendment

No modification, amendment, or other change will be binding on any Party unless consented to in writing by both Parties.

Article 32.3 Additional documents and actions

Each Party agrees to execute and deliver to the other such additional documents, and take such additional actions, as may be reasonably necessary in order to implement and give full legal effect to this Contract.

Article 32.4 Costs

Except as otherwise provided herein, each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Contract.

Article 32.5 No partnership

Neither Dalkia nor SVD 19 has any responsibility whatsoever other than as set out here in with respect to the obligations assumed by the other under this Contract nor in respect of any employment claims of any employees of any other Party hereto, and nothing in this Contract shall constitute Dalkia or SVD 19 a partner, agent or local representative of the other or create a fiduciary relationship or trust between them.

Article 32.6 Successors and assigns

Subject to **Article 26**, this Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

ARTICLE 33 SETTLEMENT OF DISPUTES

Any dispute arising from or in connection with this Agreement shall be resolved in accordance with the following procedures in this **Article 33**.

Article 33.1 Governing Law

This Contract and the obligations arising therefrom are governed by French Law.

Article 33.2 Amicable settlement

If any dispute or difference of any kind whatsoever between the Parties during the term of this Contract or after termination or early termination of this Contract, the Parties shall first negotiate in good faith with a view to achieving an amicable settlement of the same.

In the event that the Parties are unable to achieve any amicable settlement of the matter or dispute under this **Article 33.2**, then any Party shall be entitled by a notice in writing to the other Party to require the unresolved matter to be referred for an amicable settlement to a dispute resolution committee comprising:

(i) the President of SVD 19 or his authorised representative;

(ii) the CEO of Dalkia or his authorised representative; and

(iii) an independent member to be agreed upon by the Parties.

Such committee shall be empowered to regulate the rules and procedures of the matter to be resolved before its members.

Article 33.3 <u>Jurisdiction</u>

In the event:

(i) the Parties fail to agree upon the independent member within ten (10) days; or

(ii) the dispute resolution committee shall fail to decide on any matter in dispute referred to them under **<u>Article 33.2</u>** within thirty (30) days as from the date of such referral or such other period as may be agreed in writing by the Parties; or

(iii) any Party hereto is dissatisfied with the decision of the dispute resolution committee within fifteen (15) days as from this decision;

then in any such case either Party in which the dispute relates may require that the matter be finally settled under the exclusive jurisdiction of the Paris Commercial Court *(tribunal de commerce de Paris)*, even in the circumstance of multiple defendants or an impleader, and the jurisdiction clauses that may exist in other commercial and administrative documents of either of the Parties may not constitute an obstacle to the application of this clause.

Executed in Paris in two (2) copies,
On [•] 2010,

SVD 19 __________________ Represented by [•] [•]	Dalkia __________________ Represented by [•] [•]

LIST OF SCHEDULES

Schedule 1d)

SVD 19 Transformation Agreement

SVD 19 TRANSFORMATION CONTRACT[1]

<u>BETWEEN THE UNDERSIGNED</u>:

1. **Dalkia France**, a French *société en commandite par actions* with a share capital of €220,047,504, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-Lez-Lille, registered with the Trade and Companies Register of Lille under number 456 500 537;

hereinafter referred to as "**Dalkia France**",

on the one hand,

<u>AND</u>

2. **Société Valmy Défense 19 – SVD 19**, a French *société par actions simplifiée* with a share capital of €37,000, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint André, registered with the Trade and Companies Register of Lille under number 497 908 632;

hereinafter referred to as "**SVD 19**",

on the other hand,

referred to collectively as the "**Parties**" and each individually as a "**Party**".

[1] This contract shall be executed in French. The French version shall prevail over this English version. The provisions of this contract which mirror the provisions of the SKCP Transformation Contract shall be drafted in French with the exact same wording as the French wording of the SKCP Transformation Contract.

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RECITALS:

The Minister of the Economy, Finance and Industry has decided, pursuant to Article 8 of Law No. 2000-108 of February 10, 2000 concerning the modernisation and development of the electricity public service, to launch a call for tenders comprising two tranches, for the construction in France of electricity power stations using biomass, to be completed by January 1, 2010 at the latest, providing an additional generating capacity of 300 MW.

The Energy Regulation Commission (*Commission de Régulation de l'Energie* – "**CRE**") has been put in charge of implementing the Call for Tenders (as defined in the glossary below) initiated on July 12, 2006.

Smurfit Kappa Cellulose du Pin, a French "*société par actions simplifiée*" with a share capital of 45,857,826 euros, having its registered office at Allée des Fougères – Usine de Facture, 33380 Biganos, registered with the Trade and Companies Register of Bordeaux under number 572 142 198 ("**SKCP**"), is a company of the Smurfit Kappa group. SKCP owns and operates an integrated factory that produces kraft paper for use in the manufacture of corrugated cardboard packaging, located in Facture (Gironde) (the "**Factory**").

The Dalkia France group supplies its industrial customers with a complete range of energy services integrating decentralised energy production, heat generation, and optimised fuel management.

SVD 19 wished to be able to bid in the Call for Tenders and perform the electricity sale contract to be concluded with the Electricity Buyer (as defined in the glossary below), through the Plant (as defined in the glossary below) located on the Site (as defined in the glossary below), intended to supply the Site with steam and Non-Eligible Electricity (as defined in the glossary below) within the meaning of the Call for Tenders.

SVD 19 delivered its Tender (as defined in the glossary below) to CRE on August 9, 2007. This Tender was accepted by the Energy Minister by order dated June 17, 2008, published in the *Journal Officiel* on July 2, 2008.

SVD 19 and SKCP entered into a relationship regarding SVD 19's construction and operation of a biomass cogeneration power plant located at SKCP's site. This relationship led to the execution of the following agreements on August 7, 2008:

(i) a framework contract among SVD 19, SKCP and Dalkia France, amended by an amendment dated September 9, 2008 (as amended from time to time the **"SKCP Framework Contract**");

(ii) a transformation contract among SVD 19, SKCP and Dalkia France (as amended from time to time the "**SKCP Transformation Contract**");

(iii) a biomass supply contract among SVD 19, Smurfit Kappa Comptoir du Pin ("**SKCDP**") and Dalkia France (as amended from time to time the "**SKCDP Biomass Supply Contract**"). SKCDP is a sister company of SKCP; and

(iv) a land contract among SVD 19, SKCDP and Dalkia France (the "**Land Contract** ").

SVD 19 transferred the SKCP Framework Contract, the SKCP Transformation Contract and the SKCDP Biomass Supply Contract to Dalkia France. In order to reflect this transfer, the SKCP Framework Contract, the SKCP Transformation Contract and the SKCDP Biomass Supply Contract were amended by an instrument dated [•], 2010.

SKCP granted to SVD 19 an undertaking to create a usufruct right to the benefit of SVD 19, including a waiver on its immediate accession rights (the "**Usufruct**"). Upon SVD 19 being granted the definitive Usufruct, the Land Contract shall terminate *ipso facto*, without penalty or liability whatsoever.

The Parties came together in order to agree this SVD 19 Transformation Contract (the "**Contract**").

<u>**Glossary**</u>

The glossary defines the terms used in this Contract and in the appended documents, to which the Parties hereby attribute contractual value.

Terms which are used in the plural shall apply both to the collective group thereby defined and to one or more of its elements taken individually. Definitions which are given for a term in the plural shall also apply where this term is employed in the singular, and *vice versa*.

Definitions which are given for a noun shall apply *mutatis mutandis* to verbs, adjectives and adverbs with the same root, and *vice versa*.

Affiliate: means, with respect to any given person, any entity which directly or indirectly (through the intermediary of one or more other entities), Controls or is Controlled by that person as well as any legal person which is Controlled, directly or indirectly (through the intermediary of one or more other entities), by a person who Controls such a given person, directly or indirectly (through the intermediary of one or more other entities).

Auxiliary Electricity: means the electricity, if any, supplied by SKCP and consumed by the Plant for its proper operation.

Backup: means a boiler house (comprising one or more low pressure boilers), of a total capacity of seventy (70) hour tonnes, installed, maintained and used, under its responsibility, at SVD 19's exclusive expense.

Biomass: means the Internal Biomass and/or the External Biomass, as the case may be.

Black Liquor Steam (BLS): means the steam produced by SKCP's black liquor boiler.

Call for Tenders: means the call for tenders launched by the CRE by notice published in the Official Journal of the European Union of December 9, 2006 (contract notice 2006/S 235 251239) for the building in France of electric plants using biomass for a total generating capacity of 300 MW.

Contract: means the present SVD 19 Transformation Contract and its schedules as described in <u>**Article 2**</u>.

Control: means control, exercised alone or jointly, over a company or entity as defined in Article L. 233-3 of the Commercial Code as currently drafted.

CRE: shall have the meaning given to such term in the recitals.

CRE Start-Up: means the date on which, in accordance with the Specifications, the Electricity Sale Agreement shall enter into effect.

Dalkia France Efficiency Commitment: means Dalkia France's commitment to uplift, annually, the quantity of steam provided in the Contract.

Dalkia France Uptime Commitment: means Dalkia France's commitment to supply, annually, the quantity of Black Liquor Steam provided in the Contract.

Delivery Points: means the points at which the Primary Fluids and the Utilities shall be delivered, with the characteristics and in accordance with the terms defined in the Contract.

EDF: means Electricité de France.

Efficiency: means the minimum energy efficiency of 62.5% (0.9 x declared Efficiency = 0.9 x 69.5% = 62.5%), as stipulated in the Tender, in accordance with the requirements of the Specifications.

Electricity Buyer: means EDF or any other distributor designated as buyer of the Eligible Electricity, signatory of the Electricity Sale Agreement with SVD 19.

Electricity Sale Agreement: means the agreement to be concluded between SVD 19 and the Electricity Buyer within the meaning of the Specifications, to enter into effect on the CRE Start-Up date and to terminate on June 12, 2030, unless extended in accordance with the Specifications.

Eligible Electricity: means electricity generated by the Plant sold by SVD 19 to the Electricity Buyer within the meaning of the Call for Tenders.

External Biomass: means the biomass supplied to SVD 19 other than the Internal Biomass supplied under this Contract (including chips from branches, chips from root stock, bark and non categorized chips, sawdust, non classified round timbers, etc.).

Factory: means SKCP's industrial production facilities, located on the Site, which consume steam and Non-Eligible Electricity.

Factory Closure: means the complete and final ceasing of the Factory's activity or the partial ceasing of such activity where (i) the competent Prefect accepts to consider this to be equivalent to the complete and final ceasing of activity pursuant to the Specifications or (ii) following which Dalkia France will no longer be able to honour its Dalkia France Uptime Commitment or its Dalkia France Efficiency Commitment.

Internal Biomass: means the biomass (bark, wood flour and fines, slimes, bark particles, etc.) produced by SKCP and supplied to SVD 19 by Dalkia France under this Contract, in accordance with the requirements of the Specifications.

Land Contract: shall have the meaning given to such term in the recitals.

Non-Eligible Electricity: means electricity generated by the Plant which is not eligible within the meaning of the Specifications, part of which may be supplied to Dalkia France.

O&M Contract means the operations and maintenance contract entered into by SVD 19 and Dalkia France dated [●].

Plant: means the Utilities production plants built by SVD 19 with a generating capacity of 63MW, located on the Site, comprising in particular the fuel storage equipment (and other related equipment), the biomass boiler, two steam turbines and all of their auxiliary equipment. The description of the Plant appears in Schedule 1 of the Contract.

Primary Fluids: means all of the fluids (Black Liquor Steam, Internal Biomass, etc.) delivered by Dalkia France to SVD 19 with a view to the production of the Utilities, as listed in **Article 6**.

Project: means the project for the construction and operation of the Plant on the Site.

Site: means the SKCP industrial site located at the Facture factory, Biganos (33380), on which, in particular, the Factory, the Plant and SKCP's administrative buildings are located.

SKCDP Biomass Supply Contract: shall have the meaning given to such term in the recitals.

SKCP Framework Contract: shall have the meaning given to such term in the recitals.

SKCP Start-Up Date: means the date on which the operational start-up of the Plant occurred (i.e. October 1, 2010) in accordance with a notice sent by SVD 19 to SKCP dated October 4, 2010.

SKCP Start-Up Deadline: means the date on which the SKCP Transformation Contract is to fully produce its effects with respect to SKCP, i.e. July 15, 2011.

SKCP Transformation Contract: shall have the meaning given to such term in the recitals.

Specifications: means the specifications charter of the Call for Tenders concerning facilities for electricity generation using biomass, published by CRE.

SVD 19 Efficiency Commitment: means the Efficiency that SVD 19 has committed itself to in the Tender.

SVD 19 Framework Contract: means the framework contract entered into between SVD 19, and Dalkia France on [●], 2010.[2]

SVD 19 Uptime Commitment: means the Uptime that SVD 19 has committed itself to under Article 6.3 of the Specifications.

Tender: means the offer concerning the Project, made by SVD 19, solely in its own name and on its own behalf, to CRE on August 9, 2007 in response to the Call for Tenders.

Trials Start Date: means the date on which the finalisation and first trials of the Plant shall be initiated in common by the Parties and the date as of which the first exchanges of Primary Fluids and Utilities are made between the Parties.

Uptime: means the annual uptime, measured as full-power equivalent, of 4,000 hours, as specified in the Tender, in accordance with Article 6.3 of the Specifications.

Usufruct: shall have the meaning given to such term in the recitals.

Utilities: means all of the fluids (including the low pressure steam, the medium pressure steam, etc.) delivered by SVD 19 to Dalkia France.

Year: means a calendar period of twelve (12) consecutive months.

The Parties agree that, each time terms employed in this Contract have to be interpreted, in particular in the case of a dispute, controversy or claim arising in connection with this Contract or the SKCP Transformation Contract, such terms shall be interpreted consistently with the SKCP Transformation Contract (or their counterpart term in the SKCP Transformation Contract) and, where necessary, adapted to ensure coherence in the back-to-back approach agreed by the Parties.

Article 1. Purpose

The main purpose of this Contract is to define the terms, conditions and methods according to which SVD 19 undertakes to proceed with the transformation of the Primary Fluids, provided to it by Dalkia France under this Contract, into Utilities, from the Plant built on the land made available to SVD 19 by the Usufruct.

Article 2. Contractual documents

The contractual documents comprise this Contract and the schedules referred to below:

Schedules:

[2] This would be the back-to-back framework contract that would track the Framework Contract, with many provisions becoming void once the Usufruct has been established replacing the Land Contract.

Schedule 1: Description of the Plant facilities
Schedule 2: Siting plans
Schedule 3: Hook-up diagram
Schedule 4: Utilities metering plan
Schedule 5: Communication procedure
Schedule 6: Emergency situation management procedures
Schedule 7: Rules on health, safety and the environment
Schedule 8: Electricity Sale Agreement
Schedule 9: Finalisation and trials procedure
Schedule 10: Single-line diagram
Schedule 11: Delivery point and supply limits.

Those of the above schedules which are to be drawn up after the date of signature of this Contract shall form an integral part of the Contract as of the time they are signed and/or initialled by the Parties.

Article 3. Duration and phases of the Contract

3.1 Conditions precedent - Duration

The Contract shall enter into force on the date of the signature hereof.

The Contract has been entered into for a term running until the Electricity Sale Agreement expires.

The Contract shall come to an end in the following cases:

(i) occurrence of one of the termination cases referred to in **Article 15.1** of the Contract;

(ii) by mutual agreement between the Parties.

Notwithstanding the expiry or termination of the Contract, **Article 17** and **Article 21** below shall remain in force, insofar as necessary.

3.2 Phases of the Contract

The Contract comprises an operational working phase only.

[(a) Reserved]

[(b) Reserved]

(c) Operational working phase

This phase has started on October 1, 2010 (the SKCP Start-Up Date) and end on the expiry of the Contract (either upon expiry of the initial term or due to early termination).

Article 4. Scheduled maintenance

Dalkia France shall communicate the Factory's maintenance schedules to SVD 19, with a minimum of six (6) months prior notice, in order to enable SVD 19 to draw up schedules for the maintenance of the Plant, while taking the imperatives of the Factory into account insofar as possible.

Article 5. Commitments of SVD 19

5.1 Transformation commitment

As of the date hereof, SVD 19 undertakes to transform the Primary Fluids provided to it by Dalkia France under this Contract into Utilities under the conditions defined below.

(a) Characteristics of the Utilities

- Cleaning steam

The cleaning steam is used exclusively for the cleaning of the black liquor boiler.

Process steam delivery point	CH10 50 b cleaning steam header in boiler building 10
P & T measuring point	CH10 50 b cleaning steam header in boiler building (3 m before the steam header)
Nominal pressure at delivery point	25 bar abs
Pressure tolerance at delivery point	-1.0 b / +5 b
Nominal temperature at delivery point	325 °C
Temperature tolerance at delivery point	-0°C / +75°C

The cleaning steam must correspond to characteristics for feed water and be free of solid or liquid foreign bodies.

- 13 b steam

The 13 bar steam is consumed by the Factory and essentially feeds the MAP 5 and MAP 6 paper machines and the digester.

Steam delivery point	CC13 12 bar steam header at the level of the existing Plant turbine
P & T measuring point	Supply pipe for CC13 steam header (3 m before the steam header)
Nominal pressure at delivery point	13 bar abs
Pressure tolerance at delivery point	-1.0 b / +1.0 b
Nominal temperature at delivery point	220 °C
Temperature tolerance at delivery point	-20°C / +20°C
Maximum load variation slope	20 t/h per minute

The 13 bar steam must correspond to characteristics for feed water and be free of solid or liquid foreign bodies.

- 4 b steam

The 4 bar steam is consumed by the Factory and essentially supplies the digester and the evaporator.

Steam delivery point	3 bar CC3 steam header at the level of the existing Plant turbine
P & T measuring point	Supply pipe for CC3 steam header (3 m before the steam header)
Nominal pressure at delivery point	3.8 bar abs
Pressure tolerance at delivery point	-0.2b / +0.2 b
Nominal temperature at delivery point	160 °C
Temperature tolerance at delivery point	-10°C / +20°C
Maximum load variation slope	10 t/h per minute

The 4 bar steam must correspond to characteristics for feed water and be free of solid or liquid foreign bodies.

- Wastewater

Wastewater comprises in particular the washing water, cooling water, and blowdown discharge.

Wastewater, provided that it complies with environmental regulations in this area, shall be discharged into the Factory's general drainage network (unitary network) up to a limit of 60,000 cubic metres per year, excluding rainwater, to be processed by the Factory's purification plant. In this respect, SVD 19 undertakes to take the necessary steps, at any time over the duration of this Contract, to ensure that wastewater complies with the acceptance criteria for the Factory's purification plant, all in compliance with the applicable regulations.

The constraints for discharge into the Factory's collection system are as follows:
pH: between 6 and 9
Temperature: less than 60°C
COD: less than 180 mg/l
BOD: less than 75 mg/l
SM: less than 75 mg/l
Hydrocarbons: less than 5 mg/l

In the event of early termination (by expiration of the initial term or of a successive term, depending on the case, or by termination) of the Contract, and operation of the Plant in autonomous mode, SVD 19 shall take personal responsibility for the processing of waste water outside the SKCP network, without SKCP being pursued or disturbed in this respect.

- Rainwater

Rainwater collected on the roofs shall be discharged directly into the natural environment by SVD 19. An isolating system to be provided by SVD 19 must allow rainwater from roofing, in the event of fire, to be directed to the Factory's collection system.

Rainwater collected from roads shall be discharged by SVD 19 (at its expense) through an oil skimming tank, into the Factory's collection system.

The constraints for discharge into the Factory's collection system are as follows:

  - pH: between 6 and 9
  - Temperature: less than 60°C
  - COD: less than 180 mg/l
  - BOD: less than 75 mg/l
  - SM: less than 75 mg/l
  - Hydrocarbons: less than 5 mg/l.

- Electricity passing through the Factory's network

The quality criteria to be complied with at the delivery points are as follows (values valid in island mode):

  - Voltage, 13.5 kV network (minimum 13.2 kV and maximum 13.8 kV)
  - Voltage, 63 kV network (minimum 63 kV and maximum 66 kV)
  - COS phi Factory network: greater than or equal to 0.92
  - Frequency, Factory 13.5 and 63 kV networks: mini 49.5 Hz and maxi 50.5 Hz

These values shall be adjusted at the end of the detailed Project study and shall take account of the current quality level of the Factory's electricity network.

The single-line diagram appears in Schedule 11.

(b) Volume of the Utilities

- Cleaning steam:

Fixed hourly rate at delivery point	13 t/h or 9.8 MW*
Max output at delivery point	20 t/h
Min output at delivery point	0 t/h

* Thermal power calculated by difference between the enthalpy of the cleaning steam and the enthalpy of water output from hot well at 80°C.

- 13 bar steam

Fixed hourly rate at delivery point	157 t/h or 110 MW*
Maximum output at delivery point	200 t/h
Minimum output at delivery point	50 t/h

* Thermal power calculated by difference between the enthalpy of the 13 bar steam and the enthalpy of water output from hot well at 80°C.

- 4 bar steam

Fixed hourly rate at delivery point	92.2 t/h or 62.8 MW*
Maximum output at delivery point	110 t/h
Minimum output at delivery point	60 t/h

* Thermal power calculated by difference between the enthalpy of the 4 bar steam and the enthalpy of water output from hot well at 80°C.

- Non-Eligible Electricity

Fixed hourly rate at delivery point	11 MWel
Maximum power at delivery point	15 MWel
Minimum power at delivery point	0 MWel

(c) Uptime of the Utilities

Commitment for annual steam uptime:

SVD 19 undertakes to provide steam 99.7% of the time, other than during the Factory's scheduled maintenance, subject to supply of the Black Liquor Steam (BLS).

5.2 Other commitments of SVD 19

(a) Hook-ups

SVD 19 acknowledges having examined the current state of the Factory's 13.5 kV and 63 kV electricity networks. SVD 19 undertakes not to cause any fault in the Factory's electricity network and undertakes to remedy any damage to said network which is attributable to it.

(b) Reactive energy

SVD 19 undertakes not to degrade the Factory's situation regarding reactive energy and undertakes to compensate any additional costs associated with the Factory's consumption of reactive energy due to the operation of the Plant, it being agreed that the reactive energy produced for the Factory by SVD 19 shall amount to what the former turboalternators produced before the Plant was put in place.

(c) Management of the Factory's electrical islanding

[Reserved]

(d) Backup

SVD 19 undertakes to maintain a Backup in its installations, making it possible to stand in for the supply of steam from the biomass boiler in the event that it should fail or shut down, and to put it into service in such cases, other than for the Factory's scheduled maintenance.

(e) Commitment to take delivery of Primary Fluids

SVD 19 undertakes to take delivery of the quantity of Primary Fluids that SKCP undertakes to deliver under the conditions of **Article 6** below. The consequences of a failure by SVD 19 to comply with this obligation are provided for in **Article 5.4** below.

(f) Commitment to supply or to compensate electricity

SVD 19 undertakes to supply, or financially compensate, 24,795,000 kWh per year plus 41.7 kWh per tonne of Black Liquor Steam supplied by Dalkia France.

In the event that SVD 19 fulfils its duty to supply electricity by purchasing from an external supplier, the cost of transport shall be borne by SVD 19.

In the event of application of the financial compensation provided for in the first paragraph of point (f) above, Dalkia France shall invoice the total marginal cost (energy and transport, excluding subscription for transport) of energy not delivered by SVD 19, purchased or indemnified by Dalkia France to SKCP under the SKCP Transformation Contract, including any penalties borne in this respect by Dalkia France.

5.3 Sanction for SVD 19's transformation commitments

In the event that SVD 19 fails to meet its commitments referred to in **Articles 5.1**, other than in the exonerating situations enumerated in **Article 5.5** below, Dalkia France shall be entitled to apply penalties to SVD 19 under the conditions and within the caps defined below.

(a) Definition of an interruption of supply

An interruption of supply shall be observed by both Parties as of the time the characteristics of the 13 bar steam or 4 bar steam no longer meet the conditions specified in **Articles 5.1 (a)** for more than three (3) consecutive minutes.

(b) Measurement

Measurement shall be made at the Utilities delivery points.

(c) Amount of hourly penalties and annual cap

- Hourly penalty

The amount of the hourly penalty in the event of interruption is fixed at nine thousand euros (€9000) / hour of interruption.

- Annual cap for penalties

The total amount of penalties due per contractual year is capped at four hundred thousand euros (€400,000) / year, index-linked in accordance with formula K appearing in **Article 9.1**.

(d) Annual deductible

Penalties shall be triggered as of the 26th hour of cumulative interruption or as of the sixth (6th) interruption of supply within the meaning of **Article 5.3 (a)** above, in the year, outside the Factory's scheduled maintenance periods.

(e) Nature of penalties

The nature of penalties shall be to discharge the obligation and, consequently, exclude any other indemnification of Dalkia France by SVD 19, subject to the express reservation of the Backup as referred to in **Article 5.2 (d)** being put into effect whenever necessary and as soon as possible, such as to avoid any interruption in the operation or any reduction in the activity of the Factory.

(f) Specific sanction for failure to implement the Backup

Notwithstanding the provisions of paragraphs (c) and (e) above, the Parties hereby expressly agree that in the event that the Backup is not put into effect within twelve (12) hours following the shut-down of or fault in the biomass boiler or in the case of inadequacy of the Back-up, SVD 19 shall owe a penalty in addition to those set out in paragraph (c) above, of fifty thousand euros (€50,000) per day late, capped at two million euros (€2,000,000) per year.

If such implementation (inadequacy and/or failure) of the Back-up is not remedied by SVD 19 within eight (8) days as of the expiry of the aforementioned period of twelve (12) hours, Dalkia France (or SKCP as designated by Dalkia France) shall then be able to take the initiative of implementing any alternative solution (e.g. renting of boilers) in order to solve the problem itself, at SVD 19's expense, without prejudice to the application of the penalties mentioned in the preceding paragraph for so long as such alternative solution is not effective.

(g) Invoicing and payment of penalties

The penalties shall be invoiced monthly.

The penalty invoices shall be payable at sixty (60) days from the end of month, on the 10th of the month, as of their date of issue.

5.4 Sanction for the obligation to take delivery of the Primary Fluids

If SVD 19 does not take delivery of the Primary Fluids effectively made available to it by Dalkia France, said Primary Fluids which were not supplied and consequently not uplifted by SVD 19 shall be accounted for fully in Dalkia France's credit, as if they had been effectively supplied, in the calculation of the value of variations as referred to in **Article 9.1 (b)** of the Contract.

5.5 Exonerating causes

No penalty shall be due by SVD 19 to Dalkia France if its supply commitments could not be met due to the occurrence of one of the following events:

- an act or circumstance ascribable to Dalkia France or SKCP under this Contract (including failure to perform the obligations imposed on it under the Contract in terms of commitment to make Primary

Fluids available and duty to take delivery), or of their personnel, of their subcontractors or suppliers and of any person intervening on its behalf and under its responsibility, putting SVD 19 in a position of material impossibility to fulfil its duties to provide the Utilities.

- an act or circumstance ascribable to a third party, putting SVD 19 in a position of material impossibility to fulfil its duties to provide the Utilities, it being specified that a third party within the meaning of this Article shall include SKCP, SKCDP or their successors or Affiliates, the suppliers of SVD 19 (other than for the supply of gas and electricity) or SVD 19's personnel, subcontractors and any person intervening on behalf of SVD 19 and under its responsibility.

- any event outside of SVD 19's control, including any interruption or insufficiency in services for the distribution of gas and electricity, any material change in the physical characteristics of the energy thereby supplied, any fuel quotas or quotas for any other supply required for the operation of the Plant imposed by the public authorities.

- any event of force majeure or similar event referred to in **Article 16**.

It is agreed that if the circumstances, acts and/or events constituting exonerating causes above have as their origin an act or circumstance attributable to SVD 19, then said exonerating cause may not be relied upon by SVD 19.

Article 6. Commitment by Dalkia France to make the Primary Fluids available

Dalkia France undertakes to make the Primary Fluids available to SVD 19 under the following terms and conditions.

6.1 Provision of Black Liquor Steam

(a) Characteristics:

HP steam supply point	80 bar CC80A steam header at the level of boiler 9
P & T measuring point	Piping feeding steam header CC80A at the level of 9 (3 m downstream from the steam header)
Nominal pressure at point of supply	81 bar
Pressure tolerance at point of supply	-5.0 b / +5.0 bar
Nominal temperature at point of supply	435 °C
Temperature tolerance at point of supply	-5°C / +15°C
Maximum load variation slope	25 t/h by minute

(1) regulation of the 80 bar network pressure shall take place from the black liquid turbine

The chemical properties of the Black Liquor Steam shall be as follows:

Parameters	Values
Silica	< 0.02 mg / kg
Sodium (Na) + Potassium (K)	< 0.04 mg / kg
Chlorides	< 0.2 mg / kg
Total copper (Cu)	< 0,003 mg / kg
Iron (Fe)	< 0.02 mg / kg
Sulphates and sulphites	< 0.2 mg / kg
Na / PO4	2.3 to 3

(b) Volumes:

Fixed hourly rate at delivery point	186.7 t/h or 150.3 MW*

Maximum throughput at delivery point	220 t/h
Minimum throughput at delivery point	150 t/h
Black Liquor technical minimum Fuel oil technical minimum	Technical min 1: 100 t/h Technical min 2: 40 t/h

* Thermal power calculated by difference between the enthalpy of the Black Liquor Steam and the enthalpy of water output from hot well at 80°C.

6.2 Provision of the Internal Biomass

(a) Characteristics

Products		SK Barks	Fines	Slimes	Bark particles	PCI mix SK products
State of preparation of fuels		Prepared	Prepared	Prepared	Prepared	
Immediate analysis						
Average humidity	% of gross	53.0	51.0	70.0	53.0	**54,5**
Maximum humidity	% of gross	58.0	56.0	75.0	58.0	**59,5**
Minimum humidity	% of gross	46.0	45.0	50.0	46.0	**46.2**
Average ash content	% dry	9.20	0.80	50.00	28.00	**10.63**
Max ash content	% dry	12.00	1.50	60.00	35.00	**13.50**
Min ash content	% dry	5.00	0.20	40.00	20.00	**7.05**
Average density	kg/m3	280	250	330	280	**276**
Max density	kg/m3	330	300	380	330	**326**
Min density	kg/m3	230	200	280	230	**226**
PCI average gross	**MJ/kg of gross**	**7.33**	**8.18**	**0.60**	**5.45**	**6.65**
PCI min gross	MJ/kg of gross	6.05	7.04	-0.29	4.02	**5.42**
PCI max gross	MJ/kg of gross	9.24	9.55	3.41	7.49	**8.70**
N max	% dry	< 0.500	< 0.600	< 1.000	< 0.600	**< 0.585**
S nominal	% dry	0.036	0.009	0.535	0.026	**0.068**
S max	% dry	< 0.050	< 0.030	< 1.000	< 0.050	**< 0.124**
Cl nominal	% dry	0.015	0.005	0.024	0.015	**0.012**
Cl max	% dry	< 0.030	< 0.010	< 0.050	< 0.030	**< 0.024**
Si	% dry	2.9	0.2	7.0	11.0	**2.699**
Na + K	% dry	0.17	0.07	0.87	0.11	**0.190**
Grading according to ISO 3310-2						
▫ Ratio of fines <3.15mm	% of gross					**< 35%**
▫ Particles <63 mm	% of gross					**> 90%**
Maximum dimensions	mm					**200x50x25**

The delivery points and supply limits between the Parties are specified in Schedule 11.

(b) Volumes

Products		SK Barks	Fines	Slimes	Bark particles	PCI mix SK products
State of preparation of fuels		Prepared	Prepared	Prepared	Prepared	
Annual Qty	t/year	110000	79000	30000	12200	**231,200**
Annual Qty	MWh/year	223,954	179,594	5,037	18,468	**427,053**
PCI average	MWh/t	**2.04**	**2.27**	**0.17**	**1.51**	**1.85**

(c) Return of ash produced by the Internal Biomass

Dalkia France shall take personal responsibility for the portion of ash corresponding to the Internal Biomass supplied by Dalkia France to SVD 19, the elimination of the additional ash being the responsibility of SVD 19.

6.3 Provision of feed water

Dalkia France shall provide SVD 19 with a mixture of demineralised water and condensates. This water shall be used to feed the biomass boiler, the Backup, and injection desuperheaters.

(a) Characteristics

The required characteristics for this mixture are as follows:

Measuring point for T and characteristics	Feed water piping hot well (3 m downstream from the hot well)
Nominal temperature at point of supply	80 °C
Temperature tolerance at point of supply	-5°C / +5°C
pH	8.5 to 9.5
Cationic conductivity of the mixture after processing	< 0.8 µS/cm monthly average
Dissolved oxygen	2.5 PPM before the de-aerator
Iron	< 0.02 mg /l
Silica (in SiO_2)	< 0.02 mg / l
Copper	< 0.003 mg/l
Sodium + Potassium	< 0.04 mg/l before the de-aerator
Total hardness	0.02° F
TOC	<0.2 mg/l
Grease & oil	0 mg/l

(b) Volumes:

Nominal throughput at delivery point	85 t/h or 7.9 MW* (1)
Maximum throughput at delivery point	170 t/h
Minimum throughput at delivery point	4 t/h

* Thermal power calculated by difference between the enthalpy of the demineralised water and condensates at 80°C.
(1) subject to the balancing of exchanges of boiler water and steam.

6.4 Provision of raw water

Dalkia France shall provide SVD 19 with raw water. This water shall be used for:

- cleaning the floors;
- cooling the effluents; and
- cooling for certain equipment which cannot be cooled using a closed circuit.

(a) Characteristics

Volume measuring points	Meter on entry to the Plant
Average temperature at point of supply	15 °C
Temperature tolerance at point of supply	-10°C / +20°C
pH	Comprised between 6.5 and 7.5
Suspended matter (SM)	<30 mg/l

(b) Volumes:

Average throughput at delivery point	3 m3/h
Maximum throughput at delivery point	35 m3/h
Annual volume	25,000 m3

6.5 Supply of the Auxiliary Electricity to the Plant

Out of a concern for economic optimisation, all of the Auxiliary Electricity shall be purchased, as applicable, by SDV 19 from Dalkia France.

The purchase of Auxiliary Electricity is excluded from the financial provisions set out in **<u>Article 9</u>**.

(a) Characteristics:

Consumed power: approximately 4.4 MW
Hook-up point: 63 kV bus (main connection) and 13.5 kV bus (final backup)

(b) Volumes:

Average power at delivery point	4.4 MWel
Maximum power at delivery point	5.4 MWel
Minimum power at delivery point	0 MWel

(c) Price

The sale price used for the Auxiliary Electricity shall be the average price of electricity purchased by the Factory, excluding specific contracts of the Exeltium or equivalent type:

Market $ElecP_{(Year\ N)}$: is the average price of electricity purchased by the Factory, expressed as Euros / MWhel, for the year in question.
For 2007, Market $ElecP_{(2007)}$ = €56 / MWhel

Notwithstanding anything to the contrary, this **<u>Article 6.5</u>** shall not apply in any period of time during which the O&M Contract is in effect.

6.6 Penalties for Dalkia France's undertaking to provide the Primary Fluids

The terms of **<u>Article 5.4</u>** being reiterated, in case of a breach by Dalkia France of its obligation to provide the Primary Fluids, such breach shall be taken into account in the calculation of the valuation of variations provided for in **<u>Article 9.1 (b)</u>**.

It is agreed that such taking into account of the breach by Dalkia France of its obligations to provide the Primary Fluids in the calculation of the valuation of variations, shall be, under this Contract, exclusive of all other penalties and/or compensation of any nature by Dalkia France, or any of its Affiliated Companies, in favour of SVD 19 or any of its Affiliated companies.

Article 7. Other obligations of Dalkia France

7.1 Obligations to take delivery of and annual supply of steam

(a) Definition of the minimum uplift commitment and minimum annual supply

As of date hereof and until the date of expiry of the Contract (upon expiry of the initial term or of a successive term or in case of termination), Dalkia France undertakes to comply with:

(i) the Dalkia France Efficiency Commitment; and

(ii) the Dalkia France Uptime Commitment.

It is specified that the reference period for verifying compliance with the Dalkia France Efficiency Commitment and the Dalkia France Uptime Commitment is an annual period.

(b) Non-compliance with the Dalkia France Efficiency Commitment

Dalkia France undertakes to inform SVD 19, as soon as possible, once it becomes aware of the same, of any potential or actual failure on its part in meeting the Dalkia France Efficiency Commitment.

In such an event, the Parties undertake, in case of a Factory Closure, to implement the solutions mentioned in article 10.1 of the SVD 19 Framework Contract or, as the case may be, in the Usufruct Contract and, outside the case of a Factory Closure, to discuss in good faith in order to find a solution or solutions (including, where applicable, in concert with the Prefect) such as to enable SVD 19 to continue to meet or re-establish the SVD 19 Efficiency Commitment in compliance with the requirements of the Specifications. In such last case, in the absence of a solution or agreement, the Contract shall be fully and automatically terminated by either of the Parties as provided for in **Article 15**.

Dalkia France or SVD 19 may request SKCP to attend and participate in these discussions.

(c) Non-compliance with the Dalkia France Uptime Commitment

Dalkia France undertakes to inform SVD 19, as soon as possible once it becomes aware of the same, of any potential or actual failure on its part in meeting the Dalkia France Uptime Commitment.

In such an event, the Parties undertake, in case of a Factory Closure, to implement the solutions mentioned in article 10.1 of the SVD 19 Framework Contract or, as the case may be, in the Usufruct Contract and, outside the case of a Factory Closure, to discuss in good faith in order to find a solution or solutions (including, where applicable, in concert with the Prefect) such as to enable SVD 19 to continue to meet or re-establish the SVD 19 Uptime Commitment in compliance with the requirements of the Specifications. In such last case, in the absence of a solution or agreement, the Contract shall be fully and automatically terminated by either of the Parties as provided for in **Article 15**.

Dalkia France or SVD 19 may request SKCP to attend and participate in these discussions.

(d) Consequences of failure of Dalkia France to meet the Dalkia France Uptime Commitment and Dalkia France Efficiency Commitment and/or its obligations to supply Internal Biomass as well as undertakings of SVD 19 in the event of failure of SKCP to meet its SKCP Uptime Commitment and SKCP Efficiency Commitment under the SKCP Transformation Contract.

It being recalled, as a preliminary matter, that in the event that Dalkia France fails to comply with its obligation to supply the Primary Fluids, this failure to comply shall be taken into account in calculating the valuation of variations provided for in **Article 9.1 (b)**.

Subject to a non performance by SKCP resulting in Dalkia France failing to comply with its Dalkia France Uptime Commitment and/or its Dalkia France Efficiency Commitment, and without this limiting the provisions of Article 10.1 of the SVD 19 Framework Contract, or, as the case may be, of the provisions of the Usufruct contract, and **Article 6.6** of this Contract in the event of Dalkia France's failure to perform its commitments to supply Primary Fluids, the Parties expressly agree that Dalkia France's failure to comply with its Dalkia France Uptime Commitment and/or its Dalkia France Efficiency Commitment, and the subsequent termination (and all of its consequences) of the Contract, shall not provide entitlement to any damages, penalty, costs or indemnity of any whatsoever (in tort, contract or pursuant to regulations) on the part of Dalkia France in favour of SVD 19 (and/or any entities that are Affiliated to it), whatever the consequences for SVD 19 (and/or its Affiliates) or with respect to third parties (public authorities, the third party contracting parties of SVD 19 or its Affiliates) under this Contract.

In this respect, subject to a non performance by SKCP resulting in Dalkia France failing to comply with its obligations under this Contract, SVD 19 and its Affiliates whose agreement and compliance it hereby guarantees, irrevocably waives any claims of any nature whatsoever against Dalkia France and/or any of its Affiliates, connected with Dalkia France's failure to comply with its Dalkia France Uptime Commitment, its Dalkia France Efficiency Commitment and/or its obligation to provide Internal Biomass under the Contract (and in this last case, without this limiting the provisions of **Article 6.6**) and the subsequent termination (and all of its consequences) of the Contract, or which are based on, *inter alia, (*i) any consequences and/or penalties applying against it as provided, in particular, under Articles 6.3 to 6.5 of the Specifications in the event of failure to comply with, *inter alia*, the Dalkia France Uptime Commitment or Dalkia France Efficiency Commitment, (ii) any indemnity imposed on it pursuant to Article 41 of Law No. 2000-108 of February 10, 2000, or further (iii) any costs, penalties and/or indemnity of any nature connected with the possible ending or termination of agreements entered into by SVD 19 (and/or its Affiliates) with respect to the Project.

SVD 19 acknowledges that it has been informed of the provisions of the SKCP Transformation Contract, and in particular of the provisions of article 7.01(d) of the SKCP Transformation Contract. SVD 19 for itself and its Affiliates as well as its lenders, agents, employees and subcontractors, undertakes not to take any action against SKCP in case of failure by SKCP to comply with the SKCP Uptime Commitment, the SKCP Efficiency Commitment and/or its obligation to provide Internal Biomass under the SKCP Transformation Agreement whatsoever which would trigger Dalkia France's indemnification obligations or liabilities towards SKCP and its Affiliates under article 7.01(d) of the SKCP Transformation Contract, failing which SVD 19 shall fully indemnify Dalkia France and its Affiliates.

The commitments of SVD 19 under this Article constitute a condition which is a determining factor for Dalkia France's consent to enter into the Contract.

7.2 Electricity transit:

Dalkia France shall make the electricity transit installations available to SVD 19 and undertakes to ensure 99.7% availability except in the Factory's scheduled maintenance periods.

7.3 Exonerating causes

(a) No penalty shall be due by Dalkia France to SVD 19 under the Contract due to the occurrence of one of the following events:

- an act or circumstance ascribable to SVD 19 or SKCP (including failure to perform the obligations imposed on it under the Contract in terms of commitment to make Utilities available, to supply electricity to Dalkia France or to uplift the Primary Fluids), or to their personnel, their subcontractors or suppliers and to any person intervening on its behalf and under its responsibility, putting Dalkia France in a position of material impossibility to fulfil its duties under the Contract;

- an act or circumstance ascribable to a third party putting Dalkia France in a position of material impossibility to fulfil its duties under the Contract, it being specified that a third party within the meaning of this Article shall include SKCP, SKCDP or their successors or Affiliates, the suppliers of Dalkia France (other than for the supply of gas and electricity) or Dalkia France's personnel, subcontractors and any person intervening on behalf of Dalkia France and under its responsibility;

- any event outside of Dalkia France's control, including any interruption or insufficiency in services for the distribution of gas and electricity, any material change in the physical characteristics of the energy thereby supplied, any fuel quotas or quotas for any other supply required for the operation of the Factory imposed by the public authorities;

- the destruction of plants, machines and/or equipment, it being specified that this case shall not prejudice SVD 19's right to receive any and all insurance compensation for direct property damage and/or bodily injury that the Dalkia France may cover, as the case may be;

- any event of force majeure or similar event referred to in **Article 16.**

(b) it is agreed that if the acts, circumstances and/or events constituting exonerating causes above have as their origin an act or circumstance which is attributable to Dalkia France, then said exonerating cause may not be relied upon by Dalkia France, except if such acts, circumstances and/or events are attributable to an act or an omission of Dalkia France under the O&M Contract, in which case such exonerating cause shall apply and Dalkia France shall not bear any penalty, indemnity or liability whatsoever under this Contract;

For the avoidance of doubt, it is understood that SVD 19 shall not be entitled to claim from Dalkia France nor be exonerated from any penalty, indemnity or liability whatsoever under this Contract if such penalty, indemnity or liability results from an act or an omission attributable to Dalkia France under the O&M Contract.

In any case, it is also agreed that SVD 19 shall not be entitled to recover damages more than once, in particular as regards any penalty, indemnity or liability received under the O&M Contract.

Article 8. Delivery point and metering of the Utilities

8.1 Delivery point for the Internal Biomass

Supply point for internal barks	At the AT21 belt drop-off point
Supply point for dehydrated slimes	Screw press: EVIS 130c screw drop-off point Belt press : ET130b belt drop-off point
Supply point of the fines	At the AT40 belt drop-off point

8.2 Metering

The meters shall be positioned as near as possible to the points of delivery of the utilities and calibrated jointly and with the participation of the Parties.

A metering plan is appended in Schedule 4 of the Contract.

8.3 Meter failure

In the event of failure of a meter, the invoiced quantity for the period from the date of the last meter reading preceding the failure and the date on which the meter is returned to proper working condition shall be based on the Factory's historical consumption, taking account of the seasonality of the Factory's production levels.

Article 9. Financial provisions

9.1 Prices - Index-linking - Revision

The cost of transformation of the Primary Fluids into Utilities shall comprise two terms (prices):

- a fixed term (see paragraph (a) below entitled "fixed term") which corresponds to the transformation of the quantities stated in the tables in **Article 5** and **Article 6** in terms of the fixed hourly amounts ; and

- a variable term (see paragraph (b) below entitled "valuation of variations") attributing a positive or negative value to any variations in volumes between the fixed hourly amounts and the volumes actually exchanged.

(a) Fixed term

The annual fixed term which corresponds to the transformation of the Primary Fluids into Utilities shall be calculated according to the following formula:

FT = 4,047,000 x K – 64.913 * Market $ElecP_{(Year\ N)}$)

Where

K is the index value used in the CRE's Call for Tenders

$$K = 0,3 + 0,3\left(\frac{ICHTTS1}{ICHTTS1_0}\right) + 0,4\left(\frac{PPEI}{PPEI_0}\right)$$

- ICHTTS1: is the definitive value of the last known value on the first of November of each year in the hourly labour cost index (all employees) in electrical mechanical industries.

- PPEI: is the definitive value of the last known value on the first of November of each year in the business to business service industry production price index for all industry (French market).

- ICHTTS1o and PPEIo: are the definitive values of the last known values on January 1, 2007.
On January 1, 2007
ICHTTS1o = 135.3
PPEIo =111.3
On January 1, 2007, K = 1.

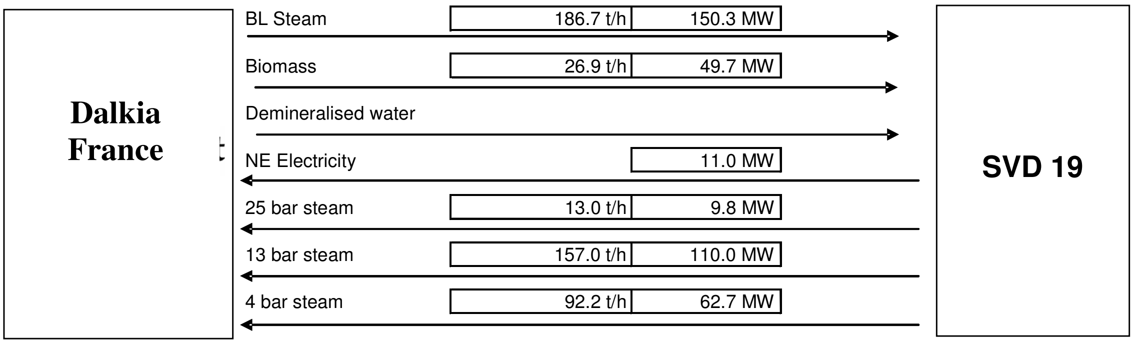
- Market $ElecP_{(Year\ N)}$: is the average price of electricity purchased by the Factory, expressed in Euros / MWh, for the year in question.
For 2007, Market $ElecP_{(2007)}$ = €56 / MWh.

Worked example:

On January 1, 2007, FT is equal to:
FT= 4,047,000 *1 – 64.913 x 56, giving
FT = €411,872 / year

(b) Valuation of variations

The Parties have defined the theoretical break-even point below.



At the break-even point, SVD 19 shall invoice Dalkia France for the Fixed Term set out in point (a).

Any variation between the fluids actually delivered and this break-even point may give rise to variations in the charges or revenues of SVD 19. Consequently, the Parties have adopted rules for the valuation of variations making it possible to offset variations in SVD 19's operating accounts.

These valuations apply to the various exchanged fluids in the following manner:

- variations in Black Liquor Steam delivered by Dalkia France shall give rise to variations in SVD 19's sales of electricity;
- variations in the supply of Internal Biomass shall give rise to variations in SVD 19's purchases of External Biomass;
- variations in the consumption of 35 bar steam, 13 bar steam and 4 bar steam shall give rise to variations in SVD 19's electricity sales;
- variations in the supply by SVD 19 of NE Electricity shall give rise to variations in Dalkia France's electricity purchases.

Step 1: Identification of the variations between volumes of steam and electricity actually delivered /supplied and volumes arising under the fixed hourly amounts expressed as MWh.

For this purpose, the Parties shall identify:

- the volumes actually delivered/supplied in steam and electricity which are measured using the meters specified in **Schedule 4**;

- the theoretical volumes delivered /supplied in steam and electricity which are calculated by multiplying the number of site opening hours by the various fixed hourly amounts indicated in the tables in **Articles 5** and **6,** summarised below:

SKCP fixed amount	t/h	MW	Uptime
Black Liquor Steam	186.7 t/h	150.3 MW	99.7%
Internal Biomass	26.9 t/h	49.7 MW	99.7%

SVD 19 fixed amount	t/h	MWh	Uptime
25 bar steam	13.0 t/h	9.8 MW	99.7%
13 bar steam	157.0 t/h	110.0 MW	99.7%
4 bar steam	92.2 t/h	62.7 MW	99.7%
NE electricity		11.0 MW	97.0%

Worked example:
Consider a month M in which the Factory is fully operational for thirty-one (31) days, i.e. seven hundred and forty-four (744) hours.

- The actual volumes exchanged are, for example, the following:

Actual values SKCP	t	MWh
Black Liquor Steam	138 488	111 488
Internal Biomass	19 254	35 573

Actual values SVD 19	t	MWh
25 bar steam	9 643	7 269
13 bar steam	116 458	81 595
4 bar steam	61 737	41 984
NE electricity		8 184

- The fixed volumes exchanged are as follows:

Worked example for Black Liquor Steam:
Period in hours x Uptime x Fixed hourly amount
744 hours x 99.7% x 186.7 t/h = 138 488 t
744 hours x 99.7% x 150.3 MW = 111 484 MWh

SKCP fixed amount	t	MWh
Black Liquor Steam	138 488	111 488
Internal Biomass	19 954	36 866

SVD 19 fixed amount	t	MWh
25 bar steam	9 643	7 269
13 bar steam	116 458	81 594
4 bar steam	68 391	46 509
NE electricity		7 938

Step 2*:* Updating the variation price table to present value

- Valuation of Non-Eligible Electricity and Internal Biomass

The principle adopted to value the Non-Eligible Electricity and the Internal Biomass is the market price principle.

Thus, the price of Non-Eligible Electricity follows the Market $ElecP_{(Year\ N)}$ index used in the invoicing of the Fixed Term:

Market $ElecP_{(Year\ N)}$: is the average price of electricity purchased by the Factory, expressed in Euros / MWh, for the year in question.

For 2007, Market $ElecP_{(2007)}$ = €56 / MWh.

The market price for the Internal Biomass is determined by the Parties at €16.61 / MWh, this price will be index-linked to the K index used in invoicing the Fixed Term:

$$K = 0,3 + 0,3\left(\frac{ICHTTS1}{ICHTTS1_0}\right) + 0,4\left(\frac{PPEI}{PPEI_0}\right)$$

- ICHTTS1: is the definitive value of the last known value on the first of November of each year in the hourly labour cost index (all employees) in electrical mechanical industries.
- PPEI: is the definitive value of the last known value on the first of November of each year in the business to business service industry production price index for all industry (French market).
ICHTTS1o and PPEIo: are the definitive values of the last known values of the aforementioned indexes on January 1, 2007.

On January 1, 2007
ICHTTS1o = 135.3
PPEIo = 111.3
On January 1, 2007, K = 1.

Worked example:
On January 1, 2007, the valuation of Non-Eligible Electricity and Internal Biomass is as follows:

	Valuation	
Non-Eligible Electricity	€56.0 / MWh	
Internal Biomass	€16.61 / MWh	€30.70 / t

- Valuation of the steam

The principle adopted to value the exchanged steam is that of electrical equivalent, thus each tonne of steam delivered by Dalkia France or supplied by SDV 19 corresponds to an equivalent in electricity generation if this steam had been put to use in the condensation turbine.

Considering:
- the characteristics of the steam;
- the foreseeable performances of the electricity generating equipment; and
- the Factory's working methods,

the Parties have determined that steam's equivalent in electricity generation is determined as follows:

Valuation of 1 t/h of Black Liquor steam = 229.7 kWh / t
Valuation of 1 t/h of 25 b steam = 182.4 kWh / t
Valuation of 1 t/h of 13 b steam = 135.2 kWh / t
Valuation of 1 t/h of 4 b steam = 109.8 kWh / t.

At the present date, the performance levels of the electricity generation tools are not known, and consequently the Parties may correct the above values as soon as the electricity generation tools are guaranteed by the consulted manufacturers.

Considering:
- the existing electrical power ratings on the Site before publication of the Call for Tenders; and
- the rules of the Call for Tenders,

the valuation and the index-linking of the valuation of variations are as follows:

Valuation for Black Liquor Steam $_{(\text{Year N})}$ = 229.7 / 1000 *(76.46% * Green ElecP$_{(\text{Year N})}$ + 23.54% Market ElecP$_{(\text{Year N})}$

Valuation of 25 b Steam$_{(\text{Year N})}$ = 182.4 / 1000 *(76.46% * Green ElecP$_{(\text{Year N})}$ + 23.54% Market ElecP$_{(\text{Year N})}$)

Valuation of 13 b Steam$_{(\text{Year N})}$ = 135.2 / 1000 *(76.46% * Green ElecP$_{(\text{Year N})}$ + 23.54% Market ElecP$_{(\text{Year N})}$)

Valuation of 4 b Steam$_{(\text{Year N})}$ = 109.8 / 1000 *(76.46% * Green ElecP$_{(\text{Year N})}$ + 23.54% Market ElecP$_{(\text{Year N})}$)

Where:

- Green ElecP$_{(\text{Year N})}$) is the price of green electricity provided in the file given in answer to CRE. This price is index-linked using the K index set out above.
For 2007, Green ElecP$_{(2007)}$ = €113.7 / MWh.

- Market $ElecP_{(Year\ N)}$: is the average price of electricity purchased by the Factory, expressed in Euros / MWh, for the year in question.
For 2007, Market $ElecP_{(2007)}$ = €56 / MWh.
Worked example:
On January 1, 2007, the valuation of the various steam levels was as follows:

	Valuation	
Black Liquor Steam	€28.57 / MWh	€23.00 / tv
25 bar Steam	€24.20 / MWh	€18.26 / tv
13 bar Steam	€19.32 / MWh	€13.54 / tv
4 bar Steam	€16.15 / MWh	€10.99 / tv

Prices given excluding VAT - subject to VAT at the rate in force on invoicing date.

Step 3: Summary of variations

The variations in observed volumes are as follows:

SKCP variation	t	MWh
Black Liquor Steam	- 0	- 0
Internal Biomass	- 700	- 1 292

Dalkia France has delivered less Internal Biomass than planned.

SVD 19 variation	t	MWh
25 bar steam	0	0
13 bar steam	0	0
4 bar steam	- 6 654	- 4 525
NE electricity		246

Dalkia France has consumed less 4 bar steam.

SVD 19 has delivered more Non-Eligible Electricity than planned.

After using the variation prices calculated in step 2, the valuation of the variations for the month in question amounts to:

SKCP variation	€
Black Liquor Steam	-
Internal Biomass	- 21 468
	- 21 468

Dalkia France financially compensates for the biomass shortfall

SVD 19 variation	€
25 bar steam	-
13 bar steam	-
4 bar steam	73 095
NE electricity	- 13 749
	59 346

Dalkia France has an interest in the increased electricity
Dalkia France financially compensates for the excess NE Electricity

Valuation of variations	37 877

Overall, Dalkia France benefits from a reduction in its monthly invoice.

9.2 Invoicing and payment

At the end of each month an invoice shall be issued, revised under the conditions provided for in the Contract, equal to:

- one twelfth (1/12) of the amount of the Fixed Term; plus

- the amount corresponding to the valuation of variations in the preceding month.

Invoices are payables by wire transfer, at sixty (60) days from the end of the month on the following tenth (10) of the month, as of their date of issue.

Any delay in the payment of invoices shall, following notice summoning payment which has remained without effect for fifteen (15) days, fully and automatically give rise to the payment of late payment interest calculated at the EURIBOR one (1) month rate plus two (2) percentage points.

9.3 Taxes

Any modification, change in rate or amount, removal or creation of taxes which directly weigh on the price of the Utilities or Primary Fluids, as referred to in **Article 9.1** and **Article 9.2** above, shall be passed on in invoices, whether upwards or downwards, in the framework of regulations in force.

9.4 $C0_2$ Quotas

Each Party shall hold its own quotas for carbon dioxide (CO_2) emissions in the context of its operations provided however that Dalkia France shall be the owner of the CO_2 emission quotas relating to the Plant as regards any period of time during which the O&M Contract is in effect and Dalkia France holds the Plant's ICPE certificate.

Subject to any contrary terms in the O&M Contract and as regards any period of time during which the O&M Contract is in effect, SVD 19 shall hold the various green certificates associated with the production of electricity by the Plant.

9.5 Ash pollution

In the event of ash pollution, the Party at the origin of the pollution shall bear all of the costs of treating the relevant volumes of ash over the period in question.

In order to give rise to Dalkia France's liability, SVD 19 must prove that the observed pollution was attributable to Dalkia France as supplier of Internal Biomass under this Contract.

Article 10. Collaboration principle

The Parties shall define the means of their collaboration, the frequency of their meetings and the most appropriate means of communication for the transmission of pertinent information concerning the operation of the Plant or Factory.

Without prejudice to the particular provisions of the Contract, the Parties undertake to inform one another promptly of any decision which might change the conditions for the operation of the Plant or the Factory, in order to act together to find solutions to preserve their respective interests.

Article 11. Liability

The principles of the Parties' contractual liability in the event of failure to perform their respective commitments to transform, to implement the Backup, to supply electricity and to uplift Primary Fluids for SVD 19, and to supply and uplift steam for Dalkia France, are set out in **Article 5**, **Article 6** and **Article 7**.

In any other circumstance, without this limiting the caps expressly provided in **Article 5.3** and **Article 7**, the exonerating causes of **Article 5.5** and **Article 7.3**, the liability of one Party towards the other shall only arise in the event of proven fault or negligence in the performance of the Contract.

In this event, the Parties hereby agree that:

(i) for any direct property damage, the limit of each Party's liability is fixed at thirty million euros (€30,000,000) per harmful event and per year for all direct property damage caused to the other Party;

(ii) for any intangible loss, the Parties agree to expressly exclude liability for either Party for intangible loss.

The Parties hereby reciprocally waive all claims exceeding the cap of thirty million euros (€30,000,000) referred to above with respect to any direct property damage, and undertake to obtain this same waiver of claims from their insurers.

Moreover, the Parties reciprocally waive all claims for intangible loss, and undertake to obtain this same waiver of claims from their insurers.

Article 12. Insurance

SVD 19 represents that it benefits from insurance policies, obtained from an insurance company of reputed solvency, covering its general liability and the liability of its employees and agents under the Contract for an amount of thirty million euros (€30,000,000) per claim and per year for all property damage, whether consecutive or not, taken together.

Dalkia France represents that it benefits from insurance policies, obtained from an insurance company of reputed solvency, covering its general liability and the liability of its employees and agents under the Contract for an amount of thirty million euros (€30,000,000) per claim and per year for all property damage, whether consecutive or not, taken together.

Each Party undertakes to maintain this policy for the entire duration of the Contract and to provide the corresponding insurance certificate at any time on the mere request of the other Party.

Article 13. Changes to conditions for the performance of the Contract

If, as a consequence of any change in the technical, financial or economic circumstances arising following the conclusion of the Contract and exceeding the Parties' normal forecasts, the economy of contractual relations are sufficiently changed to make it significantly more onerous for one of the Parties to perform its obligations, this Contract may be adapted under those conditions set out in **Article 14**. It is agreed that an amendment to the SKCP Transformation Contract resulting in a modification of the commercial conditions applicable between SKCP and Dalkia France under such SKCP Transformation Contract shall not be regarded as a change triggering the procedure of adaptation provided in **Article 14**.

Article 14. Procedure for the adaptation of the Contract

In those situations referred to in **Article 13**, the Party which relies on a change of circumstances shall notify an adaptation request to the other Party.

The Parties shall confer promptly in order to determine, by mutual agreement, the means to remedy the harmful situation promptly and, where applicable, to make the necessary amendments to the Contract in order to return to the equilibrium existing at the time of its conclusion.

If no agreement can be reached between the Parties (duly observed in writing signed by them) concerning the revision of the economic conditions within a period of three (3) months as of the aforementioned notification, either Party may implement the mediation procedure provided for in article 21.2 of the SVD 19 Framework Contract.

During this period, the reciprocal obligations of the Parties shall continue without any change in their contractual relations.

It is agreed that a change to the SKCP Transformation Agreement agreed between Dalkia France and SKCP shall not entitle Dalkia France to implement the procedure provided by this **Article 14**.

Article 15. Termination and suspension of performance of the obligations

15.1 Termination

This Contract may be terminated with immediate effect in accordance with the following terms and conditions:

(a) by mutual, written agreement between the Parties;

(b) fully and automatically, in the event of nullity, non renewal by SKCP, termination by SKCP or lapse of the SKCP Transformation Contract;

(c) by notification of SVD 19, in one of those cases provided for in **Article 7.1 (b)** and **Article 7.1 (c)** of the Contract, excluding all claims and compensation;

(d) in the occurrence of an event of force majeure, under those conditions provided for in **Article 16** below;

(e) by mere notification by SVD 19 in the event that Dalkia France fails to perform its obligation to provide Internal Biomass under the Contract arising from failure to comply with the supply plan under those conditions set forth in Article 6.4 of the Specifications, and **Article 7.1 (d)** of this Contract excluding all claims and compensation;

(f) by judicial termination on the request of the Party suffering from failure to perform by the other Party in the event of suspension of the Contract within the meaning of **Article 15.2** (b) below for a period exceeding six (6) consecutive months;

(g) fully and automatically, in case of a Factory Closure; or

(h) fully and automatically in the cases mentioned in Article 10 of the SVD 19 Framework Contract, or, as the case may be, in the cases mentioned in the Usufruct Contract.

15.2 Suspension of performance of duties

Each Party may suspend the performance of its duties under the Contract in the following cases:

(a) in the event of failure by the other Party to perform its duties under the Contract, including in particular in the event of non payment by the other Party of sums due under the Contract, including the price provided for in **Article 9** ("**Financial Provisions**"), following duly notified notice of breach which remains without effect for thirty (30) days; or

(b) in an event of force majeure within the meaning of **Article 16** below, and for as long as the event of force majeure continues, for a maximum period of six (6) months.

Article 16. Force Majeure – Restrictions on the normal operation of the Facture Factory and/or the Plant

16.1 Force majeure

Any event which, for the Party concerned, has the characteristics of force majeure pursuant to Article 1148 of the French Civil Code, including in particular those events which are commonly deemed by the Courts to constitute force majeure, shall be deemed an exonerating cause releasing each of the Parties from its liability or its duties under the Contract; these events shall include but are not limited to the following:

- war, riot, revolution, sabotage, acts of terrorism;
- natural disasters such as storm, hurricane, earthquake, tidal wave, flood, destruction by lightning, epidemic;
- explosion, fire;
- strike or popular movements whether national, regional or local which affect both Parties or internal strikes of a duration of at least eight (8) consecutive days significantly affecting the operations of the Factory and/or Plant;
- the blocking of means of transport or supplies for any reason whatsoever, governmental or local restrictions; and
- the definitive withdrawal of the administrative authorisation required for the operation of the Factory and/or Plant, except where such withdrawal is ascribable to the Party relying on such a case of force majeure;

which make it impossible for the Party concerned to perform its duties under the Contract.

If this event of force majeure continues beyond a period of four (4) months (except in the particular case of strikes which are internal to Dalkia France and/or SVD 19), the Parties shall meet in order to study the impact of this situation and any solutions to remedy it, if possible.

If the Parties determine that it is impossible to remedy the situation while maintaining the economy of the Contract and where said event of force majeure continues beyond a period of six (6) consecutive months (or a period of forty-five (45) consecutive calendar days for the particular case of strikes which are internal to Dalkia France and/or SVD 19) as of the occurrence of the event of force majeure, the Contract may, in the above cases, be fully and automatically terminated on the initiative of either of the Parties, provided that Dalkia France may initiate termination under this Article 16.1 only if and after the SKCP Transformation Contract has also been terminated due to the same force majeure event.

16.2 Restrictions on the normal operation of the Facture Factory and/or Plant

In the event of the temporary withdrawal of one or more administrative authorisations making it impossible for one of the Parties to perform its duties under the Contract, the Parties undertake to meet promptly in order to discuss the solutions which would make it possible to remedy such events in the interest of both Parties.

Dalkia France or SVD 19 may request SKCP to attend and participate in any discussion in this regard.

Article 17. Intellectual property

All intellectual property rights, know-how, or information which is equivalent or of the same nature, whether capable of protection or not, which belong to (or are used by) SKCP and/or Dalkia France in the context of their respective business and which may be made available to SVD 19, are and shall remain the exclusive property of SKCP and/or Dalkia France.

All intellectual property rights, know-how, or information which is equivalent or of the same nature, whether capable of protection or not, which belong to (or are used by) one of the Parties in the context of its business and which may be made available to the other Party, are and shall remain the exclusive property of the Party who owns or uses it and has made available to the other Party such right, know-how or equivalent information of the same nature.

The Parties hereby guarantee that their Affiliate entities, as well as their employees, agents and advisors, shall comply with this obligation and agree to take all necessary steps to ensure compliance therewith.

In particular, the use of SKCP and/or Dalkia France's know-how by SVD 19 outside the context of the Project must be submitted to SKCP and/or Dalkia France, as the case may be, for its prior written consent.

In general, the reproduction or use by one Party, for purposes other than the performance of this Contract, of elements communicated by the other Party (data, files, documents or information of any nature) shall be prohibited without the prior written authorisation of the latter.

The Parties' elements of intellectual property shall remain their property.

Article 18. Severability

If any of the provisions of the Contract should turn out to be null and void or unenforceable, the validity of the other provisions of the Contract and their enforceability shall not in any manner be affected or compromised and neither of the Parties may claim damages in this respect. In such an event, the Parties shall negotiate in good faith in order to replace the provision in question by one or more valid and enforceable provisions which are as close as possible to the Parties' initial common intent or, if such a common intent cannot be determined, the intent of whichever Party was to be protected by the provision which is null and void or unenforceable.

Article 19. Notification – communication

All notices or communications related to the Contract shall be made in writing and signed by or on behalf of the Party making it, and shall be sent either (i) by hand delivery against receipt, or (ii) by registered letter with return receipt, or (iii) by package sent by Chronopost, Fedex, DHL, TNT UPS or any equivalent service, or (iv) by fax or e-mail to the number/and or to the address stated below, followed by a confirmation sent within two (2) business days by one of the first three means stated above.

Such notices shall be deemed to have been made: (i) if hand delivered, on the date stated on the receipt, (ii) if made by registered letter with return receipt, on the date stated on the return receipt, or failing receipt, on the date of first presentation, (iii) if made by a package sent by Chronopost, Fedex, DHL, TNT or UPS or any equivalent service, on the date stated on the mailing receipt or the air transport letter by the relevant service, (iv) if made by fax or e-mail, on the date of the fax transmission report.

For SVD19:

[●]

To the attention of: [●]

Fax No.: [●]

For Dalkia France:

Dalkia France
2 Allée du Petit Cher
Les Granges Galand
BP 449
37554 SAINT AVERTIN CEDEX
For the attention of: Regional Director
Fax: 02.47.80.36.79 [●]

The Parties may change the aforementioned notice addresses with advance notice of eight (8) days, itself notified to the other Party under those conditions defined above.

Article 20. Assignment of Agreements

With the exception of any assignment to Affiliated entities, presenting the same financial guarantees as the assigning Party, neither of the Parties shall be entitled, without the other Party's prior, written agreement, to assign the benefits of the Agreement (and/or its incidentals), in whole or in part, by any legal means whatsoever (simple assignment, transfer of the business concern, capital contribution or partial business transfer, merger, demerger, spin-off, exchange or otherwise) to a third party.

In any event, the assignee agrees to comply with all the obligations of the Agreement for which the assignor was liable and, more generally, all the contractual provisions of the Agreement.

Article 21. Miscellaneous

The recitals and the Schedules of this Contract form an integral part of the Contract. In the event of contradiction between the Contract and one of its Schedules or its recitals, the Contract shall prevail.

The Contract's headings and subheadings have no legal value or value for the purposes of interpretation.

The Contract expresses the entire agreement of the Parties at the date of the Contract with respect to its subject-matter. Consequently, the Contract cancels and replaces all agreements, intentions, discussions, correspondence or exchanges of points of view between the Parties prior to the date of the Contract concerning its subject-matter.

The provisions of the Contract may only be amended by joint written agreement of the Parties.

A waiver by one of the Parties of the benefit of any of the clauses of the Contract shall be effective only if made in writing and shall be restrictively construed. No waiver of any of the clauses of the Contract shall be deemed to constitute a waiver of any other clause, whether or not the clause which has been waived is close to such other clause.

The Contract has been drafted in the French and English languages. The French version of the Contract shall prevail over the English one. The Parties may, insofar as necessary, translate it into other languages, it being specified that any such translation shall be of no legal value and of no value for the purposes of interpretation, including with respect to the other Party or any third party of foreign nationality. Consequently, in the event of contradiction between any of the provisions of the Contract and any translation in a language other than French, the provisions of the Contract shall prevail.

Article 22. Prepayment obligations of SVD 19

22.1 Prepayment by SVD 19 of Dalkia France's financial obligations

SVD 19 undertakes to pay any sum due to Dalkia France under this Contract, at least one (1) business day before the date such sum is due by Dalkia France to SKCP pursuant to the SKCP Transformation Contract (or to any third party substituted in SKCP's rights under the SKCP Transformation Contract). To that effect, Dalkia France shall send a payment notice at the latest [three (3)] business days before the expected payment date, together with all appropriate supporting evidence that such payment is due to SKCP under the SKCP Transformation Contract and by SVD 19 to Dalkia France under the SVD 19 Transformation Contract.

22.2 Set-off

The Parties agree that no set-off shall be allowed between payments due by one Party to the other Party pursuant to this Contract and payments due by one Party to the other Party under the O&M Contract, to the exception of any penalties owed by Dalkia France to SVD 19 under **Article 12.1.2** of the O&M Contract, which shall be set-off against any indemnification due by SVD 19 to Dalkia France pursuant to this Contract.

Article 23. Governing law and settlement of disputes

23.1 Governing Law

This Contract and the obligations arising therefrom are governed by French Law.

23.2 Amicable settlement

If any dispute or difference of any kind whatsoever between the Parties during the term of this Contract or after termination or early termination of this Contract, the Parties shall first negotiate in good faith with a view to achieving an amicable settlement of the same.

In the event that the Parties are unable to achieve any amicable settlement of the matter or dispute under this **Article 23.2**, then any Party shall be entitled by a notice in writing to the other Party to require the unresolved matter to be referred for an amicable settlement to a dispute resolution committee comprising:

(i) the President of SVD 19 or his authorised representative;

(ii) the CEO of Dalkia France or his authorised representative; and

(iii) an independent member to be agreed upon by the Parties.

Such committee shall be empowered to regulate the rules and procedures of the matter to be resolved before its members.

23.3 Jurisdiction

In the event:

(i) the Parties fail to agree upon the independent member within ten (10) days; or

(ii) the dispute resolution committee shall fail to decide on any matter in dispute referred to them under **Article 23.2** within thirty (30) days as from the date of such referral or such other period as may be agreed in writing by the Parties; or

(iii) any Party hereto is dissatisfied with the decision of the dispute resolution committee within fifteen (15) days as from this decision;

then in any such case either Party in which the dispute relates may require that the matter be finally settled under the exclusive jurisdiction of the Paris Commercial Court *(tribunal de commerce de Paris)*, even in the circumstance of multiple defendants or an impleader, and the jurisdiction clauses that may exist in other commercial and administrative documents of either of the Parties may not constitute an obstacle to the application of this clause.

Executed in Paris

On [●]

In two (2) original copies.

SVD 19	**Dalkia France**
__________________ Represented by [•] [•]	__________________ Represented by [•] [•]

<u>SCHEDULE 1</u>: Description of the Plant facilities

[5 photocopied pages]

<u>SCHEDULE 2</u>: Siting plans

[1 photocopied page]

<u>SCHEDULE 3:</u> Hook-up diagram

[1 photocopied page]

<u>SCHEDULE 4:</u> Utilities metering plan

These elements are defined in Articles 5 and 6 of the Contract.

<u>SCHEDULE 5:</u> Communication procedures

This Schedule shall be drawn up after the signature of the Contract.

It shall contain the following, in particular:

- the daily operating report

- the periodicity of contract reviews

- the performance indicators of operations (safety, environment, variation report sheets and follow-up of action plans.

- Dalkia France's interventions on SVD 19's facilities.

SCHEDULE 6: Emergency situation management procedures

This Schedule shall be drawn up after the signature of the Contract.

It shall contain, in particular, the management procedures in the following cases:

- biomass TAG stoppage;
- black liquor TAG stoppage;
- biomass boiler stoppage / start-up of backup;
- black liquor boiler incidents;
- rack steam leaks;
- incidents concerning feed pumps;
- environmental incidents, and
- safety incidents.

<u>SCHEDULE 7:</u> Rules on health, safety and the environment

[26 photocopied pages]

<u>SCHEDULE 8:</u> Electricity Sale Agreement

This Schedule shall be drawn up after the signature of the Contract.

<u>SCHEDULE 9:</u> Finalisation and trials procedure

This Schedule shall be drawn up after the signature of the Contract.

SCHEDULE 10: Single-line diagram

[11 photocopied pages]

<u>SCHEDULE 11:</u> Delivery point and supply limits

[2 photocopied pages]

Schedule 1e)

Side Agreement

SIDE AGREEMENT

<u>BETWEEN THE UNDERSIGNED</u>:

1. **Dalkia France**, a French *société en commandite par actions* with a share capital of €220,047,504, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-Lez-Lille, registered with the Trade and Companies Register of Lille under number 456 500 537;

hereinafter referred to as "**Dalkia France**",

on the first hand,

<u>AND</u>

2. **Société Valmy Défense 19 – SVD 19**, a French *société par actions simplifiée* with a share capital of €37,000, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-Lez-Lille, registered with the Trade and Companies Register of Lille under number 497 908 632;

hereinafter referred to as "**SVD 19**",

on the second hand,

referred to collectively as the "**Parties**" and each individually as a "**Party**".

RECITALS:

The Minister of the Economy, Finance and Industry has decided, pursuant to Article 8 of Law No. 2000-108 of February 10, 2000 concerning the modernisation and development of the electricity public service, to launch a Call for Tender (as defined in the glossary below) comprising two (2) tranches, for the construction in France of electricity power stations using biomass, to be completed by January 1, 2010 at the latest, providing an additional generating capacity of 300 MW.

The Energy Regulation Commission (*Commission de Régulation de l'Energie* – "**CRE**") has been put in charge of implementing the Call for Tender (as defined in the glossary below) initiated on July 12, 2006.

Smurfit Kappa Cellulose du Pin, a French "*société par actions simplifiée*" with a share capital of 45,857,826 euros, having its registered office at Allée des Fougères – Usine de Facture, 33380 Biganos, registered with the Trade and Companies Register of Bordeaux under number 572 142 198 ("**SKCP**"), is a company of the Smurfit Kappa group. SKCP owns and operates an integrated factory that produces kraft paper for use in the manufacture of corrugated cardboard packaging, located in Facture (Gironde) (the "**Factory**").

SVD 19 wished to bid in the Call for Tender and perform the electricity sale contract to be entered into with the Electricity Buyer (as defined in the glossary below), through the Plant (as defined in the glossary below) located on the Site (as defined in the glossary below), intended to supply the Site with steam and Non-Eligible Electricity (as defined in the glossary below) within the meaning of the Call for Tender.

SVD 19 delivered its Tender (as defined in the glossary below) to CRE on August 9, 2007, at which point in time it was part of the Dalkia group.

In accordance with the terms of the Call for Tender and Specifications, based on the existence of certain pre-existing installed capacity on the Site, 76,462% of the electricity produced by the Plant is to be sold as Eligible Electricity under the Electricity Sale Agreement and the balance is considered as Non-Eligible Electricity in the baseline operating mode in which the Factory is in operation.

When SVD 19 submitted its Tender, it specified in paragraph 3.2.6 of the said Tender that SVD 19 understood the Specifications to mean that, in the event of a closure of the SKCP Factory, P_{VAO} (as defined in the Specifications) would be equal to 41MWe, effectively meaning that, in such a case, where Article 6.5 of the Specifications is applicable due to closure of the Factory, 100% of the electricity produced by the Plant would be considered as Eligible Electricity under the Electricity Sale Agreement (the "**Call for Tender Interpretation**").

This Tender was accepted by the Energy Minister by order dated June 17, 2008, published in the *Journal Officiel* on July 2, 2008.

In accordance with the Tender SVD 19 has entered into an electricity sale agreement with EDF on [●].

On [●], Valmy Energies Biomasse SAS, Dalkia France's subsidiary, sold its stake in SVD 19 to [●]. At the time of such sale, [●] expressed concern that SVD 19's statement in the Tender as to the Call for Tender Interpretation could be challenged by the CRE.

To facilitate the process of the sale of SVD 19, Dalkia France consequently agreed that it would purchase, under certain conditions, Non-Eligible Electricity produced by the Plant at the price to which SVD 19 is entitled in respect of Eligible Electricity in the event that Call for Tender Interpretation were to be subsequently formally infirmed (in other words, 100% of the electricity produced by the Plant in case of a closure of the SKCP Factory not being considered as Eligible Electricity under the Electricity Sale Agreement).

Dalkia France's agreement thereto was subject to the condition that SVD 19 facilitates the implementation by Dalkia France of possible technical and industrial solutions that could avoid, alleviate or mitigate the possible risk resulting from the Call for Tender Interpretation being inaccurate and subject to the terms hereof, allow Dalkia France and SVD 19 to equally share in the benefit from upsides created by such solution.

Consequently, Dalkia France and SVD 19 agreed to enter into this Side Agreement (as defined in the glossary below).

GLOSSARY:

The glossary defines the terms used in this Side Agreement.

Terms which are used in the plural shall apply both to the collective group thereby defined and to one or more of its elements taken individually. Definitions which are given for a term in the plural shall also apply where this term is employed in the singular, and *vice versa*.

Definitions which are given for a noun shall apply *mutatis mutandis* to verbs, adjectives and adverbs with the same root, and *vice versa*.

Affiliate: means:

(i) with respect to any person being a legal entity, a person or entity (a) Controlled by the relevant person (b) which Controls the relevant shareholder or (c) which is Controlled by one or more persons or entities that Control the relevant person, it being however understood that two companies or funds managed by the same management company are not considered to be Affiliates for the purposes of this Side Agreement; and

(ii) with respect to any individual, his/her lineal ascendants or lineal descendants or spouses.

Alternative Energy Supply: has the meaning ascribed to it in **Article 3.2**.

Call for Tender: means the call for Tender launched by the CRE by notice published in the Official Journal of the European Union of December 9, 2006 (contract notice 2006/S 235 251239) for the building in France of electric plants using biomass for a total generating capacity of 300 MW.

Call for Tender Interpretation: has the meaning ascribed to it in the recitals to this Side Agreement.

Control:	means control, exercised alone or jointly, over a company or entity as defined in Article L. 233-3 of the Commercial Code as currently drafted.
CRE:	shall have the meaning given to such term in the recitals.
Deed of Transfer:	means the deed of transfer entered into by the Parties on [●].
EDF	means Electricité de France.
Electricity Buyer	means EDF or any other distributor designated as buyer of the Eligible Electricity, signatory of the Electricity Sale Agreement with SVD 19.
Electricity Sale Agreement:	means the agreement entered into between SVD 19 and the Electricity Buyer within the meaning of the Specifications, and terminating on June 12, 2030.
Eligible Electricity:	means electricity generated by the Plant sold by SVD 19 to the Electricity Buyer within the meaning of the Call for Tender.
Factory:	shall have the meaning ascribed to it in the recitals.
Information:	has the meaning ascribed to it in **<u>Article 6</u>**.
Non-Eligible Electricity:	means electricity generated by the Plant which is not eligible within the meaning of the Specifications.
O&M Contract:	means the operation and maintenance contract relating to the Plant dated [●] between Dalkia France and SVD 19.
Plant:	means the Utilities production plants built by SVD 19 with a generating capacity of 63MW, located on the Site, comprising in particular the fuel storage equipment (and other related equipment), the biomass boiler, two steam turbines and all of their auxiliary equipment.
Project:	means the project for the construction and operation of the Plant on the Site.
Real Property Development Contract:	means the real property development contract entered into by the Parties on [●].
Share Purchase Agreement:	means the share purchase agreement entered into

	between Valmy Energies Biomass SAS and SVD 19 on [●].
Side Agreement:	means this Side Agreement.
Site:	means the SKCP industrial site located at the Facture factory, Biganos (33380), on which, in particular, the Factory, the Plant and SKCP's administrative buildings are located.
SKCP:	shall have the meaning ascribed to it in the recitals.
Specifications:	means the specifications charter of the Call for Tender concerning facilities for electricity generation using biomass, published by CRE.
SVD 19 Transformation Contract:	means the SVD 19 transformation contract entered into by the Parties on [●].
Tender:	means the offer concerning the Project, made by SVD 19, solely in its own name and on its own behalf, to CRE on August 9, 2007 in response to the Call for Tender.
Year:	means a calendar period of twelve (12) consecutive months.

1. PURPOSE OF THE CONTRACT

The purpose of this Side Agreement is to define the circumstances under which:

(i) Dalkia France shall purchase Non-Eligible Electricity from SVD 19 at the same price as SVD 19 is entitled in respect of Eligible Electricity in cases where article 6.5, paragraph 3 of the Specifications applies and SVD 19 is not able to sell 100% of the electricity produced by the Plant as Eligible Electricity under the Electricity Sale Agreement due to the Call for Tender Interpretation being infirmed; and

(ii) Dalkia France and SVD 19 shall share the benefit of any Alternative Energy Supply.

2. DURATION AND EFFECTIVE DATE OF CONTRACT

The Side Agreement shall enter into force on the date of its execution.

The Side Agreement is of a fixed duration and shall end on the date on which the Electricity Sale Agreement comes to an end (by expiry or termination).

Notwithstanding the expiry or termination of the Side Agreement, **Articles 6** to (and including) **11** shall remain in force insofar as necessary.

3. DALKIA FRANCE'S OBLIGATIONS

3.1 **(a)** In the event that after the second anniversary of the *mise en service industrielle* of the Plant, (i) paragraph 3 of article 6.5 of the Specifications becomes applicable and (ii) SVD 19 is not able to sell 100 % the electricity produced by the Plant as Eligible Electricity under the Electricity Sale Agreement **solely as a result of the Call for Tender Interpretation being infirmed** (i.e. 100% of the electricity produced by the Plant in case of a closure of the SKCP Factory not being considered as Eligible Electricity under the Electricity Sale Agreement), Dalkia France shall purchase, and SVD 19, shall sell to Dalkia France any Non-Eligible Electricity produced by SVD 19 provided that:

(A) Dalkia France shall at no time be required to purchase more than the lesser of (x) twenty three point five hundred and thirty eight percent (23.538%) of SVD 19's total electricity production or (y) 80 GWh per annum; and

(B) the price to be paid for such Non-Eligible Electricity shall be equal to the price to which SVD 19 is entitled in respect of Eligible Electricity under the Electricity Sale Agreement after taking account of the possible five percent (5%) reduction envisaged in paragraph 3 of article 6.5 of the Specifications.

(b) In the event **Article 3.1(a)** applies, Dalkia France shall furthermore indemnify SVD 19 for any other consequences arising under the Electricity Sale Agreement and **solely resulting from the Call for Tender Interpretation being infirmed** (i.e. 100% of the electricity produced by the Plant in case of a closure of the SKCP Factory not being considered as Eligible Electricity under the Electricity Sale Agreement), less any recovery made by SVD 19 under the O&M Contract, the Real Property Development Contract, the SVD 19 Transformation Contract, the Share Purchase Agreement or the Deed of Transfer and relating to the same loss.

(c) For the avoidance of doubt, the obligations of Dalkia France under this **Article 3.1** shall not apply if, through no fault of Dalkia France or its Affiliates:

(A) electricity produced by SVD 19 does not qualify as Eligible Electricity (for reasons other than the Call for Tender Interpretation being infirmed);

(B) SVD 19 is otherwise in default under the Electricity Sale Agreement, provided that this item (B) shall not apply where SVD 19 would not have been in default under the Electricity Sale Agreement if the Call for Tender Interpretation had not been infirmed;

The obligations of Dalkia France under this **Article 3.1** entails no obligation to indemnify or otherwise hold SVD 19 harmless in respect of consequences of the Call for Tender Interpretation being infirmed as regards any sales of electricity produced by the Plant (whether Eligible Electricity or Non-Eligible Electricity) in excess of 340 GWh.

(d) The Parties agree to further negotiate in good faith any additional agreements or arrangements (notably an electricity purchase agreement) which may be necessary to fully give effect to **Article 3.1**, should **Article 3.1** apply.

3.2 Without prejudice to the generality of **Article 3.1**, if, in cases where **Article 3.1** applies, Dalkia France is in a position to supply electricity or steam to SVD 19 which would enable SVD 19 to sell more Eligible Electricity than would otherwise be the case without the supply of such electricity or steam by Dalkia France (an "**Alternative Energy Supply**"), the Parties shall negotiate in good faith such agreements and arrangements as may be appropriate to enable the Alternate Energy Supply to be made to SVD 19 on terms and conditions that, subject to **Article 5.1(iii)**, (i) would place SVD 19 in the same economic position as it would have been had the alternative Alternative Energy Supply not been implemented and Dalkia France had purchased Non-Eligible Electricity pursuant to **Article 3.1(a)** and indemnified SVD 19 pursuant to **Article 3.1(b)**, and (ii) would reduce or adjust accordingly Dalkia France's obligations under **Article 3.1** as long as SVD 19 is at least in the same economic position in case of the Call for Tender Interpretation being infirmed as it would have been if the Non-Eligible Electricity had been sold at the same price as SVD 19 is entitled in respect of Eligible Electricity.

3.3 Without prejudice to the generality of **Article 3.1**, if, in cases whereSVD 19 enjoys a right to take over and operate SKCP's CH10 black liquor boiler, SVD 19 further agrees that if it does not exercise its rights to take over and operate SKCP's CH10 black liquor boiler, it will, if requested by Dalkia France, either assign such rights to Dalkia France or exercise them with a view to making the said black-liquor boiler available to Dalkia France free of cost for SVD 19 so as to allow Dalkia France to avail itself of its options to implement an Alternative Energy Supply solution pursuant to **Article 3.2**. Similarly, SVD 19 agrees not to dismantle, dispose or render inoperable its existing 21MW (GTA1) turbine until Dalkia France has confirmed in writing that it does not intend to implement an Alternative Energy Supply solution that would require recourse to such 21 MW (GTA1) black liquor turbine.

4. DALKIA FRANCE'S RIGHTS

4.1 In consideration of the undertakings given by Dalkia France under **Article 3.1**, SVD 19 has agreed to the following in the event that **Article 3.1** shall apply. For any period in respect of which **Article 3.1** applies, SVD 19 shall pay to Dalkia France 95% of its gross margin (i.e. variable revenue less variable costs, times production) resulting from any sales of electricity made by SVD 19 in excess of 340 GWh per annum (whether Non-Eligible Electricity or Eligible Electricity) generated by the Plant other than sales resulting from the use of Alternative Energy Supplies for which **Articles 4.2** and **5.1** shall apply. SVD 19 shall report to Dalkia France monthly on its electricity sales (volumes, revenues and operating costs) and afford Dalkia France reasonable opportunity to audit the same.

4.2 SVD 19 agrees that, in circumstances where thanks to an Alternative Energy Supply proposal made by Dalkia France, and without prejudice to the applicability of **Article 3**, it would be possible for SVD 19 to generate electricity sales in excess of what SVD 19 could produce without the Alternative Energy Supply, SVD 19 will negotiate in good faith with Dalkia France and conclude appropriate agreements, which would provide *inter alia* that, subject to **Article 5**:

(A) SVD 19 would pay to Dalkia France its additional profit (e.g. additional revenue less additional costs) resulting from the additional sales of electricity made possible by Dalkia France's Alternative Energy Supply which would not have been possible without such Alternative Energy Supply.

(B) SVD 19 obligations are conditioned on the proposed arrangement (i) not jeopardizing the validity of the Electricity Sale Agreement, (ii) being implemented to the extent that SVD 19 would not be exposed to penalties under the Electricity Sale Agreement (or Dalkia France agreeing then agreeing to bear such penalties to the extent caused by Dalkia France in connection with the implementation of the Alternative Energy Supply) and further provided that (iii) the end result of the proposed arrangement should be that, subject to SVD 19's right to participate in an Alternative Energy Supply solution as envisaged in **Article 5** below, SVD 19's financial position will be identical to that in which it would have been if the arrangements envisaged in this **Article 4.2** not been entered into.

4.3 The Parties agree to further negotiate in good faith any additional agreements or arrangements which may be necessary to fully give effect to **<u>Article 4</u>**. SVD 19 agrees to negotiate with its prospective lenders appropriate rights allowing SVD 19 to abide by its obligations under this Side Agreement.

4.4 In light of the undertakings given by Dalkia France in **<u>Article 3</u>** and notwithstanding any provisions to the contrary in the O&M Contract or any Project Contract (as defined in the O&M Contract), SVD 19 hereby grants Dalkia France a mandate, on behalf of SVD 19, to contact the CRE and the Electricity Buyer regarding the relevant matters pertaining to the applicability of paragraph 3 of article 6.5 of the Specifications and, in particular, the percentage of electricity produced by SVD 19 which is to be considered as Eligible Electricity in circumstances where paragraph 3 of article 6.5 of the Specifications applies. For the avoidance of doubt, Dalkia shall not be authorized to settle any matter with the CRE on behalf of SVD 19 without the prior consent of SVD 19, which shall not be unreasonably withheld or delayed. In any case, Dalkia France shall inform and consult regularly with SVD 19 on those contacts with the CRE.

5. <u>POSSIBLE CO-INVESTMENT</u>

5.1 In the event that Dalkia France exercises its option to approach SVD 19 pursuant to **<u>Articles 3</u>** or **<u>4</u>** above regarding a possible Alternative Energy Supply project, the Parties shall further discuss the possibility of SVD 19 participating in any proposed investment and how to structure the same, possibly through a jointly owned legal entity ("**JV**"), it being understood however if SVD 19 make, at its discretion, such a co-investment, the relevant assets (or JV) shall, to the extent applicable, be primarily responsible for providing an Alternative Energy Supply in both **<u>Article 3</u>** and **<u>4</u>**. It is further understood that, in such a case where SVD 19 or an Affiliate of SVD 19 has made the envisaged co-investment, operation of the relevant assets shall be entrusted to Dalkia France on terms to be agreed. The basis for the negotiations under this Article 5 shall be that:

(i) investments shall be shared equally by Dalkia France and SVD 19 but that other allocations of investments may be agreed;

(ii) subject to item (iii), allocation of benefits and losses related to the Alternative Energy Supply shall be proportional to each Parties investment in the Alternative Energy Supply;

(iii) if **<u>Article 3.1</u>** applies, the proceeds and benefits from the Alternative Energy Supply shall be applied (a) first to the satisfaction, alleviation, reduction or compensation of Dalkia France's obligations under **<u>Article 3</u>** or as compensation for costs incurred or amounts paid by Dalkia France pursuant to **<u>Article 3</u>** (i.e. put Dalkia France in the same economic position as if it has purchased or indemnified SVD 19 the Non-Eligible Electricity produced by the Plant at market price therefore and not the price payable for Eligibile Electricity and (b) thereafter, allocated among the Parties as indicated in items (i) and (ii). The parties shall agree how the appropriate market price for Non-Eligible Electricity is to be determined.

5.2 For the avoidance of doubt, failure of the parties to agree to a possible co-investment by SVD 19 as envisaged in **<u>Article 3.1</u>** or decision of SVD 19 not to co-invest shall not detract, restrict or otherwise release SVD 19 from its obligations pursuant to **<u>Articles 3</u>** and **<u>4</u>** to negotiate in good faith the implementation of an Alternative Energy Supply proposal.

5.3 SVD 19 further agrees that, for a period of three (3) years after being informed by Dalkia France of a project or investment falling within the scope of **<u>Articles 3</u>**, **<u>4</u>** or **<u>5</u>**, it will not implement such project separately from Dalkia France and that, if at any time it does implement a project notified to it by Dalkia France in the context of **Articles 3**, **4** or **5**, this Side Agreement will automatically terminate.

6. CONFIDENTIALITY

The Parties undertake a confidentiality agreement.

Shall be deemed confidential information, all information:

- contained in this Side Agreement entered into between SVD 19 and Dalkia France; and
- related to the matters envisaged herein, whether involving information already known or future information, information from a single Party or resulting from mutual development.

  (hereinafter collectively referred to as the "**Information**").

Each Party agrees to keep the Information strictly confidential and agrees to refrain from disclosing it to third parties, including any Affiliated company which is not directly concerned by the performance of the Side Agreement and the negotiation and/or performance thereof, provided however that Dalkia France may communicate Information to SKCP as necessary for the implementation hereof.

Each Party hereby guarantees commitment to this duty of confidentiality by its staff and by its consultants, agents or service providers who have access to the Information in the context of this Side Agreement, it being specified that each Party undertakes to limit the disclosure of Information to those persons directly concerned by the performance of this Side Agreement.

Each Party agrees to refrain from using, without the other Party's prior, written consent, any of the Information for any purpose other than performance of this Side Agreement or the negotiation, performance and/or enforcement of its rights hereunder.

The confidentiality obligations shall not apply to:

- Information which is already in the public domain at the time of conclusion of the Side Agreement or which may fall into the public domain without breach by one of the Parties;
- Information which one of the Parties can prove was already in its possession at the time of conclusion of this Side Agreement;
- Information which one of the Parties can prove in writing that it acquired from a third party without breach by such third party or developed by itself independently of the other Party; and
- Information disclosed pursuant to a statutory, regulatory or judicial obligation to disclose such information; and
- Information to be communicated to prospective purchasers of an equity interest in SVD 19.

The confidentiality obligations shall remain in effect for the entire duration of the Side Agreement.

Notwithstanding this confidentiality clause, each Party accepts the communication by SVD 19 of this Side Agreement and any other Information to (i) any financing source in connection with the financing of the Project or the acquisition of SVD 19, (ii) any Affiliate of SVD 19 and (iii) for so long as one or more investment funds ("KKR Funds") advised by Kohlberg Kravis Roberts & Co. L.P. ("KKR") own an equity interest (directly or indirectly) in SVD 19, KKR and such KKR Funds, provided that such financing source, such Affiliate of SVD 19, KKR and such KKR Funds are made aware of the confidentiality provisions in this Side Agreement and agrees to comply with them.

Each Party further undertakes to obtain the consent of the other Party prior to the dissemination or publication of any press release concerning the Side Agreement.

7. SEVERABILITY

If any of the provisions of the Side Agreement are found to be invalid or unenforceable, the validity of the other provisions of the Side Agreement and the fact that they are enforceable shall not be affected or compromised in any respect and neither of the Parties shall be entitled to claim damages on such basis. In such event, the Parties shall negotiate in good faith in order to replace the relevant provision with one or more valid provisions which may be enforced and are as close as possible to the Parties' original intent or, if such mutual intent cannot be determined, the intent of whichever of the Parties the invalid or unenforceable provisions was intended to protect.

8. NOTICE - COMMUNICATIONS

All notices or communications related to the Side Agreement shall be made in writing and signed by or on behalf of the Party making it, and shall be sent either (i) by hand delivery against receipt, or (ii) by registered letter with return receipt, or (iii) by package sent by Chronopost, Fedex, DHL, TNT UPS or any equivalent service, or (iv) by fax or e-mail to the number/and or to the address stated below, followed by a confirmation sent within two (2) business days by one of the first three means stated above.

Such notices shall be deemed to have been made: (i) if hand delivered, on the date stated on the receipt, (ii) if made by registered letter with return receipt, on the date stated on the return receipt, or failing receipt, on the date of first presentation, (iii) if made by a package sent by Chronopost, Fedex, DHL, TNT or UPS or any equivalent service, on the date stated on the mailing receipt or the air transport letter by the relevant service, (iv) if made by fax or e-mail, on the date of the fax transmission report.

For SVD19:

[●]

For Dalkia France:

Dalkia France
2 Allée du Petit Cher
Les Granges Galand
BP 449
37554 SAINT AVERTIN CEDEX
For the attention of: Regional Director
Fax: + 33 2.47.80.36.79

With a copy to:

Dalkia France
36 avenue Kléber
75116 Paris
France
Attn : General Counsel
Fax : + 33 1 71 75 11 37

The Parties may change the aforementioned notice addresses with advance notice of eight (8) days, itself notified to the other Party under those conditions defined above.

9. MISCELLANEOUS

The recitals to the Side Agreement form an integral part hereof. In the event of a contradiction between the Side Agreement and one o its recitals, the Side Agreement shall have prevailing effect.

The headings and subheadings of the Side Agreement shall have no legal or interpretation weight.

The Side Agreement expresses the Parties' entire agreement on the date hereof with respect to its purpose. As a result, the Side Agreement cancels and replaces all agreements, intent, discussions, correspondence or exchanges of points of view having taken place between the Parties prior to the Side Agreement's date on the subject which is the purpose hereof.

The provisions of the Side Agreement may be amended only by a written, joint agreement of the Parties.

A waiver made by one of the Parties of any of the clauses of the Side Agreement shall take effect only if such waiver has taken place in writing and shall be interpreted restrictively. No waiver of any of the clauses of the Side Agreement shall be deemed or shall constitute a waiver of any of its clauses, whether or not the clause waived is close to such other clause.

The Side Agreement is drafted in the English. The Parties may, if need be, translate the Side Agreement into a different language, with the understanding that such translation shall have no legal or interpretation weight, including vis-à-vis the other Party or any foreign third party, including any Affiliate company. As a result, in case of a contradiction between any of the provisions of the Side Agreement and any translation into a language other than English, the provisions of the Side Agreement shall have prevailing effect.

10. ASSIGNMENT OF AGREEMENTS

With the exception of any assignment to Affiliated entities, presenting the same financial guarantees as the assigning Party, and, the granting by SVD 19 of a security interest over the rights of SVD 19 arising from this Side Agreement to financing institutions which will participate in the funding of the acquisition of SVD 19, neither of the Parties shall be entitled, without the other Party's prior, written agreement, to assign the Side Agreement (and/or its incidentals), in whole or in part, by any legal means whatsoever (simple assignment, transfer of the business concern, capital contribution or partial business transfer, merger, demerger, spin-off, exchange or otherwise) to a third party.

In any event, the assignee agrees to comply with all the obligations of the Side Agreement for which the assignor was liable and, more generally, all the contractual provisions of the Side Agreement.

11. GOVERNING LAW –AND SETTLEMENT OF DISPUTES

11.1. Governing law

The Side Agreement is, in all respects, governed by French law.

11.2. Amicable settlement

If any dispute or difference of any kind whatsoever between the Parties during the term of this Side Agreement or after termination or early termination of this Side Agreement, the Parties shall first negotiate in good faith with a view to achieving an amicable settlement of the same.

In the event that the Parties are unable to achieve any amicable settlement of the matter or dispute under this **Article 11.2**, then any Party shall be entitled by a notice in writing to the other Party to require the unresolved matter to be referred for an amicable settlement to a dispute resolution committee comprising:

(i) the President of SVD 19 or his authorised representative;

(ii) the CEO of Dalkia or his authorised representative; and

(iii) an independent member to be agreed upon by the Parties.

Such committee shall be empowered to regulate the rules and procedures of the matter to be resolved before its members.

11.3. Jurisdiction

In the event:

(i) the Parties fail to agree upon the independent member within ten (10) days; or

(ii) the dispute resolution committee shall fail to decide on any matter in dispute referred to them under **Article 11.2** within thirty (30) days as from the date of such referral or such other period as may be agreed in writing by the Parties; or

(iii) any Party hereto is dissatisfied with the decision of the dispute resolution committee within fifteen (15) days as from this decision;

then in any such case either Party in which the dispute relates may require that the matter be finally settled under the exclusive jurisdiction of the Paris Commercial Court *(tribunal de commerce de Paris)*, even in the circumstance of multiple defendants or an impleader, and the jurisdiction clauses that may exist in other commercial and administrative documents of either of the Parties may not constitute an obstacle to the application of this clause.

Executed in Paris

On [●]

In two (2) original copies.

SVD 19	**Dalkia France**
____________________	____________________
Represented by [•] [•]	Represented by [•] [•]

Schedule 1f)

Transfer Agreement

DEED OF TRANSFER OF THE OPERATING CONTRACTS

<u>BY AND BETWEEN THE UNDERSIGNED</u>:

1. **Société Valmy Défense 19 – SVD 19**, a *société par actions simplifiée* (simplified joint stock company) with a registered capital of 37,000 euros, having its registered offices at 37, avenue du Maréchal de Lattre de Tassigny, Saint-André-Lez-Lille (59350), registered in the Lille Trade and Companies Register under the number 497 908 632,

   represented by [•], in his capacity as [•], duly authorised for the purposes hereof,

   hereinafter referred to as "**SVD 19"**,

   <u>on the one hand</u>,

2. **Dalkia France**, a *société en commandite par actions* (partnership limited by shares), with a registered capital of 220,047,504 euros, having its registered offices at 37, avenue du Maréchal de Lattre de Tassigny, Saint-André-Lez-Lille (59350), registered in the Lille Trade and Companies Register under the number 456 500 537,

   represented by [•],in his capacity as [•], duly authorised for the purposes hereof,

   hereinafter referred to as "**Dalkia France"**,

   <u>on the other hand</u>,

SVD 19 and Dalkia France are hereinafter referred to collectively as the "**Parties**" and individually as a "**Party**".

RECITALS

A. The Smurfit Kappa group, through its subsidiaries, the companies:

(i) Smurfit Kappa Cellulose du Pin, a *société par actions simplifiée* with a registered capital of 45,857,826 euros, having its registered offices at Allée des Fougères - Usine de Facture, Biganos (33380), registered in the Bordeaux Trade and Companies Register under the number 572 142 198 ("**SKCP**"); and

(ii) Smurfit Kappa Comptoir du Pin, a *société par actions simplifiée* with a registered capital of 2,268,225 euros, having its registered offices at 12 bis, avenue Gustave Eiffel, Pessac (33600), registered in the Bordeaux Trade and Companies Register under the number 780 111 357 ("**SKCDP**"),

has an integrated factory at Facture (Gironde) producing Kraft paper intended for the production of corrugated cardboard packaging (the "**Factory**").

B. SVD 19 has erected, on the Factory's industrial site, a biomass cogeneration power plant with a generating capacity of 63 MW, comprising in particular fuel storage (and other related equipment), a biomass boiler, two steam turbines, and all of their auxiliary equipment (the "**Plant**"). The Plant produces both steam and electricity. This is one and the same activity.

C. SKCP's activity consumes large quantities of steam and, in addition, generates large volumes of biomass which may be used to feed the Plant.

D. In order to provide SKCP with the utilities required for its activity (including low pressure steam and high pressure steam) and to produce electricity, SVD 19 and the Smurfit Kappa group entered into the following contracts:

(i) a framework contract dated August 7, 2008, concluded by and among SVD 19, SKCP and Dalkia France, amended by an addendum dated September 9, 2008 (the "**SKCP Framework Contract"**);

(ii) a transformation contract dated August 7, 2008, concluded by and among SVD 19, SKCP and Dalkia France (the "**SKCP Transformation Contract**");

(iii) a biomass supply contract dated August 7, 2008, concluded by and among SVD 19, SKCDP and Dalkia France (the "**SKCDP Biomass Supply Contract**"); and

(iv) a contract for the loan of land dated August 7, 2008, concluded by and among SVD 19, SKCDP and Dalkia France (the "**Land Contract**").

E. Moreover, SVD 19 supplies electricity from this Plant in the framework of a contract containing an electricity purchasing obligation (the "**CRE Contract**"), having EDF as counterparty, which was awarded to SVD 19 on June 17, 2008.

F. In a larger context, aiming to entrust Dalkia France with operating the Plant, SVD 19 shall transfer to Dalkia France SVD 19's rights and obligations under (i) the SKCP Framework Contract, (ii) the SKCP Transformation Contract and (iii) the SKCDP Biomass Supply Contract (hereinafter referred to collectively as the "**Operating Contracts**").

G. The Parties have agreed to proceed with the conclusion of this contract (the "**Contract**") in order to agree on the transfer of the Operating Contracts from SVD 19 to Dalkia France (the "**Transfer**"), subject to the consent of SKCP and SKCDP.

<u>THEREUPON, IT HAS BEEN AGREED AS FOLLOWS</u>:

ARTICLE 1 <u>TRANSFER OF THE OPERATING CONTRACTS</u>

Pursuant to article 19 of the SKCP Framework Contract, article 20 of the SKCP Transformation Contract, and article 22 of the SKCDP Biomass Supply Contract, SVD 19 hereby transfers to Dalkia France on the date hereof all of its rights and obligations under the three (3) Operating Contracts, which Dalkia France hereby expressly accepts.

The Transfer is stipulated as being subject to the condition precedent of obtaining the prior agreement of SKCP and SKCDP so that this Transfer entails a novation pursuant to articles 1271 et seq. of the Civil Code and thereby releasing SVD 19 from all past and future rights and obligations under the Operating Contracts.

Concomitantly with the Transfer of the Operating Contracts, the Parties concluded, on the date hereof, a new framework contract (the "**SVD 19 Framework Contract**"), and a new transformation contract (the "**SVD 19 Transformation Contract**").

Neither Party shall receive from any other Party a consideration for the Transfer of the Operating Contracts, the Parties renouncing expressly to any right of action or contestation on this ground.

ARTICLE 2 <u>INDEMNIFICATION</u>

Dalkia France shall indemnify, defend and hold SVD 19 harmless against any and all claims, actions, recourses, proceedings, losses, damages and costs and expenses of whatever kind and nature (including with respect to tax matters) resulting from any claim, action, recourse or proceeding arising after the date hereof with respect to (i) the Transfer and (ii) the performance or non-performance by SVD 19 of its obligations under the Operating Contracts prior to the Transfer.

ARTICLE 3 <u>TRANSITIONAL ARRANGEMENTS</u>

In order to avoid disrupting relationships with SKCP and SKCDP, the Parties have agreed that:

(i) as regards invoices issued by SVD 19 in respect of the Operating Contracts prior to the date hereof, should SVD 19 receive payment thereof, SVD 19 will promptly retransfer such amounts to Dalkia France and, in any event, within two (2) business days of receipt thereof;

(ii) as regards invoices received by SVD 19 in respect of the Operating Contracts prior to the date hereof but which have not become due as of the date hereof, SVD 19 shall provide Dalkia France with a payment notice at the latest three (3) business days before the expected payment date and Dalkia France shall transfer the appropriate amounts to SVD 19 at least one (1) business day before the date the relevant amounts are due under the relevant Operating Contract, with SVD 19 undertaking to make the appropriate payment to SKCP or SKCDP on the scheduled due date for the relevant invoice, provided that SVD 19 has indeed received the relevant sums from Dalkia France as envisaged herein.

To give effect to this clause, the Parties shall issue such invoices between themselves as may be required by applicable tax legislation.

On the date hereof, SVD 19 and Dalkia France will make appropriate meter readings relating to exchanges with SKCP and SKCDP under the Operating Contracts so as to determine the accruals of amounts remaining to be invoiced by or to SVD 19 in respect of:

(i) Primary Fluids and Utilities and Non Eligible Electricity (as such terms are defined in the SKCP Transformation Contract), exchanged with SKCP under the SKCP Transformation Contract; and

(ii) biomass delivered to SVD 19 under the SKCDP Biomass Supply Contract.

The Parties shall inform SKCDP and SKCP that henceforth invoices relating to the Operating Contracts are to be issued to Dalkia France and that Dalkia France will also henceforth issue invoices relating to the Operating Contracts, including any work-in-progress or supplies of Primary Fluids, Utilities, Non-Eligibile Electricity or biomass (*encours*) not invoiced by or to SVD 19 as of the date hereof.

Dalkia France shall have the exclusive right to invoice SKCP and SKCDP in respect of the Operating Contracts, including any accruals existing as of the date hereof.

ARTICLE 4 CONFIDENTIALITY

Each of the Parties undertakes not to disclose the content of this Contract in any respect whatsoever without the prior written agreement of the other Party, in particular for any disclosure of information to SKCP or SKCDP. The text of any public announcement that one of the Parties wishes to make, if this situation should arise, concerning the purpose or subject-matter of this Contract, must be the subject of the prior written agreement of the other Party.

The above obligation of confidentiality shall not however apply:

- to information that must be disclosed to third parties for the purposes of this Contract or in order to comply with laws and regulations in force and decisions of any nature which are binding on the Parties and their affiliates, and in this case the Parties undertake to make their best efforts in order to confer to agree in advance on the terms of the disclosure which has been made necessary;

- with respect to lawyers, financial advisers, employees, officers and directors of the Parties in the context of pursuing the subject-matter of the Contract, and the Parties' Statutory Auditors, provided that they are bound by an obligation, a commitment or a general duty of confidentiality; and

- to the communication of information made to carry out decisions of the administrative or judicial authorities for the purpose of performing this Contract.

ARTICLE 5 AMENDMENT AND RENEGOTIATION OF THE CONTRACT

The Contract may only be amended by a prior written agreement by the Parties, represented by an authorised representative.

ARTICLE 6 ASSIGNMENT

Since the Contract is executed *intuitu personae*, i.e. in consideration of the personality of the Parties involved, neither of the Parties may transfer or assign, in all or in part, its rights and obligations under the Contract, for valuable consideration or without a consideration, in any manner whatsoever, without having obtained the other Party's prior written approval. The foregoing shall not apply to transfers to the benefit of affiliates of a Party, provided that such Party gives appropriate guarantees in respect of the obligations of its affiliate under the Contract.

ARTICLE 7 VALIDITY OF THE CONTRACT

The nullity or unenforceability of any of the clauses of the Contract shall have no effect on the validity of the other provisions of the Contract. The Parties shall make their best efforts to negotiate in order to cause the substitution, for said clause, of one or more new provisions of equivalent effect and/or enabling the equilibrium and general economy of the Contract to be maintained in the respect of the intention of the Parties.

ARTICLE 8 NO WAIVER

The fact that one of the Parties tolerates a failure to perform, in whole or in part, of any of the clauses and obligations of the Contract, for any duration whatsoever, shall not under any circumstances constitute a waiver by said Party of the right to demand the strict performance of the other Party's obligations at any time in the future, or a waiver of the right to being judicial proceedings in order to defend its rights.

ARTICLE 9 NOTIFICATION

To be valid, any notification under this Contract shall be made to the following addresses:

For SVD 19:

[•]
[•]
[•]
For the attention of Mr [•]
Fax: +33 [•]
E-mail: [•]

For Dalkia France:

Dalkia France
2 Allée du Petit Cher
Les Granges Galand
BP 449
37554 SAINT AVERTIN CEDEX
For the attention of: Regional Director
Fax: 02.47.80.36.79

With a copy to:

[●]

Any change of address must be notified by the Party concerned to the other Party in order to make such change binding on the other Party.

Notification shall be validly made by any of the following means: (i) by hand delivery against receipt, or (ii) by registered letter with return receipt requested, or (iii) by package sent by Chronopost, Fedex, DHL, TNT UPS or any equivalent service, or (v) by fax or e-mail followed by confirmation sent within two (2) business days by one of the first three means referred to above.

Such notification shall be deemed to have been made: (i) if hand delivered, on the date stated on the receipt, (ii) if made by registered letter with return receipt requested, on the date stated on the return receipt, or failing receipt, on the date of first presentation, (iii) if made by a package sent by Chronopost, Fedex, DHL, TNT or UPS or any equivalent service, on the date stated on the mailing receipt or the air transport letter by the relevant service, (iv) if made by fax or e-mail, on the date of the fax transmission report.

ARTICLE 10 GOVERNING LAW AND JURISDICTION

This Contract and the obligations arising therefrom are governed by French law.

10.1 Amicable settlement

If any dispute or difference of any kind whatsoever between the Parties during the term of this Contract or after termination or early termination of this Contract, the Parties shall first negotiate in good faith with a view to achieving an amicable settlement of the same.

In the event that the Parties are unable to achieve any amicable settlement of the matter or dispute under this **Article 10.1**, then any Party shall be entitled by a notice in writing to the other Party to require the unresolved matter to be referred for an amicable settlement to a dispute resolution committee comprising:

(i) the President of SVD 19 or his authorised representative;

(ii) the CEO of Dalkia France or his authorised representative; and

(iii) an independent member to be agreed upon by the Parties.

Such committee shall be empowered to regulate the rules and procedures of the matter to be resolved before its members.

10.2 Jurisdiction

In the event:

(i) the Parties fail to agree upon the independent member within ten (10) days; or

(ii) the dispute resolution committee shall fail to decide on any matter in dispute referred to them under **Article 10.1** within thirty (30) days as from the date of such referral or such other period as may be agreed in writing by the Parties; or

(iii) any Party hereto is dissatisfied with the decision of the dispute resolution committee within fifteen (15) days as from this decision;

then in any such case either Party in which the dispute relates may require that the matter be finally settled under the exclusive jurisdiction of the Paris Commercial Court *(tribunal de commerce de Paris)*, even in the circumstance of multiple defendants or an impleader, and the jurisdiction clauses that may exist in other commercial and administrative documents of either of the Parties may not constitute an obstacle to the application of this clause.

Executed in Paris in two (2) original copies,
On [•] 2011.

SVD 19 ____________________ Represented by [•] [•]	Dalkia France ____________________ Represented by [•] [•]

Schedule 1g)

Real Property Development Contract

REAL PROPERTY DEVELOPMENT CONTRACT

Between

Société Valmy Défense 19

and

Dalkia France

[●]

<u>BETWEEN THE UNDERSIGNED</u>:

1. **Société Valmy Défense**, a French "*société par actions simplifiée*" with a share capital of 37.000 euros, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-lez-Lille, registered with the Trade and Companies Register of Lille under number 497 908 632,

   represented by [●], who is duly authorised for the purposes hereof,

   hereinafter referred to as "**SVD 19**", of the first part,

AND:

2. **Dalkia France**, a French "*société en commandite par actions*" with a share capital of [220,047,054 euros], having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-lez-Lille, registered with Trade and Companies Register of Lille under number 456 500 537,

   represented by [●], who is duly authorised for the purposes of these presents,

   hereinafter referred to as "**Dalkia France**", of the second part,

SVD 19 and Dalkia France shall be hereinafter jointly referred to as the "**Parties**"

and individually as a "**Party**".

* * *

<u>PREAMBLE</u>

A. Under the terms of a decree dated 17 June 2008 published in the Official Journal on 2 July 2008, SVD 19, wholly owned by Valmy Energie Biomasse, itself owned by Dalkia France, was awarded a contract with an electrical power purchase obligation (the "**CRE Contract**"), the other party to which was EDF, pursuant to a call for tenders initiated by the Energy Regulation Commission.

B. The Dalkia group supplies its industrial customers with a range of energy services, which specifically include decentralised energy production, heat generation, and optimised fuel management.

C. Smurfit Kappa Cellulose du Pin, a French "*société par actions simplifiée*" with a share capital of 45,857,826 euros, having its registered office at Allée des Fougères – Usine de Facture, 33380 Biganos, registered with the Trade and Companies Register of Bordeaux under number 572 142 198 ("**SKCP**"), is a company of the Smurfit Kappa group. It owns an integrated factory that produces kraft paper for use in the manufacture of corrugated cardboard packaging, located in Facture (Gironde), which it operates.

D. Since SKCP's operations make heavy use of steam, SVD 19 and SKCP entered into a partnership regarding SVD 19's construction and operation of a biomass cogeneration power plant (the "**Power Plant**") located at SKCP's site. Specifically, this partnership led to the execution of the following agreements on 7 August 2008, in the presence of Dalkia France, (i) a framework contract (the "**Framework Contract**") and (ii) an agreement for the loan of the land necessary for the setting-up, construction, and operation of the Power Plant (the "**Land Contract**"). Dalkia France has entered into all the construction-related contracts (particularly into a project management ("**Contrat de maîtrise d'oeuvre**") on May 31, 2007 and into an agreement with Bruno Jacq, a French-registered architect (d.p.l.g) and Thierry Sauvé, co-contracting architect on July 3, 2008).

E. On the date hereof, the Land Contract aforementioned has been terminated and SKCP has granted to SVD 19 an usufruct right over the land necessary for the setting-up, construction, and operation of the Power Plant (the "**Usufruct Contract**").

F. The Power Plant was delivered to SVD 19 on **[●]**.

G. SVD 19 has entered into an operating and management agreement with Dalkia France dated [●] pursuant to which Dalkia shall be the operator and manager of the Power Plant (the "**Operation and Maintenance Contract**").

H. Considering the foregoing, SVD 19 and Dalkia France have agreed to materialize the mandate entrusted by SVD 19 to Dalkia France for the purpose of the construction program of the Power Plant and agreed to that effect to enter into a real property development contract with retroactive effect on May 31, 2007 (the "**Agreement**")

I. The Parties have consequently met and agreed the following.

* * *

NOW THEREFORE, IT HAS BEEN AGREED AS FOLLOWS:

1. Purpose – Program – Contracts and Insurance Policies

1.1 Purpose

Dalkia France has undertaken towards SVD 19 to proceed, for the price agreed in Article 2 hereinafter, on the land made available by SVD 19, pursuant to work contracts (*contrats de louage d'ouvrage*), with the completion of the construction program pertaining to the Power Plant, set forth in Appendix 1.1 attached hereto (the "**Program**") and to that effect, to proceed with all material, technical, legal, administrative and financial transactions necessary for the design, construction, installation, and industrial start-up (*mise en service industrielle*) of the Power Plant.

The Agreement is governed by the provisions of articles 1831-1 to 1831-5 of the French Civil Code to the extent these provisions are not expressly waived pursuant to the Agreement or in contradiction with specific provisions of the Agreement.

To that effect, Dalkia France represents that it is responsible for the proper completion of the Program in accordance with the relevant specifications listed in Appendix 1.1.

In this context, Dalkia France has commissioned the preliminary architectural and engineering studies necessary for the design of the Power Plant.

1.2 List of the main Contracts Executed and of the Insurance Policies Taken Out

Dalkia France executed all the main contracts listed in Appendix 1.2 and is insured through policies sufficient to cover its liability under the Agreement.

Dalkia represents that any contract executed by it for the purpose of the Program which are not listed in Appendix 1.2, shall not be opposable to SVD 19 nor constitute a ground for Dalkia to be released from its obligations under the Agreement.

It being specified, which SVD 19 acknowledges, that the Plant is exempted from the mandatory scope of the two-year and ten-year insurance policies pursuant to the provisions of articles L.243-1.1 of the French Insurance Code and 1792-7 of the French Civil Code.

For the avoidance of doubt, the caps / ceilings applicable to Dalkia France's insurance policies and the above mentioned acknowledgement shall not constitute a ground for Dalkia to be released from its obligations under the Agreement.

2. Price

The price agreed by Dalkia France and SVD 19 for the performance of its mission with respect to the completion of the Program, has been set at the amount of one hundred and thirty-two million six hundred thousand (132,600,000) euros, exclusive of value added taxes (the "***Price***").

The Price shall include Dalkia France's remuneration.

The Price includes all costs and expenses connected to obtaining the administrative authorizations necessary for construction and operation of the Power Plant, the design, construction, installation, and industrial start-up (*mise en service industrielle*) of the Power Plant, including the budget item for contingencies and unforeseen expenses and the warranties provided by Article 1799-1 of the French Civil Code, as well as other services established in connection with the completion of the Program.

The Price is firm, fixed, all-inclusive, final, and not subject to revision.

SVD 19 has paid the Price in full to Dalkia France. Dalkia France acknowledges that the Price has been fully paid by SVD 19, and that there is not outstanding payment or any sums to be paid by SVD 19 to Dalkia France under this Agreement.

3. Term

The Agreement shall be entered into with retroactive effect on May 31, 2007 for the duration necessary for the fulfilment of Dalkia France's mission with respect to the carrying-out of the works.

Dalkia France's mission shall end on the occurrence of the latest of the following events:

- snaggings have been lifted up,
- any disorders observed in the year covered by the perfect completion warranty have been corrected.

4. Scope of Dalkia France's Obligations

Dalkia France confirms that it:

- conducted the preliminary architectural and engineering studies relating to the Power Plant design,
- has determined the Program in cooperation with the architect and any other participant concerned,
- proceeded, pursuant to the works contracts, with the completion of the Program,
- established the projected budget relating to the technical items and allocated the tasks between contractors and participants and ensured their coordination on the building site,

- has been in charge of all actions intended to obtain the various administrative authorizations, the preparation of the contracts necessary for the completion of the works,

- was responsible for preparing the technical schedules to the contracts necessary to carry out the works and the contracts (*marchés*) entered into with the contractors and participants,

- completed all environmental studies and took all necessary steps deriving from such studies in compliance with environmental regulations applicable to the completion of the Power Plant,

- has full knowledge of the provisions of the Operation and Maintenance Contract entered into between SVD 19 and Dalkia on **[●]** 2011,

- is responsible for accepting the works from the various building companies in the name and on behalf of SVD 19 and for controlling the lifting of the snaggings made by the companies upon acceptance of the works and for controlling the remedies made to the disorders which have occurred during the perfect completion period (*période de parfait achèvement*),

- takes direct responsibility for complying with all the obligations assumed *vis-à-vis* building contractors, suppliers, subcontractors and other participants involved in the completion of the Program, and specifically it shall pay suppliers directly and in full and, in the name of and on behalf of SVD 19, building contractors and other participants involved in the performance of the services pertaining to the Program, so that the Power Plant construction, installation, and industrial start-up (*mise en service industrielle*), including during the lifting of the snaggings and the perfect completion guarantee (*garantie de parfait achèvement*) if applicable, are never interrupted or delayed due to that fact, and SVD 19 is never held liable by a building contractor, supplier, or a participant,

- is responsible regarding the payment of any sum due to the building contractors, suppliers, and other participants which it has entered into for the purpose of Program, so that SVD 19 shall not be responsible whatsoever;

- designed and built the Power Plant in compliance with the “arrêté préfectoral” dated May, 26 2010 and with the “Autorisation d’exploiter” delivered on May, 26 2010 by the Prefecture of Gironde.

Dalkia France has ensured that the building contractors, suppliers, and other participants involved in the design, construction, installation and industrial start-up (*mise en service industrielle*) of the Power Plant in compliance with the Program, have taken out and keep in force, at the minimum, the insurance policies required under the regulations applicable to the services of each of them.

5. <u>Obligation of SVD 19</u>

SVD 19 shall cooperate with Dalkia France in order to facilitate, to the extent possible, performance by the latter of its obligations under the Agreement.

SVD 19 shall ensure that Dalkia France, the building companies and the other participants have free access to the Site during the entire term of the Agreement (under the conditions defined in the aforementioned Usufruct Contract).

Dalkia France acknowledges that SVD 19 has fulfilled all obligations, including financial obligations at its charge.

6. Completion and Procès-Verbal de Livraison of the Program

6.1 Definition of the Completion

By express agreement of the Parties, the term completion has the meaning sets forth in article R.261-1 of the Building and Housing Code: the Program will be deemed completed when all construction works will have been carried out and when all items of equipment essential for the intended use of the Power Plant will be installed.

It further being understood that the Program will be deemed completed within the meaning of article R.261-1 of the Building and Housing Code:

- if completed in accordance with (i) applicable laws and regulations applicable to the Power Plant, (ii) administrative authorizations obtained, (iii) the state of the art professional practices and standards,

- if completed in compliance with contractual documents executed by Dalkia France listed in Appendix 1.2 and all specifications listed in Appendix 1.1,

- if the protocol of tests provided for in the contractual documents listed in Appendix 1.2 and/or in the specifications listed in Appendix 1.1 were conducted and deemed satisfactory.

6.2 Completion of the Program and Procès-Verbal de Livraison

Dalkia France remitted to SVD 19: the certificate issued by Dalkia France's Maitre d'Oeuvre certifying the full completion of the Program (le "**Constat d'achèvement des travaux**") and the protocol of tests provided for in the contractual documents listed in Appendix 1.2 and/or in the specifications listed in Appendix 1.1 deemed satisfactory. The list of the aforementioned protocol of tests is attached as Appendix 6.2 a).

Consequently, on **[●]** , the Parties signed the "procès-verbal de livraison", annexed as Appendix 6.2 b) (le "**Procès-Verbal de Livraison**").

The list of snaggings drawn up by both Parties is annexed to the Procès-Verbal de Livraison.

6.3 List of Documents Remitted upon the execution of the Procès-Verbal de Livraison

Upon execution of the Procès-Verbal de Livraison, Dalkia France remitted the documents listed in Appendix 6.3 to SVD 19.

6.4 Effects of the Procès-Verbal de Livraison

6.4.1 Transfer of Risks

The equipment, supplies, and material comprising the Power Plant and the construction work performed have become the property of SVD 19 by accession.

The transfer to SVD 19 of the Power Plant's risks and custody took place on the execution date of the Procès-Verbal de Livraison.

SVD 19 represents that it shall be responsible for taking out all insurance policies which are necessary following the delivery of the Power Plant, that is to say, following the Procès-Verbal de Livraison.

6.4.2 Guarantees and Liability

Dalkia France shall be bound as follows:

(I) Contractual guarantee: (the "**Contractual Guarantee**")

Dalkia France for a period of 2 years as from the date of the Procès-Verbal de Livraison, guarantees SVD 19 against all defects arising from the design and construction of the Power Plant (including the installation of all necessary equipment of the Power Plant) and including but not limited to any defect attributable to:

(i) defective design;

(ii) defective workmanship ;

(iii) defective use of materials;

(iv) defective installation of any element constituting a component of the Power Plant (excluding any damage of loose equipment);

(v) defective preparation of the Site on which the Plant is constructed;

(vi) any latent defect (vice caché);

(vii) any defect the remediation of which is due pursuant to article 1792-6 of the French Civil code.

hereinafter referred to as "**Defects**" or "**Defect**".

Dalkia France guarantees SVD 19 against any failure of the Power Plant to meet performance standard described in Appendix 1.1 as a result of any Defect as defined above.

Subject to Paragraph (IV), Dalkia France expressively undertakes to remedy at his own expenses any Defect.The Contractual Guarantee provided herein still apply whether or not the Defect are attributable to Dalkia France directly or to any of its contractors or services providers.

SVD 19 may call upon the Contractual Guarantee by written request sent to Dalkia France by registered letter (the "**Notification**") before the Expiration Date as defined hereinafter.

Dalkia France undertakes to remedy the Defect within a reasonable period as from the receipt by Dalkia of a Notification.

SVD 19 expressly agrees to authorise access to the Power Plant, even in its absence, upon request made with 24 hours advance notice[1], by the representatives of Dalkia France, as well as architects, contractors, experts, surveyors etc. the presence of which is required in order to remedy the Defect notified.

This Guarantee shall end two years as from the date of the Procès-Verbal de Livraison (the "**Expiration Date**") without any notice or other formality being required.

Dalkia France undertakes to enforce all the available and statutory guarantees benefiting to Dalkia France in order for SVD 19 to benefit from whatever is due by contractors and/or suppliers to Dalkia France after the lapse of the above mentioned two (2) years guaranty for Defects.

<u>(II) Statutory Guarantee provided for by Article 1792 to Article 1792-4 of the French Civil code</u>

Dalkia France could be liable pursuant to the statutory guarantee provided for by article 1792 to article 1792-4 of the French Civil code, if and only if, the statutory conditions are met: defects affecting the "ouvrage"within the meaning of article 1792 of French Civil code will have to be a defect causing a "dommage" meeting the criteria set out in the said article 1792.

<u>(III) Indemnification</u>

Subject to Paragraph (IV) hereafter, Dalkia France expressively undertakes to indemnify SVD 19, for any damages and/or losses ("*pertes financieres consecutives*") resulting from a Defect, if such Defect is notified before the Expiration Date (as defined in article (I) above), including, but not limited to loss of profits, all contractual penalties actually invoiced and paid in accordance with the relevant contract (including CRE penalties), business interruption or increased operating costs.

<u>(IV) Cap</u>

The total amount of the sums due by Dalkia France to SVD 19 under this Agreement (including the costs of all repairs, damages or penalty if any) shall not exceed an aggregate total maximum amount of 50.000.000 €, as full and final settlement (solde de tous comptes).

<u>(V) No double recovery</u>

To avoid any possibility of unfair enrichment, neither Party shall be entitled to recover damages more than once (i.e. by claiming compensation or indemnification for the same cause but pursuant to an agreement other than this Agreement). This prohibition of double recovery which applies in particular to any penalty, indemnity or liability received under the Operation and Maintenance Contract.

By express agreement of the Parties, the indemnities paid under the “Direct damage and operating losses” insurance policy ("Dommages directs et pertes d'exploitation") taken out by Dalkia France on behalf of SVD 19 pursuant to the Operation and Maintenance Contract, to the extent that such indemnities cover damages or indemnities or losses of SVD 19 for which Dalkia France is liable under this Agreement, shall:

(i) if paid to SVD 19 before any payment made by Dalkia France to SVD 19 in respect of a loss, damage or indemnity for which Dalkia France is liable hereunder, be applied against and in reduction of Dalkia France liability hereunder as well as against and in reduction of Dalkia France liability cap,

(ii) if paid to SVD 19 after payment made by Dalkia France to SVD 19 in respect of a loss, damage or indemnity for which Dalkia France is liable hereunder, be promptly and, in any event within three business days, paid back to Dalkia France, provided further that if Dalkia France has made a payment as contemplated in this provision, Dalkia France shall be subrogated in SVD 19 rights in respect of any insurance recovery to be made under the “Direct damage and operating losses” insurance policy taken out by Dalkia France on behalf of SVD 19 pursuant to the Operation and Maintenance Contract.

If the sums paid to SVD 19 under the “Direct damage and operating losses” insurance policy taken out by Dalkia France on behalf of SVD 19 pursuant to the Operation and Maintenance Contract (wether or not relating to a loss, damage or indemnity for which Dalkia France is liable hereunder) exceed the sums for which Dalkia France is at that point liable hereunder, any excess amount will be repaid to Dalkia France within three business days or applied in reduction of Dalkia France’s liability cap hereunder.

For the avoidance of doubt, it is agreed between the Parties that SVD 19 may elect any ground for claim Dalkia's liability, whether under Paragraph (I) or (II).

7. Levées des Réserves (Remedy of Snaggings («*réserves*»))

The snaggings appearing on the list annexed to the Procès-Verbal de Livraison shall be remedied within a maximum of 12 months from the Procès-Verbal de Livraison by repair or correction of the defects, defaults or non-conformances, or by bringing the Power Plant into compliance with the contractual documents.

SVD 19 expressly agrees to authorise access to the Power Plant, even in its absence, upon a request with 24 hours advance notice, by the representatives of Dalkia France, as well as architects, contractors, experts, inspectors, and workers that may have to perform work in order to remedy the snaggings and complete work on the premises, perform all adjustments and calibrations, all controls and inspections, provided that Dalkia France takes all necessary actions at its expense in order to disturb as little as possible the operation of the Power Plant and the work activities of the occupants of the Power Plant.

As soon as Dalkia France shall consider that said snaggings have been lifted, Dalkia France shall invite SVD 19 upon a ten-business-day prior notice to acknowledge the fact that all snaggings have been remedied.

In case of disagreement as to whether snaggings have been properly remedied, either party shall be entitled to refer the dispute to an expert appointed by common agreement between the parties, failing any agreement, this expert shall be appointed by the President of the Tribunal de Grande Instance of [•] petitioned by way of notice (référé) by the most diligent party. The expert's decision will be final and bind the Parties.

Should the deadline referred to above not be respected, Dalkia France shall pay to SVD 19 a delay penalty equal to [●][2] €.

8. Documents to be Remitted by Dalkia France

8.1 Submission of Documents within three months of the Procès Verbal de Livraison

Dalkia France shall hand over to SVD 19 within three months of the Procès Verbal de Livraison the documents listed in Appendix 8.1.

8.2 Submission of Documents in the Year following the date of the Procès-Verbal de Livraison

[2] This point shall be discussed between the Parties prior to the signature of the Agreement.

Dalkia France shall hand over to SVD 19 in the year following the Procès-Verbal de Livraison the documents listed in Appendix 8.2.

Notwithstanding of the foregoing article 8.1 and 8.2, Dalkia France undertakes to hand over to SVD 19 all necessary documents including but not limited to all available construction documentation (Dossier des Ouvrages Exécutés, plans, etc.), technical or operational manuals, instructions, documents and records relating to the Power Plant, to properly complete the Services as specified in the Operation & Maintenance Agreement.

9. Confidentiality

The Parties undertake not to disclose and not to make use of, in any manner whatsoever except to satisfy regulatory or tax requirements or except to the extent strictly necessary for the operation of the Power Plant, for a period of [●] years following the Procès-Verbal de Livraison, the technical information regarding the facilities, know-how, or production processes of the Parties or of any builder, supplier, or participant involved in the performance of this Agreement, to the extent that said information is not in the public domain, or the financial aspects of this Agreement.

Any violation of this rule could result in the termination of this Agreement, without prejudice to any legal proceedings that a Party might bring.

Each Party reserves the right, prior to the disclosure of any information, to require that the other Party sign a confidentiality undertaking.

It is specifically stated that, as an exception to the foregoing, each of the Parties may transmit the above-indicated information to its insurance broker, its auditors, tax and social security agencies, the authorised representatives of any judicial authority, as well as to the companies in their respective groups (within the meaning of the provisions of Article L.233-3 of the French Commercial Code).

10. Intellectual Property

Dalkia France shall indemnify and hold SVD 19 harmless in connection with the infringement or unauthorised use of any patent, model, copyright, trademark, or trade name whatsoever that has been filed or any other intellectual property right, in the event that the claim should arise from the completion of the construction of the Power Plant.

11. Election of Domicile

SVD 19 and Dalkia France each elect domicile at their company registered office indicated at the beginning hereof.

12. Notifications

Any notification pursuant to this Agreement must be made in French and by hand, via fax, via registered letter, or in an envelope delivered by an internationally recognized carrier.

Notification shall be valid as of the receipt of same, and shall be deemed to have been received (i) as of the date of receipt when delivered by hand, (ii) as of the date of the first delivery attempt, when it was made by registered letter or via a carrier, or (iii) as of the date of transmission, when it is made by fax.

The Parties' addresses and fax numbers for the purposes of this Article are as follows:

SVD 19	Address:	Fax:
	[•]	[•]
To the attention of:	[•]	
Dalkia France	Address:	Fax:
	[•]	[•]
To the attention of:	[•]	

Each Party must diligently notify the other Party of any change in name, addressee, address, or fax number.

13. Applicable Law - Jurisdiction

13.1 Applicable Law

The law applicable to this Agreement is French law.

13.2 Jurisdiction

In the event of difficulties with respect to the application or interpretation of this Agreement, the Paris Commercial Court shall have sole jurisdiction.

French law is the only applicable law.

Any dispute occurring between the Parties regarding the interpretation or performance of this Agreement shall be mandatorily required to be subject to an attempt at an amicable resolution, prior to any possible legal action, and the parties shall then meet for the purpose of designating a single mediator specializing in the technical area involved in the subject of the dispute, in accordance with the following terms, conditions, and procedures:

- the Party wishing to have recourse to mediation shall so notify the other Party or Parties,

- the Parties shall then have a period of five (5) Business Days following said notification to designate a mediator in good faith and by mutual consent,
- beginning with the acceptance of his mission, which must occur within five (5) Business Days following his designation by the Parties, the mediator shall have a period of fifteen (15) Business Days, which is renewable with the approval of each of the Parties, to meet with the Parties,
- in the absence of an agreement by the parties as to a mediator or if, for any reasons whatsoever, any of the above-indicated time frames has elapsed, each of the parties shall once again be free to act.

During the aforementioned period, the Parties undertake to ensure that the studies and/or the work and the payment for same shall continue, so that completion of the work shall not be impaired thereby.

List of the appendices:

Appendix 1.1
Appendix 1.2
Appendix 6.2 a)
Appendix 6.2 b)
Appendix 6.3
Appendix 8.1
Appendix 8.2

Executed on [●], on two (2) original copies.

For SVD 19	For Dalkia France
[●]	[●]

Appendix 1.1 –

Program

Appendix 1.2 –

Main Contracts

Contracts between Dalkia France and :

- Sepoc on May, 31 2007 (« ***maîtrise d'œuvre*** »)
- B.Jacq et T.Sauvée on June, 27 2008 (« ***architecte*** »)
- Socotec on October, 10 2008 ("***contrôle technique bâtiment*** ")
- Apave on November, 6 2008 ("***contrôle DESP***")
- Bureau Veritas on November, 9 2010 ("***tests de performance***")
- Metso Paper France SAS on August, 08 2008 ("***Lots 1-3B-5 pour chaudière, système stockage et manutention biomasse, contrôle commande de la centrale Biomasse***")
- Thermodyn SAS on November, 5 2008 ("***Lot 2A turbines GTA1 et GTA2***")
- Crystal on November, 26 2008 (amendment n°1 on July, 10 2009) ("***Lots 2B-7 cycle eau vapeur et chaudières de secours***")
- Forclum Aquitaine Limousin / Schneider Electric France on December, 30 2008 ("***Lot 3A Système électrique***")
- Eiffage on March, 23 2009 ("***Lot 4 Génie civil et VRD***")
- Axima on May, 28 2010 ("***Lot 8 Protection incendie***")

Appendix 6.2 a) –

List of the protocol of tests

Appendix 6.2 b) –

Procès-Verbal de Livraison

Appendix 6.3 –

List of the documents remitted to SVD 19 upon execution of the Procès-Verbal de Livraison

[to be completed]

Appendix 8.1-

List of the documents to be remitted within three months of the Procès Verbal de Livraison

- All documents of the "*Dossier des Ouvrages Exécutés*"[3].

[3] The « Dossier des Ouvrages Exécutés » includes : plans, the « *dossier constructeur* », operations manuel (le « *manuel d'exploitation* ») (or procedures) depending on the nature of the lot or equipment concerned, the maintenance manual (or « *notices de maintenance* ») depending on the nature of the lot or equipment.

Appendix 8.2 –

List of the documents to be remitted in the year following the Procès-Verbal de Livraison

[to be completed]

Schedule 1h)

SVD 19 Framework Contract

SVD 19 FRAMEWORK CONTRACT[1]

BETWEEN THE UNDERSIGNED:

1. **Dalkia France**, a French *société en commandite par actions* with a share capital of € 220,047,504, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-Lez-Lille, registered with the Trade and Companies Register of Lille under number 456 500 537;

hereinafter referred to as "**Dalkia France**",

on the first hand,

AND

2. **Société Valmy Défense 19 – SVD 19**, a French *société par actions simplifiée* with a share capital of € 37,000, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-Lez-Lille, registered with the Trade and Companies Register of Lille under number 497 908 632;

hereinafter referred to as "**SVD 19**",

on the second hand,

referred to collectively as the "**Parties**" and each individually as a "**Party**".

[1] This Contract shall be executed in French. The French version shall prevail over this English version. The provisions of this Contract which mirror the provisions of the SKCP Framework Contract shall be drafted in French with the exact same wording as the French wording of the SKCP Framework Contract.

RECITALS:

The Minister of the Economy, Finance and Industry has decided, pursuant to Article 8 of Law No. 2000-108 of February 10, 2000 concerning the modernisation and development of the electricity public service, to launch a call for tenders comprising two tranches, for the construction in France of electricity power stations using biomass, to be completed by January 1, 2010 at the latest, providing an additional generating capacity of 300 MW.

The Energy Regulation Commission (*Commission de Régulation de l'Energie* – "**CRE**") has been put in charge of implementing the Call for Tenders (as defined in the glossary below) initiated on July 12, 2006.

Smurfit Kappa Cellulose du Pin, a French "*société par actions simplifiée*" with a share capital of 45,857,826 euros, having its registered office at Allée des Fougères – Usine de Facture, 33380 Biganos, registered with the Trade and Companies Register of Bordeaux under number 572 142 198 ("**SKCP**"), is a company of the Smurfit Kappa group. SKCP owns and operates an integrated factory that produces kraft paper for use in the manufacture of corrugated cardboard packaging, located in Facture (Gironde) (the "**Factory**").

The Dalkia France group supplies its industrial customers with a complete range of energy services integrating decentralised energy production, heat generation, and optimised fuel management.

SVD 19 wished to be able to bid in the Call for Tenders and perform the electricity sale contract to be concluded with the Electricity Buyer (as defined in the glossary below), through the Plant (as defined in the glossary below) located on the Site (as defined in the glossary below), intended to supply the Site with steam and Non-Eligible Electricity (as defined in the glossary below) within the meaning of the Call for Tenders.

SVD 19 delivered its Tender (as defined in the glossary below) to CRE on August 9, 2007. This Tender was accepted by the Energy Minister by order dated June 17, 2008, published in the *Journal Officiel* on July 2, 2008.

SVD 19 and SKCP entered into a relationship regarding SVD 19's construction and operation of a biomass cogeneration power plant located at SKCP's site. This relationship led to the execution of the following agreements on August 7, 2008:

(i) a framework contract among SVD 19, SKCP and Dalkia France, amended by an amendment dated September 9, 2008 (as amended from time to time the **"SKCP Framework Contract**");

(ii) a transformation contract among SVD 19, SKCP and Dalkia France (as amended from time to time the "**SKCP Transformation Contract**");

(iii) a biomass supply contract among SVD 19, Smurfit Kappa Comptoir du Pin ("**SKCDP**") and Dalkia France (as amended from time to time the "**SKCDP Biomass Supply Contract**"). SKCDP is a sister company of SKCP; and

(iv) a land contract among SVD 19, SKCDP and Dalkia France (the "**Land Contract**").

SVD 19 transferred the SKCP Framework Contract, the SKCP Transformation Contract and the SKCDP Biomass Supply Contract to Dalkia France. In order to reflect this transfer, the SKCP Framework Contract, the SKCP Transformation Contract and the SKCDP Biomass Supply Contract were amended by an instrument dated [•], 2010.

In this regard, Dalkia France acknowledges that the rights and obligations of SVD 19 under the SKCP

Framework Contract have been fully transferred to Dalkia France and that SVD 19 does not any incur any outstanding liability towards SKCP or SKCDP as a result of such transfer, nor has any liability towards Dalkia France in connection with said transfer.

SKCP granted SVD 19 an usufruct right over the land occupied by SVD 19 on SKCP's Facture site pursuant to an instrument dated [●] (the "**Usufruct Contract**") including a waiver of SKCP's immediate accession rights to the assets erected on the land covered by the usufruct by SVD 19. Upon SVD 19 being granted the usufruct, the Land Contract terminated *ipso facto*, without penalty or liability whatsoever.

The Parties came together in order to agree this SVD 19 Framework Contract (the "**Contract**").

GLOSSARY:

The glossary defines the terms used in this Contract and in the appended documents, to which the Parties hereby attribute contractual value.

Terms which are used in the plural shall apply both to the collective group thereby defined and to one or more of its elements taken individually. Definitions which are given for a term in the plural shall also apply where this term is employed in the singular, and *vice versa*.

Definitions which are given for a noun shall apply *mutatis mutandis* to verbs, adjectives and adverbs with the same root, and *vice versa*.

Affiliate: means, with respect to any given person, any entity which directly or indirectly (through one or more other entities), Controls or is Controlled by that person as well as any legal person which is Controlled, directly or indirectly (through the intermediary of one or more other entities), by a person who Controls such given person, directly or indirectly (through of one or more other entities).

Biomass: means the Internal Biomass and/or the External Biomass, as the case may be.

Black Liquor Steam (BLS): means the steam produced by SKCP's black liquor boiler.

Call for Tenders: means the call for tenders launched by the CRE by notice published in the Official Journal of the European Union of December 9, 2006 (contract notice 2006/S 235 251239) for the building in France of electric plants using biomass for a total generating capacity of 300 MW.

Commercial Agreements: shall mean the SKCP Framework Contract, SKCP Transformation Contract, the SVD 19 Transformation Contract, the Usufruct Contract and the SKCDP Biomass Supply Contract.

Contract: means the present SVD 19 Framework Contract and its schedules as described in **Article 2**.

Control: means control, exercised alone or jointly, over a company or entity as defined in Article L. 233-3 of the Commercial Code as currently drafted.

CRE: shall have the meaning given to such term in the recitals.

Dalkia France Efficiency Commitment: means Dalkia France's commitment to uplift, annually, the quantity of steam provided in the Contract.

Dalkia France Uptime Commitment: means Dalkia France's commitment to supply, annually, the quantity of Black Liquor Steam provided in the Contract.

EDF: means Electricité de France.

Efficiency: means the minimum energy efficiency of 62.5% (0.9 x declared Efficiency = 0.9 x 69.5% = 62.5%), as stipulated in the Tender, in accordance with the requirements of the Specifications.

Electricity Buyer: means EDF or any other distributor designated as buyer of the Eligible Electricity, signatory of the Electricity Sale Agreement with SVD 19.

Electricity Sale Agreement: means the agreement to be entered into between SVD 19 and the Electricity Buyer within the meaning of the Specifications, to enter into effect on the CRE Start-Up date and to terminate on June 12, 2030, unless extended in accordance with the Specifications.

Eligible Electricity: means electricity generated by the Plant sold by SVD 19 to the Electricity Buyer within the meaning of the Call for Tenders.

External Biomass: means the biomass supplied to SVD 19 other than the Internal Biomass supplied under the SVD 19 Transformation Contract (including chips from branches, chips from root stock, bark and non categorized chips, sawdust, non classified round timbers, etc.).

Factory: shall have the meaning given to such term in the recitals.

Factory Closure: means the complete and final ceasing of the Factory's activity or the partial ceasing of such activity where (i) the competent Prefect accepts to consider this to be equivalent to the complete and final ceasing of activity pursuant to the Specifications or (ii) following which Dalkia France will no longer be able to honour its Dalkia France Uptime Commitment or its Dalkia France Efficiency Commitment.

Internal Biomass: means the biomass (bark, wood flour and fines, slimes, bark particles, etc.) produced by SKCP and supplied to SVD 19 by Dalkia France under the SVD 19 Transformation Contract, in accordance with the requirements of the Specifications.

Land Contract: shall have the meaning given to such term in the recitals.

Non-Eligible Electricity: means electricity generated by the Plant which is not eligible within the meaning of the Specifications, part of which may be supplied to Dalkia France.

O&M Contract: means the operations and maintenance contract entered into by SVD 19 and Dalkia France dated [●].

Plant: means the Utilities production plants built by SVD 19 with a generating capacity of 63MW, located on the Site, comprising in particular the fuel storage equipment (and other related equipment), the biomass boiler, two steam turbines and all of their auxiliary equipment.

Primary Fluids: means all of the fluids (Black Liquor Steam, Internal Biomass, etc.) delivered by Dalkia France to SVD 19 with a view to the production of the Utilities.

Project: means the project for the construction and operation of the Plant on the Site.

Site: means the SKCP industrial site located at the Facture factory, Biganos (33380), on which, in particular, the Factory, the Plant and SKCP's administrative buildings are located.

SKCDP: shall have the meaning given to such term in the recitals.

SKCDP Biomass Supply Contract: shall have the meaning given to such term in the recitals.

SKCP: shall have the meaning given to such term in the recitals.

SKCP Framework Contract: shall have the meaning given to such term in the recitals.

SKCP Transformation Contract: shall have the meaning given to such term in the recitals.

SKCP Transformation Contract: shall have the meaning given to such term in the recitals.

SVD 19 Transformation Contract: means the SVD 19 Transformation Contract entered between SVD 19 and Dalkia France on [●].

Specifications: means the specifications charter of the Call for Tenders concerning facilities for electricity generation using biomass, published by CRE.

SVD 19 Biomass Supply Contract: means the biomass fuel supply contract executed entered into between the Parties on **[●]**.

Tender: means the offer concerning the Project, made by SVD 19, solely in its own name and on its own behalf, to CRE on August 9, 2007 in response to the Call for Tenders.

Usufruct Contract: shall have the meaning given to such term in the recitals.

Utilities: means all of the fluids (including the low pressure steam, the medium pressure steam, etc.) delivered by SVD 19 to Dalkia France.

Year: means a calendar period of twelve (12) consecutive months.

The Parties agree that, each time terms employed in this Contract have to be interpreted, in particular in the case of a dispute, controversy or claim arising in connection with this Contract or the SKCP Framework Contract, such terms shall be interpreted consistently with the SKCP Framework Contract (or their counterpart term in the SKCP Framework Contract).

1. PURPOSE OF THE CONTRACT

The purpose of the Contract is to define the framework of the Parties' future collaboration, having regard to the Project, and in particular the Parties' mutual rights and obligations in the framework of the main agreements for implementing the Project.

2. DURATION AND EFFECTIVE DATE OF CONTRACT

The Contract shall enter into force on the date of its execution.

The Contract is of a fixed duration and shall end (i) on the date on which the last of the Commercial Agreements comes to an end (by expiry or termination), or (ii) in the event of termination under those conditions provided in **Article 14**.

Notwithstanding the expiry or termination of the Contract, **Articles 13** and **21** shall remain in force insofar as necessary.

3. CONFIGURATION OF THE PLANT – COMPLIANCE WITH LEGISLATION AND REGULATIONS

3.1. [Reserved]

3.2. [Reserved]

3.3. [Reserved]

3.3.1. [Reserved]

3.3.2. [Reserved]

4. FACTORY/ PLANT OPERATION

4.1. Dalkia France shall communicate the Factory's maintenance schedules to SVD 19, with a notice period of a minimum of six (6) months in order to enable SVD 19 to prepare maintenance schedules for the Plant, while taking into account the requirements of the Factory.

4.2. [Reserved]

4.3. [Reserved]

4.4. [Reserved]

4.5. [Reserved]

5. [RESERVED]

6. AGREEMENTS PERTAINING TO THE PROJECT

In order to ensure the completion of the Project, the Parties agree to conclude the following agreements, including in particular the following terms and conditions.

6.1. [Reserved]

6.2. [Reserved]

6.3. [Reserved]

6.4. [Reserved]

6.5. Agreement to be entered into between SKCP, SVD 19 and RTE

SVD 19 acknowledges that it has been informed of the provisions of article 6.5. of the SKCP Framework Contract and SVD 19 for itself and its Affiliates as well as its lenders, agents, employees and subcontractors, undertakes not to take any action against SKCP, its successors or Affiliates which would trigger Dalkia France's indemnification obligations or liabilities towards SKCP, its successors or Affiliates under article 6.5 of the SKCP Framework Contract, failing which SVD 19 shall fully indemnify Dalkia France.

6.6. [Reserved]

6.7. [Reserved]

6.8. [Reserved]

7. [RESERVED]

8. INSURANCE/LIABILITY

8.1. [Reserved][2]

[2] Assumes that construction is completed by closing.

8.1.1. [Reserved]

8.1.2. [Reserved]

8.1.3. [Reserved]

8.1.4. SVD 19 shall have civil liability insurance for an amount, per claim and per insurance year, of thirty million euros (€30,000,000) for all bodily injury and property damage, whether direct/consequential or not.

8.2. During operation of the Plant

Dalkia France and SVD 19 shall each take personal responsibility for insurance covering their respective property and their civil liability (for all bodily injury, property damage and intangible loss, whether direct/consequential or not), and in particular, under the conditions of the SVD 19 Transformation Contract as provided in Article 12 of said contract.

9. [RESERVED]

10. FUTURE OF THE PLANT

10.1. Future of the Plant in case of expiry or termination of the Transformation Contract prior to the normal date of expiry of the Electricity Sale Agreement.

In the event of the expiry or termination of the SVD 19 Transformation Contract and/or the SKCP Transformation Contract and/or of Factory Closure (whether connected with SKCP ceasing to operate the Factory or with SKCP ceasing to produce paper pulp) prior to the normal date of expiry of the Electricity Sale Agreement, Dalkia France undertakes to make its best efforts to allow SVD 19 to continue autonomous operation of the Plant, in particular by implementing in good faith the provisions of Article 12 below (to the extent they are applicable).

In the event of termination of the SVD 19 Transformation Contract due to serious and repeated breach attributable to SVD 19, it is agreed that the Parties shall meet as soon as possible in order to discuss this situation and remedy it. In the absence of agreement, Dalkia France may seek the judicial termination of the Contract and other Commercial Agreements.

Dalkia France furthermore undertakes to inform SVD 19 of any planned Factory Closure.

10.2. Exclusion of damages, waiver of claims against and compensation from SKCP in the event of claims by third parties in the event of Factory Closure

In the event of Factory Closure, and without this limiting the provisions of **Article 10.1** of the Contract and **Article 6.6** of the SVD 19 Transformation Contract in the event of failure by Dalkia France to perform its commitments for the supply of Primary Fluids, the Parties expressly agree that the Factory Closure and the subsequent termination (and all of its consequences) of the SVD 19 Transformation Contract shall not provide entitlement to any damages, penalty, costs or indemnity of any whatsoever (in tort, contract or pursuant to regulations) on the part of Dalkia France in favour of SVD 19 (and/or any entities that are Affiliated to it), whatever the consequences for SVD 19 (and/or its Affiliates) or with respect to third parties (public authorities, the third party contracting parties of SVD 19 or its Affiliates).

In this respect, SVD 19, and its Affiliates whose agreement and compliance it hereby guarantees, irrevocably waive any claims of any nature whatsoever against Dalkia France and/or any of its

Affiliates, connected with the Factory Closure and the subsequent termination (and all of its consequences) of the SVD 19 Transformation Contract, or which are based on, inter alia, (i) any consequences and/or penalties applying against it as provided, in particular, under Articles 6.3 to 6.5 of the Specifications, (ii) any indemnity imposed on it pursuant to Article 41 of Law No. 2000-108 of 10 February 2000, or further (iii) any costs, penalties and/or indemnity of any nature connected with the possible ending or termination of agreements entered into by SVD 19 (and/or its Affiliates) with respect to the Project.

SVD 19 acknowledges that it has been informed of the provisions of the SKCP Framework Contract, and in particular of the provisions of Article 10.2. of the SKCP Framework Contract. SVD 19 for itself and its Affiliates as well as its lenders, agents, employees and subcontractors, and undertakes not to take any action against SKCP in case of Factory Closure which would trigger Dalkia France's indemnification obligations or liabilities towards SKCP and its Affiliates under Article 10.2 of the SKCP Framework Contract, failing which SVD 19 shall fully indemnify Dalkia France and its Affiliates.

10.3. [Reserved]

10.4. [Reserved]

11. [RESERVED]

12. SUPPLY COMMITMENT IN CASE OF EXPIRATION OF THE TRANSFORMATION AGREEMENT PRIOR TO THE NORMAL DATE OF EXPIRATION OF THE ELECTRICITY SALE AGREEMENT

12.1. Commitment related to the Biomass

Dalkia France agrees, until the term of the Contract, to grant SVD 19 exclusivity for the supply of Internal Biomass, provided that (i) neither the O&M Contract nor, as the may be, the SVD 19 Biomass Supply Contract are in effect, and (ii) SCKP has provided Internal Biomass to Dalkia France pursuant to article 12.1 of the SKCP Framework Contract and to the extent of supply of Internal Biomass by SKCP.

12.2. Commitment related to the steam

Dalkia France shall endeavour good faith efforts so that SKCP (i) supplies Black Liquor Steam to Dalkia France, (ii) grants priority for the supply of steam necessary for the operation of the SKCP Factory to and (iii) enters into good faith discussions with Dalkia France on the terms and conditions of such new supplies in accordance with the provisions of article 12.2 of the SKCP Transformation Contract, with a view to putting Dalkia France in a position to implement the provisions stipulated below in this **Article 12.2**.

Dalkia France agrees, until the term of the Contract, to grant to SVD 19 exclusivity for the supply of the Black Liquor Steam.

.

Dalkia France agrees, until the term of the Contract, to grant priority to SVD 19 for the supply of steam necessary for the operation of the SKCP Factory.

It is agreed that the provisions of the two (2) previous paragraphs shall apply on the condition and to the extent that, pursuant to article 12.2 of the SKCP Framework Contract, (i) SCKP has provided the Black Liquor Steam to Dalkia France, (ii) SKCP has granted priority to Dalkia France for the steam necessary for the operation of the SKCP Factory.

In case of expiration of the SVD 19 Transformation Contract and/or the SKCP Transformation Contract (by reaching their term or on the expiration of a successive term) prior to the normal date of expiration of the Electricity Sale Agreement, the Parties agree to meet, at least six (6) months prior to such expiration date in order to contemplate together the continuation of their contractual relations within the framework of new agreements pertaining to the autonomous continuation of the Power Plant's operation.

The Parties agree to discuss in good faith the terms and conditions (fixed and variable part) of such new supplies in compliance with the following principles for the variable parts, provided and to the extent that such principles have also been retained by Dalkia France and SKCP in their negotiations pursuant to article 12.2 of the SKCP Framework Contract (without prejudice to Dalkia France's commitment to endeavour good faith efforts in this regard).

The portion of steam (in MWh) supplied to SKCP arsing from the transformation of the Black Liquor Steam shall have the same price as the Black Liquor Steam (in €/MWh).

The portion of steam (in MWh) supplied to SKCP arsing from the transformation of the Internal Biomass shall be equal to 1.2 times the price of the Internal Biomass (in €/MWh NCV).

The portion of steam (in MWh) supplied to SKCP from the External Biomass shall have a price lower than the equivalent production from natural gas (in €/MWh NCV).

The contractual provisions of this Article 12.2 shall not apply in the event of Factory Closure.

As an exception, the contractual provisions of this Article 12.2 shall remain applicable in the event of a partial closure of the Factory (not deemed equivalent to a complete and final ceasing of activity within the meaning of the definition of Factory Closure), provided that the Factory still has the means to produce and uplift steam.

13. <u>CONFIDENTIALITY</u>

The Parties undertake a confidentiality agreement.

Shall be deemed confidential information, all information:

- contained in the Contract and the other Commercial Agreements entered into between SVD 19 and Dalkia France;
- related to the Project and to the Plant, whether involving information already known or future information, information from a single Party or resulting from mutual development; and
- related to Dalkia France, SVD 19, SKCP and SKCDP, their respective activities, and, in particular, all intellectual property rights of which SVD 19 may become aware or which may be communicated by Dalkia France, SKCP and/or SKCDP, within the framework of the performance of the Contract and the other Commercial Agreements entered into between SVD 19 and Dalkia France;

  (hereinafter collectively referred to as the "**Information**").

Each Party agrees to keep the Information strictly confidential and agrees to refrain from disclosing it to third parties, including any Affiliated company which is not directly concerned by the performance of the Contract and the negotiation and/or performance of the other Commercial Agreements entered into between SVD 19 and Dalkia France, provided however that Dalkia France may communicate Information belonging to SKCP and SKCDP as necessary for the performance of the Commercial Agreements.

Each Party hereby guarantees commitment to this duty of confidentiality by its staff and by its consultants, agents or service providers who have access to the Information in the context of the Contract or the other Commercial Agreements entered into between SVD 19 and Dalkia France, it being specified that each Party undertakes to limit the disclosure of Information to those persons directly concerned by the performance of the Agreement and/or the negotiation and/or performance of the other Commercial Agreements entered into between SVD 19 and Dalkia France.

SVD 19 agrees to refrain from using, without Dalkia France's prior, written consent, the information related to SKCP's activities and/or facilities in the Facture Factory or related to the activities of Dalkia France of which it may become aware and which may not be directly necessary for the performance of the Contract or the negotiation and/or performance of the other Commercial Agreements entered into between SVD 19 and Dalkia France.

The confidentiality obligations shall not apply to:

- information which is already in the public domain at the time of conclusion of the Contract or which may fall into the public domain without breach by one of the Parties;
- information which one of the Parties can prove was already in its possession at the time of conclusion of the Contract;
- information which one of the Parties can prove in writing that it acquired from a third party without breach by such third party or developed by itself independently of the other Party; and
- information disclosed pursuant to a statutory, regulatory or judicial obligation to disclose such information.

The confidentiality obligations shall remain in effect for the entire duration of the Contract and for a duration of ten (10) years after its expiration for any reason whatsoever.

Notwithstanding this confidentiality clause, each Party accepts the communication by the other Party, as necessary, of any information concerning the Contract and/or the Commercial Agreements and/or the Project to any credit institution to which the Party in question is bound by an agreement requiring it to communicate such information to that institution, subject to compliance by that institution with this duty of confidentiality.

Each Party further undertakes to obtain the consent of the other Party prior to the dissemination or publication of any press release concerning the Contract and/or the Commercial Agreements to which SVD 19 and Dalkia France are party.

14. TERMINATION / LAPSE OF THE CONTRACT

The Contract shall come to an end (i) on the date on which the last of the Commercial Agreements comes to an end (by expiration of its term or by termination)or (iv) on the date of termination of the Contract by written mutual agreement between the Parties.

Notwithstanding the expiry or termination of the Contract, **Articles 13** and **21** shall remain in force as necessary.

15. [RESERVED]

16. SEVERABILITY

If any of the provisions of the Contract are found to be invalid or unenforceable, the validity of the other provisions of the Contract and the fact that they are enforceable shall not be affected or compromised in any respect and neither of the Parties shall be entitled to claim damages on such basis. In such event, the Parties shall negotiate in good faith in order to replace the relevant provision with one or more valid provisions which may be enforced and are as close as possible to the Parties' original intent or, if such mutual intent cannot be determined, the intent of whichever of the Parties the invalid or unenforceable provisions was intended to protect.

17. NOTICE - COMMUNICATIONS

All notices or communications related to the Contract shall be made in writing and signed by or on behalf of the Party making it, and shall be sent either (i) by hand delivery against receipt, or (ii) by registered letter with return receipt, or (iii) by package sent by Chronopost, Fedex, DHL, TNT UPS or any equivalent service, or (iv) by fax or e-mail to the number/and or to the address stated below, followed by a confirmation sent within two (2) business days by one of the first three means stated above.

Such notices shall be deemed to have been made: (i) if hand delivered, on the date stated on the receipt, (ii) if made by registered letter with return receipt, on the date stated on the return receipt, or failing receipt, on the date of first presentation, (iii) if made by a package sent by Chronopost, Fedex, DHL, TNT or UPS or any equivalent service, on the date stated on the mailing receipt or the air transport letter by the relevant service, (iv) if made by fax or e-mail, on the date of the fax transmission report.

For SVD19:

[●]

For Dalkia France:

Dalkia France
2 Allée du Petit Cher
Les Granges Galand
BP 449
37554 SAINT AVERTIN CEDEX
For the attention of: Regional Director
Fax: 02.47.80.36.79

The Parties may change the aforementioned notice addresses with advance notice of eight (8) days, itself notified to the other Party under those conditions defined above.

18. MISCELLANEOUS

18.1. The recitals and schedules to the Contract form an integral part hereof. In the event of a contradiction between the Contract and one of its schedules or its recitals, the Contract shall have prevailing effect.

18.2. The headings and subheadings of the Contract shall have no legal or interpretation weight.

18.3. In case of a contradiction between the Contract and one of the Commercial Agreements to which SVD 19 and Dalkia France are party, the particular Commercial Agreement shall have prevailing effect.

18.4. The Contract express the Parties' entire agreement on the date hereof with respect to its purpose. As a result, the Contract cancels and replaces all agreements, intent, discussions, correspondence or exchanges of points of view having taken place between the Parties prior to the Contract's date on the subject which is the purpose hereof.

18.5. The provisions of the Contract may be amended only by a written, joint agreement of the Parties.

18.6. A waiver made by one of the Parties of any of the clauses of the Contract shall take effect only if such waiver has taken place in writing and shall be interpreted restrictively. No waiver of any of the clauses of the Contract shall be deemed or shall constitute a waiver of any of its clauses, whether or not the clause waived is close to such other clause.

18.7. The Contract is drafted in French and English languages. The Parties may, if need be, translate the Agreement into a different language, with the understanding that such translation shall have no legal or interpretation weight, including vis-à-vis the other Party or any foreign third party, including any Affiliate company. As a result, in case of a contradiction between any of the provisions of the Agreement and any translation into a language other than French, the provisions of the Agreement shall have prevailing effect.

19. ASSIGNMENT OF AGREEMENTS

With the exception of any assignment to Affiliated entities, presenting the same financial guarantees as the assigning Party, neither of the Parties shall be entitled, without the other Party's prior, written agreement, to assign the benefits of the Agreement (and/or its incidentals), in whole or in part, by any legal means whatsoever (simple assignment, transfer of the business concern, capital contribution or partial business transfer, merger, demerger, spin-off, exchange or otherwise) to a third party.

In any event, the assignee agrees to comply with all the obligations of the Agreement for which the assignor was liable and, more generally, all the contractual provisions of the Agreement.

20. [RESERVED]

21. GOVERNING LAW AND SETTLEMENT OF DISPUTES [3]

21.1. Governing law

This Contract and the obligations arising therefrom are governed by French Law.

21.2. Amicable settlement

If any dispute or difference of any kind whatsoever between the Parties during the term of this Contract or after termination or early termination of this Contract, the Parties shall first negotiate in good faith with a view to achieving an amicable settlement of the same.

In the event that the Parties are unable to achieve any amicable settlement of the matter or dispute under this **Article 21.2**, then any Party shall be entitled by a notice in writing to the other Party to require the unresolved matter to be referred for an amicable settlement to a dispute resolution committee comprising:

(i) the President of SVD 19 or his authorised representative;

(ii) the CEO of Dalkia or his authorised representative; and

[3] Subject to review of drafting of other agreements between Dalkia France and SVD 19 which cross-reference this Article 21

(iii) an independent member to be agreed upon by the Parties.

Such committee shall be empowered to regulate the rules and procedures of the matter to be resolved before its members.

21.3. Jurisdiction

In the event:

(i) the Parties fail to agree upon the independent member within ten (10) days; or

(ii) the dispute resolution committee shall fail to decide on any matter in dispute referred to them under **Article 21.2** within thirty (30) days as from the date of such referral or such other period as may be agreed in writing by the Parties; or

(iii) any Party hereto is dissatisfied with the decision of the dispute resolution committee within fifteen (15) days as from this decision;

then in any such case either Party in which the dispute relates may require that the matter be finally settled under the exclusive jurisdiction of the Paris Commercial Court *(tribunal de commerce de Paris)*, even in the circumstance of multiple defendants or an impleader, and the jurisdiction clauses that may exist in other commercial and administrative documents of either of the Parties may not constitute an obstacle to the application of this clause.

22. SET-OFF

The Parties agree that no set-off shall be allowed between payments due by one Party to the other Party pursuant to this Contract and payments due by one Party to the other Party under the other Commercial Agreements to which both Parties are parties, to the exception of any penalties owed by Dalkia France to SVD 19 under Article 12.1.2 of the O&M Contract, which shall be set-off against any indemnification due by SVD 19 to Dalkia France pursuant to this Contract.

Executed in Paris

On [●]

In two (2) original copies.

SVD 19	**Dalkia France**
____________________	____________________
Represented by [•] [•]	Represented by [•] [•]

SCHEDULE 1

Description of the Plant facilities

[5 pages]

Schedule 1i)

SVD 19 Biomass Supply Contract

BIOMASS FUEL SUPPLY CONTRACT

<u>BETWEEN THE UNDERSIGNED</u>:

1. **Société Valmy Défense 19 – SVD 19**, a French "*société par actions simplifiée*" with a share capital 37,000 euros, having its registered office at [•[1]], registered with the Trade and Companies Register of Lille under number 497 908 632,

   represented by [•], in his/her capacity as [•], duly authorized for the purposes hereof,

   hereinafter referred to as "**SVD 19"**,

   <u>on the one hand</u>,

<u>AND</u>:

2. **Dalkia France**, a French "*société en commandite par actions*" with a share capital of 220,047,504 euros, having its registered office at 37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint-André-Lez-Lille, registered with the Trade and Companies Register of Lille under number 456 500 537,

   represented by [•], in his/her capacity as [•], duly authorized for the purposes hereof,

   hereinafter referred to as "**Dalkia"**,

   <u>on the other hand</u>,

SVD 19 and Dalkia shall hereinafter be collectively referred to as the "**Parties**" and individually as a "**Party**".

[1] [New registered office of SVD 19 to be provided]

TABLE OF CONTENTS:

WHEREAS:

A. Under the terms of a decree dated June 17, 2008 published in the Official Journal on July 2, 2008, SVD 19 was awarded a contract with an electrical power purchase obligation, the other party to which was EDF, pursuant to a Call for Tender (as defined hereinafter) initiated by the Energy Regulation Commission (*Commission de Régulation de l'Energie* (the "**CRE**")).

B. The Dalkia group supplies its industrial customers with a range of energy services, which specifically include decentralised energy production, heat generation, and optimised fuel management.

C. Smurfit Kappa Cellulose du Pin, a French *société par actions simplifiée* with a share capital of 45,857,826 euros, having its registered office at Allée des Fougères – Usine de Facture, 33380 Biganos, registered with the Trade and Companies Register of Bordeaux under number 572 142 198 ("**SKCP**"), is a company of the Smurfit Kappa group. SKCP owns and operates an integrated factory that produces kraft paper for use in the manufacture of corrugated cardboard packaging, located in Facture (Gironde) (the "**Factory**").

D. Since SKCP's operations make heavy use of steam, SVD 19 and SKCP entered into a relationship regarding SVD 19's construction and operation of a biomass cogeneration plant located at SKCP's site. This relationship led to the execution of the following agreements on August 7, 2008:

(i) a framework contract between SVD 19, SKCP and Dalkia, amended by an amendment dated September 9, 2008 (the **"SKCP Framework Contract**");

(ii) a transformation contract between SVD 19, SKCP and Dalkia (the "**SKCP Transformation Contract**");

(iii) a biomass supply contract between SVD 19, Smurfit Kappa Comptoir du Pin ("**SKCDP**") and Dalkia (the "**SKCDP Biomass Supply Contract**"). SKCDP is a sister company of SKCP; and

(iv) a land contract between SVD 19, SKCP and Dalkia (the "**Land Contract**").

E. Pursuant to a novation agreement dated [•] and as part of an internal reorganization of the Dalkia Group, the SKCP Framework Contract, the SKCP Transformation Contract and the SKCDP Biomass Supply Contract were transferred to Dalkia and were amended on the same day. Following such transfer, SVD 19 had no further rights and obligations under those agreements.

F. On [•], the Parties entered into (i) a framework contract (the "**SVD 19 Framework Contract**"), which provides for certain obligations between Dalkia and SVD 19 as regards the Project (as defined below), (ii) a transformation contract (the "**SVD 19 Transformation Contract**"), which provides for the transformation of primary fluids into utilities between Dalkia and SVD 19, and (iii) an operation and maintenance contract for the Plant (the "**Operation and Maintenance Contract**").

G. On [•], the Land Contract was terminated and replaced by a usufruct contract (the "**Usufruct Contract**") entered into between the Parties on the same day.

H. Pursuant to a share purchase agreement dated [•], and as a result of the contractual changes described above, [BidCo] acquired [on the date hereof] from Valmy Energies Biomasse S.A.S., a Dalkia subsidiary, shares in SVD 19 representing one hundred percent (100%) of SVD 19's share capital and voting rights.

I. Upon termination of the Operation and Maintenance Contract, the Parties agree that SVD 19 may continue to receive a supply of External Biomass (as defined hereinafter) from Dalkia. To this end, the Parties agree to execute this contract (the "**Contract**"), pursuant to which Dalkia undertakes to provide SVD 19 with External Biomass (as defined hereinafter), should the Operation and Maintenance Contract be terminated for reasons other than a material breach by SVD 19 of the Operation and Maintenance Contract, and SVD 19 resolves to implement the Contract.

*

*   *

NOW, THEREFORE, IT HAS BEEN AGREED AS FOLLOWS:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

Article 1.1 Definitions

Affiliate: means:

(i) with respect to any person being a legal entity, a person or entity (a) Controlled by the relevant person (b) which Controls the relevant shareholder or (c) which is Controlled by one or more persons or entities that Control the relevant person, it being however understood that two companies or funds managed by the same management company are not considered to be Affiliates for the purposes of this Contract; and

(ii) with respect to any individual, his/her lineal ascendants or lineal descendants or spouses.

Applicable Laws: means:

(i) any or all laws of the Republic of France or of the European Union (in so far as they are applicable in France) from time to time being in force, including any rules or other subsidiary legislation made under any such legislative instrument; and

(ii) any applicable guidance, directions or other requirements (including the requirement to obtain any Government Authorisations) issued by a Government Entity with which the relevant Party is required to comply,

and shall include any modification, amendment or re-enactment of any of the foregoing.

Call for Tender: refers to the call for tender launched by the CRE in a notice published in the Official Journal of the European Union of December 9, 2006 (procurement notice Nr 2006/S 235 251239) for the construction in French territory of electrical plants using biomass, with a total installed power of 300 MW.

Change in Law: means the coming into effect after the Execution Date of:

(i) any addition, modification or amendment of any Applicable Laws; and

(ii) any applicable judgment of a relevant court of law made after the Execution Date which changes a precedent and adversely and materially affecting the Supply and/or the Plant;

provided that Changes in Law shall not include changes in paragraphs (i) and (ii) above relating to Tax.

Compensation:	has the meaning ascribed to it in **Article 9.1**.
Contract:	has the meaning ascribed to it in Paragraph I of the Recitals.
Control:	refers to control within the meaning of Article L. 233-3 of the French Commercial Code (and the verb to Control and the various words derived therefrom shall be interpreted on the basis of the aforementioned concept of Control).
CRE:	has the meaning ascribed to it in Paragraph A of the Recitals.
CRE Contract:	refers to the contract for purchase by EDF of electrical energy entered into on [•] between SVD 19 (including both general and specific terms), the Call for Tender, its Specifications and SVD 19's tender to the Call for Tender.
EDF:	refers to *Electricité de France*.
Excusing Cause:	has the meaning ascribed to it in **Article 10.1**.
Execution Date:	means the date on which this Contract is validly executed by both Parties.
External Biomass:	refers to any biomass other than Internal Biomass.
Factory:	has the meaning ascribed to it in Paragraph C of the Recitals.
Factory Closure Activity Volume Cap:	has the meaning ascribed to it in **Article 4.2**.
Factory Closure Ordered Annual Volume:	has the meaning ascribed to it in **Article 4.2**.
FM0ABE0000:	has the meaning ascribed to it in **Article 9.2**.
$FMABE0000_0$:	has the meaning ascribed to it in **Article 9.2**.
***Force Majeure* Event:**	has the meaning ascribed to it in **Article 17.1**.
Government Authorisations:	means any consent, permission, licence, authorisation, approval or certificate issued or to be issued by any Government Entity: (i) applicable to either Party, for the performance of the Supply; or (ii) required by SVD 19 to own, operate and finance the Plant; or (iii) required in order to comply with Applicable Laws.
Government Entity:	means any national, provincial or local legislature or government of the Republic of France or of the European Union, and any

	ministry, department, agency, authority or commission of any national, state or local government of the Republic of France or the European Union or such other similar entity.
ICHTrevTS:	has the meaning ascribed to it in **Article 9.2**.
$ICHTrevTS_0$:	has the meaning ascribed to it in **Article 9.2**.
Individual Orders:	has the meaning ascribed to it in **Article 4**.
Initial Normal Activity Volume Cap:	has the meaning ascribed to it in **Article 4.1**.
Initial Factory Closure Activity Volume Cap:	has the meaning ascribed to it in **Article 4.2**.
Internal Biomass:	refers to the biomass supplied by Dalkia to SVD 19 under the SVD 19 Transformation Contract.
NCV:	refers to the net calorific value expressed as lower heating value, of the Biomass *(pouvoir calorifique inférieur)*
Normal Activity Volume Cap:	has the meaning ascribed to it in **Article 4.1**.
Normal Activity Ordered Annual Volume:	has the meaning ascribed to it in **Article 4.1**.
Operation and Maintenance Contract:	has the meaning ascribed to it in Paragraph F of the Recitals.
P_0:	has the meaning ascribed to it in **Article 9.1**.
Penalties:	refers to the penalties to be paid either by Dalkia or by SVD 19, as the case may be in accordance with the terms and conditions set forth in **Article 11**.
Plant:	refers to the utilities generation facilities and equipment erected on the Site by SVD 19, and owned by SVD 19, with an installed electrical power capacity of 63 MW, consisting, in particular, of the biomass boiler, two (2) steam turbines, and all of their auxiliary equipment.
Q:	has the meaning ascribed to it in **Article 9.1**.
Revision Factor M	has the meaning ascribed to it in **Article 9.2.**
Site:	refers to the industrial site of SKCP located at the Facture plant in Biganos (33380) on which the Factory, the Plant and SKCP's administrative offices are located.
SKCDP:	has the meaning ascribed to it in Paragraph D of the Recitals.
SKCDP Biomass Supply	has the meaning ascribed to it in Paragraph D of the Recitals.

Contract:	
SKCP:	has the meaning ascribed to it in Paragraph C of the Recitals.
SKCP Framework Contract:	has the meaning ascribed to it in Paragraph D of the Recitals.
SKCP Transformation Contract:	has the meaning ascribed to it in Paragraph D of the Recitals.
Specifications:	refers to the Call for Tender specifications regarding the facilities for electricity generation using biomass, published by the CRE, and which are contained in **Schedule 11**.
Supply:	has the meaning ascribed to it in **Article 2.2.**
Supply Plan:	refers to the supply plan attached in **Schedule 4**, as amended or revised from time to time.
Suspension Cause:	has the meaning ascribed to it in **Article 10.2.**
SVD 19 Transformation Contract:	has the meaning ascribed to it in Paragraph F of the Recitals.
Tax or **Taxes:**	means all forms or present or future taxation, duties, imposts, levies, rates, deductions, charges, and withholdings imposed, assessed or charged by any Government Entity including any penalties or interest relation thereto, as may be applicable.

Article 1.2 Interpretation

In this Contract, except where the context otherwise requires or expressly states:

(i) the expression "*this Contract*" or any similar expression shall comprise the Recitals, Articles, Paragraphs and Schedules of this Contact, to which the Parties hereby attribute contractual value, and includes any supplemental written agreement thereto as may be executed and be in force from time to time or any time;

(ii) terms employed in the plural shall apply both to the whole set of items so defined, as well as to one or more of the items taken individually. The definitions provided for a term in the plural shall also apply when said term is employed in the singular, and *vice versa*;

(iii) definitions which are provided for a noun shall apply *mutatis mutandis* to verbs, adjectives and adverbs that have the same root, and *vice versa*;

(iv) reference to Recitals, Articles, Paragraphs and Schedules are to be construed as references to Recitals, Articles, Paragraphs, and Schedules of this Contract, unless otherwise provided herein;

(v) words applicable to natural persons include any body of persons, company, corporation, firm or partnership incorporated and *vice versa* and that person's or those persons' legal personal representatives, successors and permitted assigns;

(vi) words importing any gender shall include any other gender;

(vii) reference to this Contract or any other agreement or document includes permitted variations, amendments, replacements, novations or supplements to this Contract (including the Schedules) and, as the case may be, such other agreement or document;

(viii) the headings to the Articles of this Contract are for convenience of reference only and shall not affect the interpretation and construction thereof;

(ix) reference to any time of day is a reference to time or calendar day in Paris, France.

ARTICLE 2 PURPOSE OF THE CONTRACT

Article 2.1 Principle

The purpose of this Contract is to define the terms and conditions for the supply of External Biomass between Dalkia and SVD 19 and their reciprocal commitments.

Article 2.2 Scope of the Supply

Subject to the exclusion set forth in **Article 2.3**, the supply by Dalkia of External Biomass to SVD 19 under this Contract shall include:

(i) the collection by Dalkia of External Biomass in accordance with the Supply Plan;

(ii) the preparation by Dalkia of a mixture and packaging of External Biomass in accordance with the Specifications; and

(iii) the onsite delivery and unloading by Dalkia of the External Biomass,

the obligations provided in paragraphs (i) to (iii) above shall be hereinafter collectively referred to as the “**Supply**”.

Article 2.3 Exclusion

The Supply shall not include the ash disposal.

The ash disposal works are therefore expressly excluded from the Compensation to be received by Dalkia.

ARTICLE 3 TERM AND EFFECTIVE DATE OF THE CONTRACT

Article 3.1 Effective Date

The Contract shall enter into force on the effective termination date of the Operation and Maintenance Contract (i.e. after the three (3)-month notice period as set forth in the Operation and Maintenance Contract), except if such termination is due to a material breach by SVD 19 of said Operation and Maintenance Contract (the “**Effective Date**”), provided that SVD 19 has indicated its decision to implement the Contract in the termination notification letter of the Operation and Maintenance Contract, in accordance with article 23.2 of the Operation and Maintenance Contract.

Article 3.2 Term

Except in the event of early termination as provided in **Article 15**, the Contract shall expire on the expiration date of the CRE Contract.

ARTICLE 4 <u>COMMITMENTS OF SVD 19</u>

SVD 19 shall place with Dalkia individual orders of External Biomass under the terms and conditions detailed in **<u>Schedule 3</u>** (the "**Individual Orders**") for volumes determined in compliance with the provisions of this **<u>Article 4</u>**.

Article 4.1 <u>Volume commitments of SVD 19 in case of normal activity</u>

Subject to **<u>Article 4.2</u>**, SVD 19 undertakes to comply with the volume commitments set forth in this **<u>Article 4.1</u>**.

(a) The volumes of External Biomass to be ordered and removed by SVD 19 from Dalkia during the first twelve (12)-month period as from the Effective Date shall be set at 756,838 MWh NCV. Such volumes shall be referred to as the "**Initial Normal Activity Volume Cap**".

(b) SVD 19 shall be entitled to reduce or increase the total volume of its Individual Orders for a given twelve (12)-month period, provided that:

    (i) such variation (be it a reduction or an increase) does not exceed ten percent (10%) of the volumes ordered during the previous twelve (12)-month period;

    (ii) SVD 19 notifies Dalkia at least twelve (12) months prior such reduction or increase, except for a reduction which does not cause the Individual Orders placed by SVD 19 for a given twelve (12)-month period (the "**Normal Activity Ordered Annual Volume**") be lower than eighty percent (80%) of the Initial Normal Activity Volume Cap, in which case such prior notification requirement shall not apply; and

    (iii) the total volumes of Individual Orders shall in no event exceed the then applicable Normal Activity Volume Cap, as defined in paragraph (c) below.

(c) The "**Normal Activity Volume Cap**" shall be initially equal to the Initial Normal Activity Volume Cap and shall in no event exceed the Initial Normal Activity Volume Cap. The Normal Activity Volume Cap shall be automatically reduced if, at any time, the Normal Activity Ordered Annual Volume are lower than eighty percent (80%) of the then applicable Normal Activity Volume Cap, in which case the new Normal Activity Volume Cap shall be automatically reduced and shall become equal to the Normal Activity Ordered Annual Volume requested by SVD 19. For the avoidance of doubt, if the Normal Activity Ordered Annual Volume is at least equal to 80% of the then applicable Normal Activity Volume Cap, the Normal Activity Volume Cap shall remain unchanged.

(d) The volumes of External Biomass to be ordered in a twelve (12)-month period shall apply on a *pro rata temporis* basis for the twelve (12)-month period in which the volumes are reduced according to Article 4.2 below or in which the Contract is terminated or expires.

Provided that Dalkia meets the quality criteria provided in **<u>Article 5.2</u>** below and subject to the provisions of **<u>Article 4.4</u>**, SVD 19 undertakes to remove all the volumes of External Biomass delivered by Dalkia in compliance with SVD 19's Individual Orders.

Article 4.2 <u>Volume commitments of SVD 19 in case of Factory closure</u>

In the event of a closure of the Site or Factory leading to a definitive cessation of the supply of Internal Biomass, SVD 19 may notify to Dalkia its intent of amending the volume commitments set forth in **<u>Article 4.1.</u>** above, with a prior written notice of six (6) months.

In such a case, SVD 19 undertakes to comply with the new volume commitments set forth in this **Article 4.2.**

(a) The volumes of External Biomass to be ordered and removed by SVD 19 from Dalkia during the twelve (12) month period following the above six (6) month prior notice shall be set at 1,150,000 MWh NCV. Such volumes shall be referred to as the "**Initial Factory Closure Activity Volume Cap**".

(b) SVD 19 shall be entitled to reduce or increase the total volume of its Individual Orders for a given twelve (12) month period, provided that:

(i) such variation (be it a reduction or an increase) does not exceed ten percent (10%) of the volumes ordered during the previous twelve (12)-month period;

(ii) SVD 19 notifies Dalkia at least twelve (12) months prior to such reduction or increase, except for a reduction which does not cause the Individual Orders placed by SVD 19 for a given twelve (12)-month period (the "**Factory Closure Ordered Annual Volume**") be lower than eighty percent (80%) of the Initial Factory Closure Activity Volume Cap, in which case such prior notification requirement shall not apply; and

(iii) the total volumes of Individual Orders shall in no event exceed the then applicable Factory Closure Activity Volume Cap, as defined in paragraph (c) below.

(c) The "**Factory Closure Activity Volume Cap**" shall be initially equal to the Initial Factory Closure Activity Volume Cap and shall in no event exceed the Initial Factory Closure Activity Volume Cap. The Factory Closure Activity Volume Cap shall be automatically reduced if, at any time, the Individual Orders placed by SVD 19 for a given twelve (12) month period (the "**Factory Closure Ordered Annual Volume**") are lower than 80% of the then applicable Factory Closure Activity Volume Cap, in which case the new Factory Closure Activity Volume Cap shall be automatically reduced and shall become equal to the Factory Closure Ordered Annual Volume requested by SVD 19. For the avoidance of doubt, if the Factory Closure Ordered Annual Volume is at least equal to eighty percent (80%) of the then applicable Factory Closure Activity Volume Cap, the Factory Closure Activity Volume Cap shall remain unchanged.

(d) The volumes of External Biomass to be ordered in a twelve (12)-month period shall apply on a *pro rata temporis* basis for the twelve (12)-month period in which the Contract is terminated or expires.

Provided that Dalkia meets the quality criteria provided in **Article 5.2** below and subject to the provisions of **Article 4.4**, SVD 19 undertakes to remove all the volumes of External Biomass delivered by Dalkia in compliance with SVD 19's Individual Orders.

Article 4.3 Information by SVD 19 relating to the stock of Biomass

In order to anticipate the differences in consumption at the Plant, SVD 19 shall inform Dalkia on a weekly basis, on the status of its stocks of External Biomass and its current External Biomass needs under the terms of this Contract.

Article 4.4 Suspension of Individual Orders due to a technical incident at the Plant

In case of a technical incident at the Plant expected to lead to a general stoppage of External Biomass consumption for more than three (3) days, SVD 19 shall be entitled to suspend all (and not part of) existing Individual Orders of External Biomass by serving without delay following the technical incident, a notice to this effect to Dalkia in accordance with **Article 25**.

Such notice shall include reasonable evidence of the occurrence of the technical incident at the Plant.

The suspension shall be effective three (3) days after receipt by Dalkia of the said notice. Following service of such notice, the Parties will hold good faith discussions with a view to adapting the volumes of External Biomass to the Plant situation and to minimizing the costs incurred by Dalkia as a result of such suspension.

In any event, the Parties agree that, in case of such technical incident, SVD 19 shall be released from its volume commitments under **Articles 4.1 and 4.2** above and payment of the penalties stipulated in **Article 11.1** below, provided that:

(i) the notice mentioned in this **Article 4.4** has been served by SVD 19 to Dalkia; and

(ii) SVD 19 indemnifies Dalkia for all actual costs (including breakage, storage or transport costs, but excluding consequential damages and loss of profits) incurred as result of such suspension of existing Individual Orders; it being agreed that (a) Dalkia shall use its best efforts to minimize and mitigate such costs following receipt of the said notice and (b) such indemnity shall not exceed an amount equal to €17.5 indexed with the Revision Factor M, multiplied by the MWh NCV of External Biomass of which delivery was suspended, taking account of average daily deliveries.

SVD 19 shall notify to Dalkia any restart of the External Biomass consumption and the subsequent total or partial resumption of the Individual Orders with an advance notice of either (i) three (3) days in case of stoppage of the External Biomass consumption up to twenty one (21) days or (ii) ten (10) days in case of stoppage of the External Biomass consumption for more than twenty one (21) days.

For the avoidance of doubt, the suspension by SVD 19 of its existing Individual Orders following a technical incident at the Plant leading to a general stoppage of External Biomass consumption, shall not automatically reduce the Normal Activity Volume Cap. In case of restart of the External Biomass consumption, the Normal Activity Volume Cap shall be the Normal Activity Cap applicable immediately prior to the date at which the notice of technical incident was served by SVD 19.

ARTICLE 5 COMMITMENTS OF DALKIA

Dalkia shall supply External Biomass to SVD 19 under the terms and conditions described in **Articles 5.1** and **5.2** hereinafter:

Article 5.1 Volume commitments of Dalkia

Dalkia undertakes to deliver the volumes of External Biomass determined and ordered by SVD 19 in in compliance with its Individual Orders as provided in **Article 4** above and **Schedule 3**.

Article 5.2 Quality commitments of Dalkia

Dalkia undertakes to comply with the quality criteria contained in **Articles 5.2.1** and **5.2.2** below.

In the event of non-compliance of the External Biomass with such quality criteria, Dalkia shall be considered as having defaulted and the External Biomass may be refused by SVD 19.

This refusal shall not exonerate Dalkia from the obligations referred to in **Article 5.1**.

Article 5.2.1. Compliance with the Supply Plan

The External Biomass delivered by Dalkia shall comply with the Supply Plan and the specifications of the CRE Contract.

However, the various categories of External Biomass requested may be revised by Dalkia in accordance with CRE Contract and, in particular, article 6.4 of the Specifications.

In the event of non-compliance with the Supply Plan that requires SVD 19 to file a corrective plan with the local authority (*Préfet*), Dalkia shall:

(i) prepare a proposal of such corrective plan for SVD 19's approval for the portion of External Biomass supplied by Dalkia under this Contract, and

(ii) once approval of SVD 19 on the corrective plan has been obtained, assist SVD 19 in submitting such plan to the local authority (*Préfet*) to the extent that the Supply of the External Biomass under this Contract is affected.

Both Parties shall cooperate in a diligent manner so that the corrective plan be submitted to the local authority (*Préfet*) within the deadlines set out by the CRE Contract and the Specifications.

In the event of an application of **Article 4.2**, Dalkia shall as soon as reasonable possible prepare a new Supply Plan regarding the portion of the Supply of External Biomass under this Contract.

For the avoidance of doubt, SVD 19 shall remain responsible for obtaining, revising and/or amending all consents (in particular from the local authority *(préfet)*) necessary for the approval of this new Supply Plan.

Article 5.2.2. Compliance with the technical characteristics of the External Biomass

Dalkia undertakes to provide the External Biomass in accordance with the technical characteristics set forth in **Schedule 1**.

Article 5.2.3. Air emissions and ash pollution

Dalkia undertakes that the performance of the Supply shall not generate:

(i) any presence of compounds such as chlorine, sulfur, halogenated compounds, heavy metals, and urea in the External Biomass delivered that cause the regulatory thresholds with respect to air emissions to be exceeded

(ii) any ash pollution.

ARTICLE 6 CONSENTS

Article 6.1 Consents to be obtained by SVD 19

SVD 19 shall be responsible for obtaining and/or renewing (as the case may be) all Government Authorisations and, subject to **Article 6.2**, other consents, licences, approvals, permits and authorisations necessary for the performance of its obligations under this Contract and pay all fees associated with same.

Dalkia shall provide all reasonable assistance to SVD 19 in order to obtain and renew such Government Authorisations.

Article 6.2 Consents to be obtained by Dalkia

Dalkia shall be responsible for obtaining (and thereafter complying with) any consent, license, approval, permit or other authorisation that is required pursuant to the Applicable Laws for the purposes of the Supply.

SVD 19 shall provide all reasonably required assistance and co-operation to Dalkia in obtaining all consents, licenses, approvals, permits or other authorisations required for the Supply.

All other consents, licences, approvals, permits and authorisations connected with the Plant shall be obtained by SVD 19 in accordance with **Article 6.1**.

ARTICLE 7 TERMS OF IMPLEMENTATION AND TRANSFER OF TITLE AND RISKS

The Parties agree to comply with the terms and conditions of implementation of the Supply as set forth in **Schedule 2**, **Schedule 3** and **Schedule 12**.

Transfer of the title to and risks related to the External Biomass to SVD 19 shall occur on the time of delivery at the Plant.

ARTICLE 8 METERING AND CONTROLS

Article 8.1 Energy metering

The metering of the energy of the External Biomass delivered by Dalkia shall be conducted in accordance with **Schedule 6**.

SVD 19 undertakes that the number of periodic measurements of receipt of the External Biomass, which are made on the Site, shall be sufficient to ensure:

(i) a fair assessment of the delivered External Biomass; and

(ii) the compliance with the operating constraints of the Plant.

Any cost with respect to the energy metering shall borne by SVD 19 only. .

Article 8.2 Quality controls

Quality controls of the Biomass shall be conducted in accordance with **Schedule 10**.

Such controls shall include:

(i) controls and analyses on Site, which shall be paid for by SVD 19 only; and

(ii) controls performed in the laboratory, the intent of which is to audit the periodic controls process and on Site analyses; such controls shall be performed by a jointly selected laboratory, with the understanding that the costs of these controls will be shared equally between the Parties.

SVD 19 reserves to itself the right to perform at its own expense random controls and other analysis in order to:

(i) search for heavy metals;

(ii) search for halogenated compounds;

(iii) measure chlorine levels;

(iv) measure nitrogen levels; and

(v) measure silica levels.

ARTICLE 9 <u>FINANCIAL PROVISIONS</u>

Article 9.1 <u>Compensation</u>

As compensation for the performance of the Supply, SVD 19 shall pay Dalkia France the sole comprehensive monthly compensation P (the "**Compensation**"), determined in the following manner:

$$P = P_0 \text{ x } M \text{ x } Q$$

where:

- **"P_0"** = €19.5 per MWh NCV:
- **"M"** means the Revision Factor M, as defined in **<u>Article 9.2</u>**;
- "**Q**" means the quantities of External Biomass actually delivered by Dalkia and accepted by SVD 19 expressed in form of MWh NCV in accordance with **<u>Schedule 6</u>**.

All Compensation amounts are exclusive of VAT.

Article 9.2 <u>Revision</u>

The Compensation shall be determined on the basis of prevailing economic conditions as of January 1, 2007. The Compensation shall be revised on a monthly basis by applying the revision factor M (the "**Revision Factor M**") calculated in accordance with the following formula:

$$M = (0.43 \text{ x } ICHTrevTS / ICHTrevTS_0 + 0.57 \text{ x } FM0ABE0000/FM0ABE0000_0)$$

where:

- "**ICHTrevTS**" is, as of the Compensation determination date concerned, the value for the most recent known definitive value as of the 1st January of year N of the ICHTrevTS index, which has replaced the ICHTTS1 index "hourly labor cost - all salaried employees in the mechanical and electrical industries" as from July 3, 2009, as defined in the CRE Contract;

- "**FM0ABE0000**" is, as of the Compensation determination date concerned, the value for the most recent known definitive value as of the 1st January of year N of the FM0ABE0000 index, which has replaced the PPEI index "industrial production index - French market (PVIS000100)", as from April 2, 2009, as defined in the CRE Contract;

- "**$ICHTrevTS_0$**" and "**$FMABE0000_0$**" are the definitive values for the most recent known values of the aforementioned ICHTTS1 and PPEI indexes as of January 1, 2007, to wit:

  - $ICHTrevTS_0$ = 93.9 = 134.3 (ICHTTS1 as of August 2006) / 1.43

  - $FMABE0000_0$ = 105.3 = 112.0 (PPEI as of August 2006 / 1.064.

Article 9.3 **<u>Invoicing and payment</u>**

Dalkia shall invoice SVD 19 on a monthly basis. Provided Dalkia invoices SVD 19 for the Supply related to the previous calendar month (N) by the 20th day of the following month (N+1), SVD 19 shall pay such invoice no later than the 20th day of the month following issuance of Dalkia's invoice. If Dalkia invoices SVD 19 after the 20th day of a given month, the payment terms shall be extended by an equal number of days.

Any delay in the payment of invoices shall automatically and *ipso jure* result in the payment of late payment interest charges computed at the one (1) month EURIBOR rate, increased by three (3) points or, if higher, the minimum default interest applicable under French Law.

In the event of delay by SVD 19 in the payment of invoices, and independently of late payment interest charges, Dalkia may suspend the performance of its Supply, fifteen (15) days following formal payment demand sent by registered letter with return receipt that has remained unremedied, unless such retention of payment by SVD 19 is made in accordance with the last paragraph of this **<u>Article 9.3</u>**.

Likewise, Dalkia shall be entitled to suspend its Supply, failing SVD 19's payment of the amounts necessary to perform the Supply.

In the event of a dispute relating to any invoice issued by Dalkia, SVD 19 shall pay any undisputed portion and shall only be entitled to withhold or reduce payment to Dalkia in respect of any disputed portion in good faith for which it has issued a notice to Dalkia detailing the nature of and the amount in dispute within thirty (30) days of the receipt of the invoice and only until such time as the matter is agreed or determined, <u>provided that</u> SVD 19 shall pay the amount agreed or determined to be due and payable within fifteen (15) days of such agreement or determination.

It is mandatory that Dalkia invoices shall include the following two references:

First reference:
Billing Address:

Second reference:
Restatement of references:
SVD 19 order number;
SVD 19 order date; and
Supplier code number;

Dalkia shall attach a statement of bank account information to the first invoice issued under the terms of the Contract or each first invoice following a change to its banking information.

SVD 19 intra-community VAT number is [•].

ARTICLE 10 EXCUSING CAUSES AND SUSPENSION CAUSES

Article 10.1 Excusing Causes

An "**Excusing Cause**" shall mean any of the following events:

(i) any act or omission of SVD 19, its customers or its subcontractors and suppliers, or any third party, other than an employee, agent or subcontractor of Dalkia and more generally any act not attributable to Dalkia, that prevents or impedes Dalkia from performing the Supply in accordance with the agreed performance standards;

(ii) any measure taken by Dalkia in order to comply with a Change in Law, when such implementation has an adverse material impact on Dalkia's ability to supply External Biomass to the contractually agreed performance standards;

(iii) any failure of SVD 19 to perform its obligations under the Contract or any Applicable Law, including (without prejudice to the foregoing generality) any failure by SVD 19 to pay the Compensation or the Penalties on the due date for payment, under the conditions set forth in **Article 9.3** and **11.4**; and

(iv) any *Force Majeure* Event, as defined in **Article 17.1**.

Dalkia shall not be in breach of this Contract, nor shall Dalkia bear any liability to SVD 19 for breach of this Contract or otherwise (including, without limitation, liability pursuant to **Article 12** or liability to pay Penalties pursuant to **Article 11.2**), (i) if and to the extent that such breach is due to an Excusing Cause, and (ii) then to the extent that the events giving rise to the Excusing Cause do not have their origin in an act or circumstance which is attributable to Dalkia.

Article 10.2 Suspension Causes

A "**Suspension Cause**" shall mean any of the following events:

(i) an emergency, defined as circumstances involving an imminent or serious threat to human health or safety, the environment of the Plant, and including, for the purposes of this **Article 10.2**, the measures taken to avoid or respond to such emergency;

(ii) any act or omission of SVD 19, its customers or its subcontractors and suppliers, or any third party, other than an employee, agent or subcontractor of Dalkia and more generally any act not attributable to Dalkia, that prevents or impedes Dalkia from performing the Supply in accordance with the agreed performance standards;

(iii) any violation of an Applicable Law or Government Authorisations by Dalkia, which would result from the performance of the Supply to the contractually agreed performance standards,

(iv) any *Force Majeure* Event, as defined in **Article 17.1**; and

(v) any Dalkia's election to curtail or suspend the Supply in whole or in part, pursuant to one of the cases mentioned from (i) to (iv) above.

In the event of a Suspension Cause, Dalkia shall be entitled to suspend performance of the Supply under the Contract.

Dalkia shall not be in breach of this Contract, nor shall bear any liability to SVD 19 for breach of this

Contract or otherwise (including, without limitation, liability pursuant to **Article 12** or liability to pay Penalties pursuant to **Article 11.2**) as a result of the suspension of the Supply, to the extent the events giving rise to the Suspension Cause do not have their origin in an act or circumstance which is attributable to Dalkia.

ARTICLE 11 PENALTIES

Article 11.1 Penalties incurred by SVD 19

In the event of SVD 19's breach of its volume commitments under **Article 4.1** and **4.2**, SVD 19 shall pay to Dalkia a Penalty corresponding to the difference expressed in MWh NCV between (i) the quantities which should have been ordered by SVD 19 in accordance with **Articles 4.1** and **4.2** and (ii) the quantities actually ordered by SVD 19, valued at 17.5 € per MWh NCV, indexed with the Revision Factor M.

Article 11.2 Penalties incurred by Dalkia

Article 11.2.1 Penalties for breach of volume commitments

In the event of Dalkia's breach of its volume commitments under **Articles 5.1** resulting in an inability for SVD 19 to produce electricity (as justified by reasonable evidence to be provided by SVD 19), Dalkia shall pay to SVD 19, a Penalty equal to twelve euros (€12) per MWh NCV of External Biomass not delivered, capped at three million euros (€3,000,000) per annum indexed with the Revision Factor M.

Article 11.2.2 Penalties for breach of quality commitments

In the event of Dalkia's breach of its quality commitments under **Articles 5.2** above, the External Biomass may be refused by SVD 19, without prejudice to the application of the Penalty stipulated in **Article 11.2.1** above if Dalkia fails to meet within applicable deadlines its volume commitments following such refusal (or subsequent refusals for breach of quality commitments).

Article 11.3 Exclusive remedy

The Penalties provided in **Articles 11.1** and **11.2** shall be the exclusive remedy of either Party against the other Party in respect of any breach or non compliance under **Article 11** and, save the case of fraud, such other Party hereby waives any other rights it may have in this respect.

Article 11.4 Invoicing and payment of Penalties

Penalties shall be invoiced on a monthly basis.

Penalty invoices shall be payable at earliest of (i) sixty (60) days end of the month following the issuance date or (ii) ten (10) days following the date of which CRE penalties become due by SVD 19 to EDF under the CRE Contract.

Article 11.5 Exemptions

For the avoidance of doubt, Dalkia shall not bear any liability to pay Penalties as a result of an event considered as an Excusing Cause.

ARTICLE 12 <u>INDEMNITY AND LIABILITY</u>

Article 12.1 <u>Principle</u>

In the event of any damage caused to a Party (the "**Indemnified Party**") that is attributable to the other Party (the "**Indemnifying Party**") and results from an event other than those covered by the Penalties provided in **<u>Article 11</u>** such Indemnifying Party may be held liable *vis-à-vis* the Indemnified Party only on condition that proof be provided of:

(i) the Indemnifying Party's commission of a wrongful act; and

(ii) the existence of damage suffered by the Indemnified Party,

to the extent, in each case, that such losses, damages, claims, actions, judgements, suits, costs, expenses and disbursements (except consequential damages as set forth in **<u>Article 12.2</u>** below) arise out of or by reason of any negligence or default, of the Indemnifying Party, its consultants, contractors, employees or agents.

Any Party suffering a damage in connection with this Contract and/or alleging a breach of Contract, fault or right to be indemnified in accordance with the Contract shall be under a duty to take all necessary measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or cost.

Article 12.2 <u>Consequential damages</u>

No Party shall be liable to any other Party by way of indemnity or by reason of any breach of this Contract or of statutory duty or by reason of tort (including negligence), strict liability or otherwise for any incidental, consequential, subsequent, punitive or special damages or any consequential or economic loss including, but not limited to, any loss of profit, use, opportunity or other indirect or consequential loss that may be suffered by that other Party.

Such limitation shall apply to Affiliates, directors, officers, employees, agent and subcontractors of each Party.

Article 12.3 <u>Exemptions</u>

For the avoidance of doubt, Dalkia shall not bear any liability whatsoever towards SVD 19 as a result of an event considered as an Excusing Cause.

Article 12.4 <u>Control of claims</u>

If the Indemnified Party becomes aware of any claim from a third party, the Indemnified Party shall, as soon as reasonably practicable and in any event within ten (10) days, give written notice to the Indemnifying Party of the matter which might give rise to a claim under or pursuant to a covenant (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed).

The Indemnified Party shall consult with the Indemnifying Party with respect to the matter.

If the matter has become the subject of any proceedings, the Indemnified Party shall (so far as it is able) give the notice within sufficient time to enable the Indemnifying Party to contest the proceedings before any first instance judgment in respect of such proceedings is given.

The Indemnified Party shall:

(i) take such action and institute such proceedings and give such information and assistance as the Indemnifying Party or its insurers may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against any person (other than the Indemnifying Party) the rights of the Indemnified Party or its insurers in relation to the matter;

(ii) in connection with any proceedings related to the matter (other than against the Indemnifying Party) use professional advisers nominated by the Indemnifying Party or its insurers and, if the Indemnifying Party or its insurers so request, allow the Indemnifying Party or its insurers the exclusive conduct of the proceedings in each case on the basis that the Indemnifying Party shall fully consult with the Indemnified Party and keep the Indemnified Party fully informed and the Indemnifying Party shall fully indemnify the Indemnified Party for all costs incurred as a result of any such request or nomination by the Indemnifying Party or its insurers;

(iii) not admit liability in respect of the matter; and

(iv) not settle the matter without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed provided that the Indemnified Party shall (in circumstances where the Indemnifying Party withholds such consent) be free to settle any claim in circumstances where it agrees in writing to waive any right to be indemnified pursuant to this **Article 12**.

If the Indemnifying Party has knowledge of any actual or potential third party claim, it shall inform the Indemnified Party and, if the Indemnifying Party has conduct of any litigation and negotiations in connection with a claim, the Indemnifying Party shall promptly take all proper action to deal with the claim so as not, by any act or omission in connection with the claim, to cause the Indemnified Party's interests to be materially prejudiced.

If the Indemnifying Party does not elect to have conduct of any litigation and negotiations in connection with a claim by notice in writing to the Indemnified Party within ten (10) days of the Indemnified Party giving notice of the matter, the Indemnified Party shall be free to take such action in relation to that matter as it considers expedient to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter in question subject to a duty to use all reasonable endeavours to mitigate the liability of the Indemnifying Party in respect of that claim.

The failure by the Indemnified Party to comply with the provisions of this **Article 12.4** shall not release the Indemnifying Party from its obligations of indemnification, but shall result in a reduction of the indemnification due up to the amount of the actual damage caused to the Indemnifying Party by such delay.

ARTICLE 13 OVERALL CAPS FOR PENALTIES, INDEMNITIES AND LIABILITIES

Article 13.1 Aggregate cap

The total amount of indemnification owed by Dalkia under **Article 11.2.** (Penalties) and **Article 12** (Indemnity and liability) or under any other provision of this Contract (whether such amount result from a contractual failure of a Party or from its liability in tort in relation to this Contract) may not, in any case, exceed a maximum limit of:

(i) forty eight million Euros (€48,000,000),

less

(ii) any liability, penalty, or indemnity already paid or incurred by Dalkia under the Operation and Maintenance Contract.

Article 13.2 Waiver

SVD 19 waives all legal actions:

(i) above the maximum limit of the caps provided in **Articles 11.2** and **13.1** above established hereinabove, with respect to any possible direct and material damage, and undertakes to obtain from its insurers the same waiver of legal action against Dalkia;

(ii) for any indirect and consequential or subsequent damage as defined in **Article 12.2**, and undertakes to obtain from its insurers the same waiver of legal action against Dalkia.

ARTICLE 14 MATERIAL EVENT

Each Party shall promptly notify to the other Party as from such Party becomes aware of the occurrence of the following events:

(i) potential renewal or modification of Government Authorisation;

(ii) evidence of actual or potential significant decrease in Biomass fuel supply;

(iii) any Change in Law; and

(iv) any *Force Majeure* event.

In case of such event, the Parties shall discuss in good faith the opportunity to change the relevant terms and conditions of the Contract.

ARTICLE 15 TERMINATION

Article 15.1 Termination events

The Contract may be automatically terminated either at the initiative of SVD 19, or at the initiative of Dalkia, under the following conditions and circumstances:

(i) by SVD 19, after the three (3)-month notice period as set forth below, in the event of Dalkia's material breach (which shall include non payment of amounts due but not contested by Dalkia), which has not been remedied within a period of sixty (60) days following receipt of a written notification sent to Dalkia by SVD 19 for such purpose, and which has caused a loss to SVD 19 that is not compensated by payment of the Penalties;

(ii) by Dalkia, after the three (3)-month notice period as set forth below, in the event of SVD 19 material breach (which shall include non payment of amounts due but not contested by SVD19) which has not been remedied within a period of sixty (60) days following receipt of a written notification sent to Dalkia by SVD 19 for such purpose; or

(iii) by either Party in the event of the occurrence of a *Force Majeure* event, if a Party proves to be impossible to restore the situation, and said *Force Majeure* event persists for more than a period of three (3) consecutive months; in such case no indemnification will be due by either Party.

A termination for any cause whatsoever shall be effective upon the expiration of a three (3)-month advance notice period commencing on the date of the termination notification (except for *Force Majeure event* for which the period of the three (3) consecutive months of persistence of such event shall be deemed to be the advance notice period). The provisions of the Contract shall continue to apply during the notice period.

Article 15.3 Consequences of termination

In all termination events, the amounts that remain due between the Parties under this Contract shall become immediately due and payable as of the effective termination date of the Contract.

Article 15.4 Continuation in case of event of default

Notwithstanding any breach, default or omission by one Party, the other Party may elect to maintain this Contract in full force and effect and to enforce its rights hereunder.

Failure of either Party to exercise any right hereunder including the right of termination shall not be deemed a waiver of such right for any continuing or subsequent default.

Article 15.5 Survival of rights on termination

The provisions of this Contract set forth in **Article 21** (confidentiality), and **Article 27** (governing law and settlement of disputes), as well as any rights or obligations which may have accrued prior to termination, including any antecedent breach, shall survive the termination of this Contract.

ARTICLE 16 INSURANCES

[Dalkia represents that it has taken out a Civil Liability insurance policy to provide coverage for SVD 19 with respect to its liabilities arising from the performance of this Contract. Dalkia undertakes to keep in force a policy that is equivalent in terms of level of coverage throughout the entire term of the Contract.

The coverage shall be underwritten in the amount of thirty million euros (€30,000,000) per claim per year for all bodily and material damages.

This coverage shall also cover liability in the event of bodily and material damages resulting from accidental damage to the environment, particularly in case of air or ash pollution in accordance with the stipulations set forth in **Article 5.2.3**.

To this end, Dalkia undertakes to provide SVD 19, upon signature of the Contract and upon each renewal and/or revision:

(i) the certificates of qualification appropriate to its field of activity, and

(ii) certification of insurance, including the mandatory deductibles and activities covered on the day of signature of the renewal and/or revision.

Dalkia undertakes to pay the deductibles applied by insurers with respect to its activity.

Each Party shall procure that its insurers waive all express and implied rights of subrogation against the other Party[2].]

ARTICLE 17 FORCE MAJEURE – RESTRICTIONS TO THE ACTIVITY OF THE PARTIES

Article 17.1 Force Majeure

"***Force Majeure* Event**" shall mean any event or circumstances which has the characteristics of force majeure, pursuant to Article 1148 of the French Civil Code, including, in particular those events customarily considered by case law to be *Force Majeure* Events, shall be considered as exonerating causes releasing each of the Parties from its liability or its obligations under this Contract; these events shall include, but are not limited to the following:

(i) wars, riots, revolutions, sabotage, acts of terrorism;

(ii) natural disasters such as storms, hurricanes, earthquakes, tidal waves, floods, destruction by lightning, epidemics; or

(iii) a national strike that affects both Parties and SKCP, its successors or assignees.

Neither Party shall be entitled to bring a claim for a breach of obligations (other than a payment obligation) under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a *Force Majeure* Event occurs and it is prevented from carrying out its obligations by that *Force Majeure* Event or its consequences.

If any Party shall rely on the occurrence of a *Force Majeure* Event as a basis for being excused from performance of its obligations under this Contract, then the Party relying on the event or condition shall:

(i) provide prompt notice to the other Party of the occurrence of the event within (5) days following the occurrence of said *Force Majeure* Event or condition giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder;

(ii) exercise all reasonable efforts to continue to perform its obligations hereunder;

(iii) expeditiously take action to correct or cure the event or condition excusing performance;

(iv) exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests; and

(v) provide periodic notices to the other Party with respect to its actions and plans for actions in accordance with Paragraphs (ii), (iii) and (iv) above and prompt notice to the other Party of the cessation of the event or condition giving rise to it being excused from performance.

Once the Parties had been informed of the *Force Majeure* Event, the Parties shall meet to study the impact of the situation and the possible solutions to remedy same, or minimize the consequences thereof, when that is possible.

[2] [to be confirmed by Dalkia's insurance department]

If it should prove impossible to restore the situation while maintaining the financial terms of the Contract, and said *Force Majeure* Event persists for more than a period of three (3) consecutive months, the Contract may be automatically terminated, at the initiative of either of the Parties, without indemnification by either Party.

Article 17.2 Restrictions on the normal operation of the Plant

In instances of total or partial strikes (or occupations of plants or premises, or work stoppages, etc.), or also, for example, a temporary withdrawal of one or more administrative authorizations which makes it impossible for either of the Parties to perform its obligations under the Contract, the Parties undertake to meet as soon as possible for the purpose of discussing solutions that will make it possible to remedy said events in the interest of both Parties.

ARTICLE 18 COOPERATION

As part of their relationship under this Contract, the Parties agree to consult each other first for all supplies and/or additional supplies.

In any event, the Parties shall meet once a year in order to:

(i) conduct an assessment of activity;

(ii) define the growth plan for the following year; and

(iii) conduct a survey report for the past year.

The purpose of this meeting will be to:

(i) discuss potential difficulties related to the performance of the Supply provided (access, planning, contacts…);

(ii) advise on the content of operational reports;

(iii) analyze any evaluations and complaints from the manager of the Plant, especially regarding the quality of the results guaranteed by Dalkia under this Contract; and

(iv) make potential amendments to certain aspects of this Contract.

The meeting may approve proposals for the improved performance of Supply.

ARTICLE 19 INTELLECTUAL PROPERTY

Article 19.1 Dalkia's Intellectual Property

Any Intellectual Property created, produced, or ordered by Dalkia and pertaining to the performance of the Supply, and the copyrights pertaining thereto as well as all the Intellectual Property rights that Dalkia holds, are, shall be, and shall remain the property of Dalkia.

SVD 19 expressly undertakes not to disclose all or part of the aforementioned Intellectual Property to any third parties whatsoever, nor the knowledge it has acquired of said Intellectual Property.

SVD 19 shall indemnify Dalkia against any loss, injury or damage suffered by Dalkia as a consequence of Dalkia's use of any SVD 19's Intellectual Property of which SVD 19 has mandated the use in accordance with this **Article 19.1**.

Article 19.2 Files - Data

The reproduction or use by one Party, for purposes other than performance of the Contract, of information conveyed by the other Party (data, files, documents or information of any nature) is prohibited without the prior written authorization of the other Party.

Article 19.3 Trademarks

By express agreement, if one Party intends to use the trademark and/or figurative trademark of the other Party in order to have it appear on its business documents, it must first obtain authorization for use, and not for commercial utilization, on a case-by-case basis, which shall necessarily be the subject of prior written approval.

ARTICLE 20 ASSIGNMENT

Since the Contract is executed *intuitu personae*, i.e. in consideration of the personality of the Parties involved, neither of the Parties may transfer or assign, in all or in part, its rights and obligations under the Contract, for valuable consideration or without a consideration, in any manner whatsoever, without having obtained the other Party's prior written approval. The foregoing shall not apply to transfers to the benefit of Affiliates of a Party, provided that such Party gives appropriate guarantees in respect of the obligations of its affiliate under the Contract.

Nevertheless:

(i) Dalkia may assign, transfer, or contribute the Contract to an Affiliate, provided that it informs SVD 19 thereof within a period of fifteen (15) days prior to the transfer or contribution;

(ii) SVD 19 may assign, transfer, or contribute the Contract to an Affiliate, provided that it informs Dalkia thereof within a period of fifteen (15) days prior to the transfer or contribution.

A transfer may be contemplated pursuant to a sale of an entire business or a part thereof, or the transfer of a business division to which the Contract is attached.

ARTICLE 21 CONFIDENTIALITY

Article 21.1 Technical information

The Parties are prohibited from disclosing, directly or indirectly, any technical, commercial, financial or other information obtained pursuant to the contractual relationship under this Contract, without the written approval of the concerned Party.

The Parties recognize and acknowledge that any disclosure, of any of the confidential information to third parties, even in part, without the prior written consent of the other Party, and/or any use of said information for purposes other than those contemplated by this Contract, shall be seriously detrimental to the interests of the other Party.

The confidentiality obligations provided hereinabove shall survive termination of the Contract, for a period of two (2) years.

This confidentiality obligation shall not apply:

(i) to the disclosure of information to SKCP or its Affiliates (except as regards Biomass prices which shall in no event be disclosed to SKCP or its Affiliates);

(ii) to the information needs and requirements of the personnel of each of the Parties or their Affiliates, to the extent that they are bound by the same confidentiality obligations;

(iii) to information disclosed to judicial, Tax, or governmental authorities pursuant to a requirement imposed by law or regulations, or by a market authority;

(iv) to information that is in the public domain, or which shall fall into the public domain after the date of this Contract, without that fact being (directly or indirectly) attributable to any action or omission on the part of the Party concerned;

(v) to the consultants and advisors of the Parties, to the extent that the latter are bound by the same confidentiality obligations;

(vi) to the internal marketing communication and commercial needs and requirements of each of the Parties, for the purpose of deriving benefit from the performance, including the ecological performance, of their processes; and

(vii) information, the disclosure of which is required by Applicable Laws or a final court decision.

The Parties shall refrain from making negative comments about and/or denigrating the other Party, its products and its employees.

Article 21.2 Contract

Each of the Parties undertakes not to disclose the content of this Contract on any basis whatsoever, without the prior written approval of the other Party. The text of any public announcement that either of the Parties should wish to make, as the case may be, regarding the performance of the Supply covered by this Contract must be the subject of prior written approval by the other Party.

The confidentiality obligation provided hereinabove is not applicable, however:

- to the information that is necessary to disclose to third parties for the purposes of the performance of the Supply covered by this Contract or in order to comply with applicable laws and regulations and decisions of any nature to which the Parties or their Affiliates are subject, and the Parties in such instances undertake to make their best effort to negotiate so as to agree in advance on the terms of the disclosure which has become necessary;

- with respect to the attorneys, financial advisers, employees, and executives of the Parties, in connection with the performance of the Supply covered by this Contract, as well as the statutory auditors of the Parties, provided that the latter are bound by an obligation, commitment, or a general duty of confidentiality; and

- to the disclosures of information made (a) in performing decisions of administrative or judicial authorities and/or (b) to the competent court for the purposes of the performance of this Contract.

ARTICLE 22 PRIMACY, AMENDMENT AND RENEGOCIATION OF THE CONTRACT

This Contract shall prevail over all general or special terms and conditions.

This Contract may be amended only by prior written approval of both Parties, represented by authorized representatives.

ARTICLE 23 VALIDITY OF THE CONTRACT

The invalidity or unenforceability of any of the clauses of this Contract shall not affect in any way the validity of the other provisions of the Contract. The Parties shall in such instances make their best effort to negotiate to achieve the replacement of said clause with a new provision or new provisions that have an equivalent effect and/or that make it possible to maintain the equilibrium and financial terms of the Contract, in accordance with the Parties' intent.

The Schedules may be updated and amended by the Parties during the term of the Contract. In order for an Schedule to be considered as a contractual document, it must be initialed by both Parties and must indicate the date of the update.

ARTICLE 24 ABSENCE OF WAIVER

The fact that either of the Parties has tolerated the total or partial non-performance of any of the clauses and obligations of the Contract, for any period of time whatsoever, shall not under any circumstances affect the validity of any of said clauses and obligations, and under no circumstances shall it constitute a waiver on its part as to requiring at any time in the future strict performance of the other Party's obligations, nor a waiver of legal action to defend its rights.

ARTICLE 25 NOTIFICATIONS

Any notification pursuant to this Contract must be made in French and by hand, via fax, via registered letter, or in an envelope delivered by an internationally recognized carrier. Notification shall be valid as of the receipt of same, and shall be deemed to have been received (i) as of the date of receipt when delivered by hand, (ii) as of the date of the first delivery attempt, when it was made by registered letter or via a carrier, or (iii) as of the date of transmission, when it is made by fax.

The Parties' addresses and fax numbers for the purposes of this Article are as follows:

SVD 19	Address:	Fax:
	[•]	[•]
To the attention of:	[•]	
Dalkia	Address:	Fax:
	[•]	[•]
To the attention of:	[•]	

Each Party must diligently notify the other Party of any change in name, addressee, address, or fax number.

ARTICLE 26 MISCELLANEOUS

Article 26.1 Language

This Contract and each document or notice referred to in this Contract or to be delivered under this Contract shall be in the English language.

Article 26.2 Additional documents and actions

Each Party agrees to execute and deliver to the other such additional documents, and take such additional actions, as may be reasonably necessary in order to implement and give full legal effect to this Contract.

Article 26.3 Costs

Except as otherwise provided herein, each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Contract.

Article 26.4 No partnership

Neither Dalkia nor SVD 19 has any responsibility whatsoever other than as set out here in with respect to the obligations assumed by the other under this Contract nor in respect of any employment claims of any employees of any other Party hereto, and nothing in this Contract shall constitute Dalkia or SVD 19 a partner, agent or local representative of the other or create a fiduciary relationship or trust between them.

Article 26.5 Successors and assigns

Subject to **Article 20**, this Contract shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

ARTICLE 27 GOVERNING LAW AND SETTLEMENT OF DISPUTES

Article 27.1 Governing Law

This Contract and the obligations arising therefrom are governed by French Law.

Article 27.2 Amicable settlement

If any dispute or difference of any kind whatsoever between the Parties during the term of this Contract or after termination or early termination of this Contract, the Parties shall first negotiate in good faith with a view to achieving an amicable settlement of the same.

In the event that the Parties are unable to achieve any amicable settlement of the matter or dispute under this **Article 27.2**, then any Party shall be entitled by a notice in writing to the other Party to require the unresolved matter to be referred for an amicable settlement to a dispute resolution committee comprising:

(i) the President of SVD 19 or his authorised representative;

(ii) the CEO of Dalkia or his authorised representative; and

(iii) an independent member to be agreed upon by the Parties.

Such committee shall be empowered to regulate the rules and procedures of the matter to be resolved before its members.

Article 27.3 Jurisdiction

In the event:

(i) the Parties fail to agree upon the independent member within ten (10) days; or

(ii) the dispute resolution committee shall fail to decide on any matter in dispute referred to them under **<u>Article 27.2</u>** within thirty (30) days as from the date of such referral or such other period as may be agreed in writing by the Parties; or

(iii) any Party hereto is dissatisfied with the decision of the dispute resolution committee within fifteen (15) days as from this decision;

then in any such case either Party in which the dispute relates may require that the matter be finally settled under the exclusive jurisdiction of the Paris Commercial Court *(tribunal de commerce de Paris)*, even in the circumstance of multiple defendants or an impleader, and the jurisdiction clauses that may exist in other commercial and administrative documents of either of the Parties may not constitute an obstacle to the application of this clause.

Executed in Paris in two (2) original copies,

On [•] 2010,

SVD 19	Dalkia
________________ Represented by [•] [•]	________________ Represented by [•] [•]

LIST OF SCHEDULES[3]

[3] [Schedules to be reviewed by Dalkia's operational teams]

Schedule 1:
External Biomass technical characteristics

I – Guarantees

Dalkia undertakes to provide External Biomass in accordance with the guarantees defined in this Schedule.

In the event of the non-compliance of External Biomass or the exceeding of the thresholds guaranteed in this **Schedule 1**, Dalkia shall be considered as having defaulted and the non-compliant External Biomass may be rejected by SVD 19.

I.1 – External Biomass compliance

Notwithstanding the compliance of the External Biomass to the Supply Plan attached in **Schedule 4**, the External Biomass shall also be consistent with the definition of category 2910A of the nomenclature of Facilities Classified for the Protection of the Environment (ICPE), namely:

> *"Biomass is present in its natural state and is not impregnated or coated with any substance. It includes wood in the form of raw chunks, bark, shredded wood, sawdust, sanding dust, or offcuts of timber industry end products, or its conversion or crafting."*

For the sake of environmental controls and for the proper functioning of the Plant, SVD19 may refuse any delivery that does not strictly meet this definition and contains, by way of example, the following products:

- Plywood
- Chipboard
- Glulam
- Painted, coated, or treated wood
- Demolition wood
- Plastic-type foreign bodies
- Etc.

I.2 – Moisture content

Humidity is expressed a percentage of gross weight, according to the ratio:

$$\text{Moisture of gross (\%)} = \frac{\text{Weight of moist sample} - \text{Weight of dry sample}}{\text{Weight of moist sample}} \times 100$$

The moisture content of the External Biomass delivered must comply with the values defined in the technical specifications in Chapter II of this **Schedule 1** (average, minimum, maximum). It shall be determined on the Site at the Delivery Points specified in Schedule 12 and as detailed in **Schedule 10** of the Contract.

This measure of the moisture content shall also be used to determine the energy delivered according to the methodology defined in **Schedule 6** to the Contract.

The external laboratory measurements set forth in the manner defined in Schedule 10 of the Agreement shall also be used to verify the compliance of the External Biomass delivered.

Dalkia shall take all necessary steps to ensure that the External Biomass delivered is in compliance with the humidity conditions defined in the technical characteristics in this **Schedule 1**.

I.3 – Ash content

Ash content is expressed as a percentage of dry weight.

Ash content in the External Biomass delivered is the mineral matter measured by an external laboratory in the manner defined in **Schedule 10** of the Contract.

Ash content shall be determined based on a sample calcined at 550°C.

Ash content of the External Biomass delivered must comply with the values defined in the technical specifications of Chapter II of this **Schedule 1** (average and maximum).

I.4 – Net Calorific Value (NCV)

The average annual NCV for the External Biomass supplied is 2.62 MWh per ton for a fuel whose average annual gross weight moisture content is about H ref = 41.8% for an average annual ash rate of 6.7%.

At each delivery, the NCV shall be determined using the methodology defined in Schedule 6 to the Contract. The NCV may also be determined by an external laboratory according to the terms defined in **Schedule 10** of the Contract.

The NCV of the Biomass delivered must meet the technical specifications of Chapter II of this Schedule (minimum value and maximum value).

I.5 – Particle size and filtering

The External Biomass delivered must be comprised of products whose particle size is consistent with the following limits:

- Maximum proportion of particles passing through a control sieve 3.15mm in diameter: < 20% of mass
- Maximum proportion of particles passing through a control sieve 63mm in diameter: > 90% of mass
- Maximum dimensions of particles in mm: 200 x 50 x 25

Particle size shall be determined on the Site or in an external laboratory in the manner defined in **Schedule 10** of the Contract.

I.6 – Foreign bodies

The External Biomass delivered shall be free of foreign materials such as metals, stones, plastics, sand, and soil, with the exception of sand and soil that may be naturally embedded in bark.

In the event that a presence of foreign bodies in the External Biomass delivered causes damage to the operation of the Plant, the liability of Dalkia may be sought for all subsequent direct harmful material and immaterial consequences.

Accordingly, Dalkia must take out an insurance policy to cover the risk foreseen in the preceding paragraph and its possible consequences. The annual certifications with the deductibles and activities covered will be forwarded to SVD 19 upon the signature of the Contract and at each renewal and/or revision.

II – Technical specifications

(i) The following table specifies the characteristics of the External Biomass guaranteed under the terms in Chapter I of this Schedule. It also provides a number of target values and reference values.

	Units	Value (guaranteed, target, or indicative)	Chips from bundles of branches	Chips from stumps	Degraded bark & chips	Sawdust	Degraded logs	Mixed biomass supplied by SKCDP
Preparation status of biomass arriving on Site			To be prepared onsite by SKCDP	To be prepared onsite by SKCDP	Prepared	Prepared	To be prepared onsite by SKCDP	
Ann. quantity	t/yr.	Indicative	70000	99100	15000	5000	10000	199 100
Ann. quantity	MWh/yr.	Guarantee	194 460	257 227	35 655	11 300	23 364	522 006
Avg. NCV	MWh/ton	Target	**2,78**	**2,60**	**2,38**	**2,26**	**2,34**	**2,62**
Immediate analysis								
Average annual moisture	% of gross	Target	**41,2**	**40,1**	**48,7**	**50,0**	**48,0**	41,8
Max. moisture	% of gross	Guarantee	**50,0**	**45,0**	**55,0**	**55,0**	**55,0**	48,3
Min. moisture	% of gross	Guarantee	**32,0**	**32,0**	**40,0**	**45,0**	**40,0**	33,3
Average dryness	% of gross	Target	58,8	59,9	51,3	50,0	52,0	58,2
Avg. max. ann. ash rate	% of dry	Guarantee	**3,00**	**10,00**	**5,00**	**1,50**	**3,00**	6,69
Max. ash rate	% of dry	Guarantee	**5,00**	**14,00**	**10,00**	**3,00**	**5,00**	9,90
NCV of pure	MJ/kg of pure	Indicative	19,3	19,2	20,0	19,0	19,0	19,25
Min. NCV of gross	MJ/kg of gross	Guarantee	7,95	7,96	6,76	6,95	6,78	7,80
Max. NCV of gross	MJ/kg of gross	Guarantee	12,14	11,72	10,66	9,30	10,31	11,66
Elemental analysis								
Max. N	% of dry	Target	**< 0,500**	**< 0,400**	**< 0,500**	**< 0,600**	**< 0,500**	< 0,45
Max. S	% of dry	Target	**< 0,040**	**< 0,040**	**< 0,050**	**< 0,030**	**< 0,040**	< 0,040
Max. Cl	% of dry	Target	**< 0,030**	**< 0,030**	**< 0,030**	**< 0,010**	**< 0,030**	< 0,030
Na + K	% of dry	Target	**< 0,20**	**< 0,11**	**< 0,17**	**< 0,07**	**< 0,20**	< 0,15
Fusibility								
Fusibility temp. of ashes (1st point of deformation)	°C	Target	**>1100**	**>1100**	**>1100**	**>1100**	**>1100**	>1100
Particle size								
Sifting (proportions in mass)								
Fine rate <3.15 mm	% of gross	Guarantee						< 20%
Particle rate >63 mm	% of gross	Guarantee						> 90%
Max. particle dimensions	mm	Guarantee						<200x50x25

The values listed in the table above include uncertainties related to measurement accuracy.

(ii) Dalkia is exonerated to comply with the target values set in the table above for the following parameters:

- maximum chlorine (Cl) content
- sulfur (S) content
- nitrogen (N) content
- maximum sodium + potassium (Na+K) content
- minimum ash fusibility temperature

It is agreed that if the laboratory controls specified in **Schedule 10** revealed that thresholds in the table above were exceeded, the Parties would meet to analyze the cause of the excesses.

The Parties shall define the actions to be implemented to bring the characteristics of the External Biomass within the limits set for these five parameters.

Dalkia shall inform SVD 19 prior to any change of External Biomass that could cause the thresholds for these five parameters to be exceeded.

Schedule 2:
Safety Protocol - Loading and unloading

	RECEIVING COMPANY	EXTERNAL COMPANY
Company name		
Address		
Tel./Fax		
Name of manager		

Business hours of the receiving company for the reception of transporters

Place of operation: Date of operation:	

Type of action	Type of merchandise (specify):
❑ Unpacking of acid – soda ❑ Unpacking of fuel ❑ Unloading of coal ❑ Delivery of hazardous products ❑ Waste removal ❑ Loading/unloading of equipment ❑ Loading/unloading of merchandise ❑ Other:	❑ General merchandise ❑ Industrial waste ❑ Hazardous materials **Merchandise packaging** ❑ Bulk ❑ Pallet ❑ Parcel w/no pallet handling ❑ Other:

		attached to protocol	to be completed onsite
APPLICABLE DOCUMENTS	Specific instructions	❑	❑
	Environmental instructions (ref.)	❑	❑
	Emergency instruction sheets (ref.)	❑	❑
	Other documents	❑	❑

Emergency and first aid:		
First aid tel.:	Fire tel.:	Receiving company manager tel.:
Technical problem tel.:	Telephone number available for drivers:	

Operation location plan:		
(Attach site plan if one exists)	Plan reference	Approximate plan if no site plan:
• Loading and unloading areas • Standby parking areas • Traffic lanes and flows • Administrative offices for documents • Restrooms (toilets – sinks – showers) • Others	❑ ❑ ❑ ❑ ❑ ❑	

Receiving company equipment:		**Transporting company equipment:**		**PPE for transporter during loading/unloading**	
• Unloading dock	❑	• Auxiliary crane	❑	• Safety shoes	❑
• Bridge crane with driver	❑	• Pallet truck	❑	• Handling gloves	❑
• Power lift truck with driver	❑	• Hand truck/ Trolley	❑	• Helmet	❑
• Elec. or manual pallet truck	❑	• Tailgate lift	❑	• **Apron + gloves + glasses for unloading of products**	❑
• Hand truck/ Trolley	❑	• Tilting skip	❑	• Other:	❑
• Grounding device	❑	• Cistern	❑		
• Absorbing material in case of spillage	❑	• Light car/Heavy truck	❑		
• Fire-fighting facilities	❑	• Other:	❑		
• Showers/eyewash fountains	❑				
• Other:	❑				

Risks and preventative measures:			
	Risk taken into account	Instructions to be consulted	Preventative measures
• Chemical products	❑	❑	
• Falls/dropped equipment	❑	❑	
• Intoxication/Asphyxia	❑	❑	
• Muscular/skeletal problems	❑	❑	
• Cuts/crushing/jamming	❑	❑	
• Electrification	❑	❑	
• Fire/Explosion	❑	❑	
• Water/air/soil pollution via spills	❑	❑	

• Burial	❑	❑	
• Others	❑	❑	

General receipt and safety instructions to be strictly applied onsite:
1. Comply with the date of receipt listed and contact the manger of the receiving company before you arrive. 2. Let people know you're on the site before any loading or unloading operations. 3. Mention the purpose of your visit in the notebook or the register provided to that effect on each site. 4. Strictly follow any additional rules or instructions given to you. 5. Always bring personal protective equipment adapted to the operation to be carried out. 6. Before beginning any loading/unloading operation, locate brake, emergency shutoff, and alarm switches, fire-fighting facilities, absorbing materials in case of spillage, etc. 7. Let the sit manager know about any malfunctions. 8. Clean up and put things back in the loading/unloading area before leaving it. 9. Let people know you're leaving.

Date established	**Receiving company**	**External company**
	Person responsible: Title: Signature:	Person responsible: Title: Signature:

Schedule 3:
Terms of implementation

1 Ordering Terms

Before the fifteen (15th) of each calendar month (N), SVD 19 shall duly complete and send to Dalkia by fax at the number specified in **Article 25** a monthly delivery schedule (based on the model reproduced below) for the calendar month starting after the following calendar month (N+2).

External Biomass shall be delivered by Dalkia in compliance with such monthly delivery schedule.

Order Form [To be inserted]

2 Terms of unloading

2.1 Visit conditions

It its imperative that loading and unloading be carried out following the safety protocol attached in **Schedule 2**, as filled in upon receipt of the first delivery. The safety protocol may be updated and verified by the Parties during the term of the Contract.

Dalkia undertakes to put in place the means to ensure the protection of the employees it uses to perform the Supply. Generally speaking, Dalkia employees shall comply with any requests from SVD 19 for compliance with existing hygiene and safety regulations and the workplace regulations of the Plant.

2.2. Unloading of prepared External Biomass

External Biomass is supplied by Dalkia according to the Plant(s) plan(s) circulating seal(s) in Schedule 5. It is issued in accordance with the Delivery Points set out in Schedule 12.

Dalkia used vehicles with trailers moving floor 80 or 100 m^3 or 50 m^3 tipper.

The unloading of the truck by Dalkia into the receiving pit shall take a maximum of 15 minutes.

SVD 19 shall provide access for Dalkia vehicles instead of storage [device] and using a device that allows it to empty its load.

After each delivery, Dalkia shall ensure that the delivery area is in the state of cleanliness in which it was before the delivery.

SVD 19 is solely responsible for the maintenance and compliance of its equipment and facilities.

Unloading operations are performed by Dalkia at its own risk and responsibility.

External Biomass is stored at the risk of SVD 19, provided that Dalkia complies with the provisions of **Article 5.2.2** of the Contract.

2.3. Unloading of External Biomass to be prepared on the platform

Dalkia shall have a preparation platform for External Biomass located near the Plant. Dalkia shall store, at its own risk, External Biomass to be prepared on its platform preparation.

Delivery of External Biomass from the preparation platform to the Plant shall be performed at the Delivery Points specified in **Schedule 12** on a conveyor and a weigh tape constructed and operated by SVD 19.

External Biomass delivered to SVD 19 shall be stored at the risk of SVD 19, provided Dalkia complies with the provisions of **Article 5.2.2** of the Contract.

2.4. Delivery timetables

Dalkia shall arrange deliveries according to all data, as specified above.

Deliveries shall be made in the presence of SVD 19, during business days at the following times:

- from 5:00 a.m. to 6:00 p.m. Monday through Friday,
- from 5:00 a.m. to noon Saturday morning.

Dalkia shall stagger deliveries throughout the timeframe of receipt to avoid possible congestion problems.

3 Methods of Reception

3.1. Control of External Biomass

Prepared products shipped in the hopper are subject to a visual check before discharge from SVD 19 which may refuse delivery.

Deliveries of stumps and bundles of branches for grinding shall be received by Dalkia at the entrance to its platform. SVD 19 shall exercise its right to control the output of the chipper.

If SVD 19 refuses delivery, SVD 19 must initiate a control procedure as defined in **Schedule 10**.

Acceptance of delivery of External Biomass does not prejudice the outcome of any potential controls mentioned in Schedule 10 below.

3.2 Registration of deliveries of prepared External Biomass

For each delivery, Dalkia shall issue a delivery order stating:

- the order and Plant reference,
- the date of delivery,
- the delivery identification number,
- the quantity delivered,
- Origin of External Biomass and any information concerning traceability,
- Category of External Biomass as defined by the Specifications,
- the reference of the transporting vehicle (license plate number, transporter name).

3.3 Registration of shipments of External Biomass to be prepared

Each delivery of External Biomass to be prepared on the platform shall be registered by Dalkia according to its internal procedures. Once prepared, the amount of External Biomass (tonnage, dryness) will be measured by SVD 19 on the outgoing belt on the chipper (as described in **Schedule 12**) and following the procedure described in **Schedule 6**.

A reconciliation of SVD and Dalkia 19 records will be made monthly in order to verify the consistency of amounts after taking into account the change in stock (quantity, dryness) on the platform, waste, and any external resales.

3.4 Non-delivery or under-delivery

In the event of a non-delivery or under-delivery compared to the SVD 19 order, thus causing a stockout of the silo, the official report will be prepared by SVD 19 and sent to Dalkia by registered letter with acknowledgment of receipt.

3.5 Monthly summary

Every month, SVD 19 shall prepare for Dalkia a monthly summary of the amounts of energy delivered to the storage entrance.

Schedule 4:
Supply Plan

Schedule 5:
Access and traffic map(s)

[This Schedule shall be prepared within two (2) weeks as from the effective date of the Contract determined in accordance with Article 3.1 above]

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Schedule 6:
Metering of energy delivered

I – Preamble

Dalkia shall be paid based on the amount of energy delivered expressed in MWh NCV (megawatt hours lower heating value) and measured at the Delivery Points defined in **Schedule 12**.

External Biomass refers to a range of fuels whose properties may vary based on several factors:

- o seasonal variations
- o variations depending on the origin of the External Biomass
- o variations depending on the conditions of collection, storage, and preparation

The metering method adopted makes it possible to determine the amount of energy delivered, taking into account factors influencing the calorific value of the External Biomass.

II – Method of calculating the energy delivered

The energy in the External Biomass delivered is the sum of the following two terms:

- o energy contained in the delivered External Biomass prepared on Site
- o energy contained in the delivered External Biomass from the Dalkia preparation platform

An adjustment will be made at the end of each calendar year to reflect the average characteristics actually observed over the year (ash rate and NCV to pure).

II.1 – Energy contained in the delivered External Biomass prepared on Site

The amount of energy contained in the delivered External Biomass prepared on Site shall be calculated each month using the following formulas:

$$\boxed{E\_bio\_préparée = \sum_i \sum_j \frac{Q_{ij} \times PCI_{ij}}{3,6}}$$

With

$$\boxed{\mathrm{PCI}_{ij} = \mathrm{PCIpur}_i \times \frac{(100 - \mathrm{C}_i) \times (100 - \mathrm{H}_{ij})}{10000} - 2{,}443 \times \frac{\mathrm{H}_{ij}}{100}}$$

(Following the standard formula: Pr CEN/TS 14918: Solid Biofuels - Methods for the determination of calorific value/net calorific value at constant pressure)

Where:

- o E_ bio_préparée: Energy contained in delivered External Biomass prepared on site, expressed in MWh NCV

- Q_{ij}: Quantity of biomass in delivery j, from origin i, expressed in tons.

  This quantity Q_{ij} delivered shall be determined by the weight difference of the delivery truck (entry weighing/exit on Site weighbridge)
- Ci: Average ash rate of biomass from origin i, expressed as % of dry. This value will be adjusted at the end of each calendar year based on periodic analyses performed by the independent laboratory designated by the Parties in the manner provided in Schedule 10. The initial value of Ci is defined in Schedule 1 of the Agreement.
- Hij: Moisture content of delivery j, from origin i, expressed as % of gross. The moisture content shall be determined for each delivery j or an average daily sample of deliveries from origin i.
- PCIpuri: Average NCV out of pure of biomass from origin i, expressed in MJ/kg (value will range between 18.0 and 20.5 MJ/kg). This value will be adjusted at the end of each calendar year based on periodic analyses performed by an independent laboratory designated by the Parties in the manner provided in Schedule 10. The initial value of PCIpuri is defined in Schedule 1 of the Agreement.
- PCIij: NCV out of gross for delivery j, from origin i, expressed in MJ/kg, obtained by calculation
- i: the index i corresponds to the origin of the biomass
  As of this date, the various following origins i have been identified for the External Biomass supplied by Dalkia:
  1. wood chips from the grinding of bundles of branches
  2. wood chips from the grinding of stumps
  3. degraded bark and chips
  4. sawdust
  5. chips from the grinding of degraded logs

  This list may be arranged by mutual agreement between the Parties, should it become necessary to differentiate between two products of the same origin or to group origins together in order to improve the determination of the energy delivered.
- j: the index j corresponds to the reference of the delivery. An index j is assigned to each delivery of the prepared product by truck.

<u>II.2 – Energy contained in the External Biomass delivered from the Dalkia preparation platform</u>

Since the products prepared on the Dalkia platform are ground at a single facility, Dalkia shall provide a product mix. It is therefore not possible to determine the quantities of biomass by origin on the weighing equipment continuously on the belt.

The amount of energy contained in the External Biomass delivered from the Dalkia preparation platform will be calculated each month using the following formulas:

$$E\_bio\_plateforme = \sum_j \frac{Q_j \times PCI_j}{3,6}$$

With

$$PCI_j = PCIpur_m \times \frac{(100 - C_m) \times (100 - H_j)}{10000} - 2,443 \times \frac{H_j}{100}$$

(Following the standard formula: Pr CEN/TS 14918: Solid Biofuels – Methods for the determination of calorific value/net calorific value at constant pressure)

And

$$PCIpur_m = \frac{\sum_i Q_i \times PCIpur_i}{\sum_i Q_i}$$

$$C_m = \frac{\sum_i Q_i \times C_i}{\sum_i Q_i}$$

Where:

- E_ bio_plateform: Energy contained in the External Biomass delivered from the Dalkia preparation platform, expressed in MWh NCV
- Q_j: Quantity of biomass in delivery j, comprised of a product mix, expressed in tons.

  This amount will be determined by online delivery weighing equipment (weighing on belt with commercial precision). The amount determined by weighing Q_j online will match one-day delivery of the product mix.
- Q_i: Monthly amount of biomass from origin i entering the Dalkia preparation platform, expressed in tons.

  This amount will be reported monthly by Dalkia to SVD19 with the necessary documentation.
- Cm: Average monthly biomass ash rate, expressed as % of dry.
- Ci: Average ash rate of biomass from origin i, expressed as % of dry. This value will be adjusted at the end of each calendar year based on periodic analyses performed by the independent laboratory designated by the Parties in the manner provided in Schedule 10. The initial value of Ci is defined in Schedule 1 of the Agreement.

  $Cm = \sum_j C_i \times Qi/\sum Qi$
- Hj: Moisture content of delivery j, expressed as % of gross. The moisture content shall be determined for each delivery j or an average daily sample of deliveries. For products to be ground.
- PCIpurm: NCV out of pure of monthly biomass average, expressed in MJ/kg.
- PCIpuri: Average NCV out of pure of biomass from origin i, expressed in MJ/kg (value will range between 18.0 and 20.5 MJ/kg). This value will be

adjusted at the end of each calendar year based on periodic analyses performed by an independent laboratory designated by the Parties in the manner provided in Schedule 10. The initial value of PCIpuri is defined in Schedule 1 of the Agreement.

- PCIj: NCV out of gross for delivery j, expressed in MJ/kg, obtained by calculation
- i: the index i corresponds to the origin of the biomass
  As of this date, the various following origins i have been identified for the External Biomass supplied by Dalkia:

  1. wood chips from the grinding of bundles of branches
  2. wood chips from the grinding of stumps
  3. degraded bark and chips
  4. sawdust
  5. chips from the grinding of degraded logs

  This list may be arranged by mutual agreement between the Parties, should it become necessary to differentiate between two products of the same origin or to group origins together in order to improve the determination of the energy delivered.
- j: the index j corresponds to the reference of the delivery. An index j is assigned to each delivery lot for the products prepared on the Site, with one lot corresponding to a delivery day.

II.3 – Annual adjustment.

At the end of each calendar year, an adjustment shall be made to reflect the average characteristics of the External Biomass delivered during the first eleven (11) months of the year (PCIpuri and Ci). The energy in the External Biomass delivered during the year shall be recalculated based on:

- NCV out of pure for an average annual biomass from origin i established on the basis of laboratory analyses

- the average annual ash rate of the biomass from origin i established on the basis of laboratory analyses

Any differences between the amounts of energy billed monthly and the quantity recalculated at year end shall be adjusted on the December invoice.

Schedule 7:
Index Statement Order

Client:
………………………..
………………………..
………………………..
………………………..

Supplier:
………………………..
………………………..
………………………..
………………………..

Date …………………

In accordance with the Contract, we are sending you the technical parameters for the period:

Date : __/__/__/

Summary of indices for previous period:
- MWh at plant entry: ....
- Number of hours of operation:...

Date : __/__/__/

Index for period
- MWh at Plant entry: ....
- Number of hours of operation :...

For the period from __/__/__/ to __/__/__/
- Number of MWh produced
- Number of hours of operation
- Estimated inventory: …………………….Tons or m^3

Client signature:

Supplier signature:

Schedule 8:
Sample moisture measurement procedure
(Microwave method)

1. Object

This simplified procedure makes it possible to measure the average moisture rate of the wood fuels.

2. Equipment used

- one microwave oven;
- one scale with precision within one gram;
- one small dish made of inflammable material.

3. Notations

- m1: weight of small dish;
- m2: weight of dish with sample before placed in microwave oven;
- m3: weight of dish with sample after taken out of microwave oven.

4. Testing procedure

- Cover the dish with a layer of fuel and weigh both (m2).
- Put the filled dish in the microwave oven for one minute, weigh it, and repeat until brownish spots or smoke appears. Record the weight in m3.

Repeat the procedure three times.

5. Presentation of results

The humidity rate is:

$$H = 100 \times \frac{(m2 - m3)}{(m2 - m1)}$$

Take the average of the three measurements and report the results in the registration notebook.

Schedule 9:
Site map of the Plant and storage of External Biomass

Schedule 10:
External Biomass control and analysis methods

I – Objectives

The Contract provides for testing and analysis of External Biomass in order to:

- verify compliance of biomass with contractual and regulatory requirements
- determine the amount of energy delivered
- verify the proper functioning of the metering count

This Schedule specifies the means and methodologies adopted for the various controls and tests conducted *in situ* or by an independent laboratory chosen by the Parties.

II – On-Site inspection and analysis

II.1 – Control of delivery order

This control consists of verifying the consistency between the delivery order and the External Biomass delivered, and that the following information is correctly entered:

- Delivery date
- Identification number of delivery
- Name and address of the delivery company
- License plate number of the delivery vehicle
- Origin of the External Biomass and any information concerning traceability
- Category of biomass as defined by Specifications

I.2 - Visual Control of External Biomass

The purpose of the visual control before, during, or after unloading is to ensure that the External Biomass delivered complies with regulatory and contractual requirements and the delivery slip.

In the event that a visual control should discover a non-conforming delivery, SVD19 may:

- refuse receipt of delivery if non-conformity is noted before unloading;
- ask the supplier to stop unloading if non-conformity is noted during unloading. The non-unloaded portion of the delivery will be refused;
- evaluate the need to withdraw the non-compliant from the receiving pit or storage if the statement is made or after being unloaded. The costs resulting from such operation and the recovery of the non-compliant External Biomass will be paid by Dalkia.

II.3 – Weighing

The weight of the delivery trucks, loaded then empty, may be determined by deducting the mass delivered. This operation shall be done on the weighbridges located at the site entrance of the Invoiced Plant.

Continuous weighing on a conveyor belt is achieved by means of a weighing machine installed and operated by SVD 19 (weighing module that replaces a section of belt or a roller), coupled with a belt speed measuring and an integrator, which calculates the instantaneous flow rate and provides tabulation. The online weighing instruments used will have commercial precision (uncertainty of 0.5%).

This weighing equipment shall be regularly maintained and periodically undergo a metrology check by an authorized agency in accordance with the regulatory requirements applicable to this type of measuring instrument.

II.4 – Moisture measurements

Moisture content is measured by SVD 19 according to the procedure of the EN 14774 standard, Solid biofuels – Method for determining moisture content.

The moisture content of the External Biomass shall be determined by drying in an oven at 105°C of a representative sample until a constant mass is obtained. The sampling shall be conducted in accordance with the procedures outlined in Chapter IV of this Schedule.

The mass of the sample is determined using a scale with a precision of 0.1g.

$$\textit{Moisture of gross (\%)} = \frac{\textit{Weight of moist sample} - \textit{Weight of dry sample}}{\textit{Weight of moist sample}} \times 100$$

This measurement shall be used in particular for the determination of the energy delivered in accordance with Schedule 6.

Moreover, the analysis performed by an independent laboratory designated by the Parties shall verify the proper accuracy of this measurement and make possible the necessary corrections to the measurement chain.

If technological developments make possible a system of continuous moisture measurement with sufficient accuracy and reliability, the Parties may, by mutual agreement, make the decision to determine the energy delivered on the basis of the continuous measurement of moisture.

II.5 – Particle size

The control of particle size on Site will be conducted periodically by SVD 19. Its goal shall be to verify the following points:

- The fraction of fine particles (passing through a test sieve of 3.15 mm)
- The fraction of coarse particles (not passing through a test sieve of 63 mm)
- The maximum dimensions of particles

Sampling will be conducted in accordance with the procedures outlined in Chapter IV of this Schedule.

Particle measurement shall be conducted on control sieves with round holes (according to NF ISO 3310-2), after having reduced the biomass sample beforehand to less than 20% moisture by drying.

III – Controls and tests by an independent laboratory

III.1 – Choice of laboratory

The testing laboratory shall be chosen by mutual agreement between the Parties for a period of two (2) years.

The laboratory shall have all qualifications and credentials necessary to conduct the measurements stipulated pursuant to standards respecting biofuels.

III.2 – Audit of measurement process and control on site

SVD19 shall have the laboratory (or other verifying organization if the laboratory does not have the necessary expertise) verify on an annual basis the measurement process implemented on the Site for the metering and control of External Biomass.

III.3 – Laboratory Analysis

The following table defines a non-exhaustive list of analyses that can be performed on each External Biomass sample, as well as the analytical methods to use (otherwise the default standards commonly used for solid fuels shall be applied).

Parameters	Unit	Methods & Reference standards
Immediate analysis		
Moisture	% of gross	EN 14774 – 1 - Determination method of moisture content – Drier method Part 1: Total moisture – Reference method
Ash rate at 550°C	% of dry	EN 14775 – Determination method of ash content
HHV of dry	kJ/kg of gross	EN 14918 – Determination method of calorific value

NCV of dry	kJ/kg of dry	EN 14918 – Determination method of calorific value
NCV of gross	kJ/kg of gross	EN 14918 – Determination method of calorific value
Apparent density	apparent kg/m3	
Particle size *Fine particle rate <3.15mm* *Particle rate >63mm* *Maximum dimensions of particles*	 % of gross % of gross mm x mm x mm	NF ISO 3310 – Part 2 – Control sieve Technical requirements and verifications Control sieves made of perforated metal sheets - Type of orifices: Round holes - Biomass sample must be pre-dried in order to bring its moisture below 20% (see project CEN TC335 WG3 Solid Biofuels – Sample preparation)
Elemental analysis		
C	% of dry	
H	% of dry	
O	% of dry	
N	% of dry	
S	% of dry	Threshold of measurement < 0.01% of dry
Cl	% of dry	Threshold of measurement < 0.01% of dry
F	% of dry	Threshold of measurement < 0.01% of dry
Mineralization & metals		
Si	mg/kg of dry	
Ca	mg/kg of dry	
Na	mg/kg of dry	
K	mg/kg of dry	
Mg	mg/kg of dry	
P	mg/kg of dry	
Al	mg/kg of dry	
Fe	mg/kg of dry	
As+Sb+Cr+Co+Cu+Sn+Mn+Ni+V+Zn+Pb	mg/kg of dry	

Hg+Tl+Cd	mg/kg of dry	
Fusibility of ashes prepared at 550°C		
Deformation temperature	°C	
Fusibility temperature	°C	
Hemisphere temperature	°C	
Fluidity temperature	°C	
Flow temperature	°C	

Sampling shall be conducted in accordance with the procedures outlined in Chapter IV of this Schedule. SVD 19 shall inform Dalkia, which may witness the sampling.

The list of parameters analyzed shall be defined by SVD 19 based on the non-conformities that may be detected. It shall include at least the following parameters:

- Humidity
- Ash rate
- NCV

III.4 – Frequency of analyses

The frequency of external laboratory analyses shall be defined by SVD 19 based on the dispersion of analysis results and any identified non-conformities.

The frequency shall be at least one analysis per month.

IV – Sampling Protocol

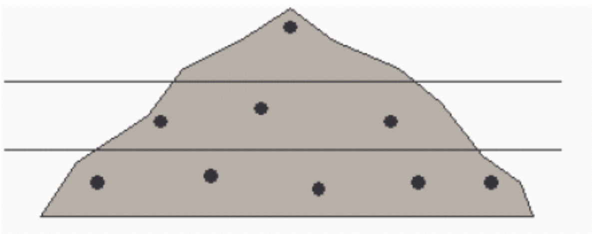
IV.1 – Sampling Procedure

Sampling shall be conducted in the spirit of the draft standard prEn 14778-1 Solid biofuels – Sampling Project – Part 1: sampling method.

IV.1.1 – Location of sampling

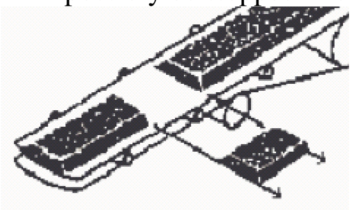
The sampling may be performed manually or by an automatic sampling system:

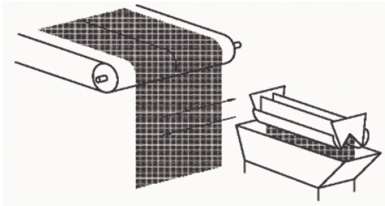
- In a heap (immobile product)
  The operator must visually divide the pile into 3 horizontal layers and collect samples from each layer in proportion to the volume contained in each (see diagram below). The samples in the lower layer must be made more than 30cm from the ground.



- In a continuous flow (product in motion)

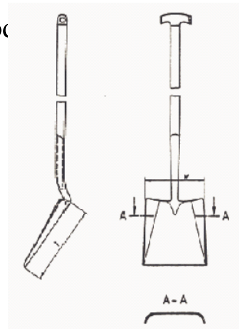
In the case of a streaming sample, the operator must sample the entire flow (across the whole width of the conveyor or chute) for the duration of the sampling. The belt or conveyor may possibly be stopped in order to sample a complete section of the product.





In the case of a sampling from a continuous flow, the samplings must be spaced out over a period equal to at least ten times the sampling time

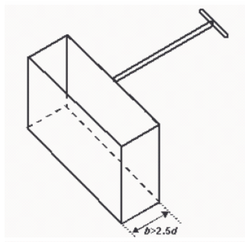
Article 1.1.1IV.1.2 – Sampling metho



The sampling shall be done using:

- a shovel with the following minimum dimensions:
  - products group 1 (d = 20mm): 5cmx10cm
  - Product group 2 (d = 40mm): 10cmx20cm
  - Product group 3 (d = 80mm): 20cmx40cm

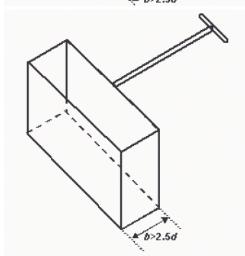
  ➩ to be used for sampling stationary piles



- <u>a sampling case with the following minimum dimensions:</u>
  - products group 1 (d=10mm) : 5cmx10cm x height 5cm
  - Product group 2 (d=40mm) : 10cmx20cm x height 10cm
  - Product group 3 (d=80mm) : 20cmx40cmx height 20cm

  ➩ To be used for sampling under a chute
  If there is no sampling case, a bucket with ϕ 25cm may be used.

- <u>an automatic sampling system on a belt or through drilling:</u>



Article 1.1.2IV.1.3 – Volume to be taken

The minimum volume per sample to be taken is more important for heterogeneous products and/or large particle size:

- products group 1: 1 liter
- Product group 2: 2 liters
- Product group 3: 13 liters

The volume taken must be identical for each sample from a single product.

IV.2 – Number of samples per batch

The creation of a representative batch of fuel will require the taking of several samples. The minimum number of samples to be taken to create a batch will depend on the heterogeneity and particle size of each type of product (classification in 3 groups), and the state of the product in which the sampling is carried out (immobile product or product in motion). The number of samples to be taken in a pile is higher than in a continuous flow, because the product is less homogeneous and classification by particle size or density is possible.

The following table summarizes the number of samples per batch to be taken for each product type:

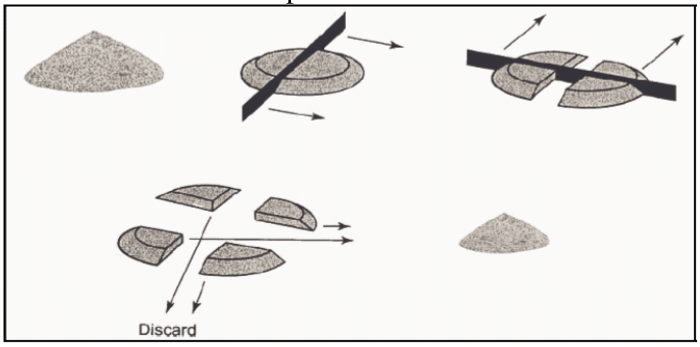
Product family	Classification Gr 1 homogenous <10mm Gr2 homogenous >10mm Gr3 homogenous	Minimum number of samples per lot (product in movement)	Minimum number of samples per lot (stationary product)
Bark	Group 3	12	24
Sawdust	Group 1	3	6
Industrial wood chips	Group 2	6	12
Other wood industry waste	Group 2	6	12
Wood chips	Group 2	6	12
Wood shavings from recycling	Group 3	12	24
Green waste	Group 3	12	24
Composting slivers	Group 3	12	24
Mixture	Group 3	12	24

The various samples are immediately collected in batches for each product type.

IV.3 - Reduced sample

From the samples taken for each type of biomass, a representative sample of each lot must be extracted. The sample reduction shall be carried out according to the standard CEN/TS 14780 – "Solid biofuels – Sampling Project – method of sample reduction.

Different samples from the same batch of product are mixed (e.g., shoveling of piles into a new pile) and an average sampling by quartering shall be carried out. The quartering (manual sampling) consists of an operation in which the biofuel is extended in an even layer on a dry and clean surface (or tarp) and divided into four equal parts by cutting at right angles (see fig. below). The quarters thus formed are used or rejected in order to reduce the sample to the desired size.



The various batches shall be reduced to obtain representative samples of about 5 kg. This operation shall be performed as soon as possible after sampling.

IV.4 – Packaging & shipping

The samples intended for the external laboratory shall immediately be packed in black plastic (trash-bag type) bags that have been hermetically sealed after expelling the air. Each bag shall then be placed in a sealed container (or box) for shipping with a label mentioning the reference sample (product name + sample no. + date)
Samples will be shipped as soon as possible to the laboratory approved by the parties.

The samples analyzed on the Site shall be packaged in a drum with a lid and analyzed as soon as possible.

Pending their analysis on the Site or their shipping, SVD19 shall make especially sure not to leave the samples under conditions of moisture or heat that could alter their characteristics.

IV – Traceability

SVD 19 shall ensure a rigorous traceability of samples:

- Reference sample (product name + sample no.) -> record on the sample
- Date and time of sampling
- Place of sampling

- Method of sampling
- Type of packaging
- Name of sampler
- any specific information regarding the sampling

Schedule 11:
Specifications

Schedule 12:
Delivery points

The delivery points for the External Biomass on the Site are set:

- For External Biomass prepared in the unloading pit built and operated by SVD 19,
- For External Biomass to be prepared at the exit to the Dalkia chipper on a mat and a weighing on a belt built and operated by SVD 19.

These delivery points will be mentioned on the final plan for the Site.

Schedule 1j)

Subscription Agreement

Subscription Agreement Cover Note[1]

Agreed basis for the determination of the number of shares and preferred equity certificates to be issued pursuant to this subscription agreement, and their terms

Capitalized terms in this cover note shall, unless otherwise defined, have the respective meanings given to them in the share sale and purchase agreement to which this subscription agreement is appended.

The total amount (the "**Total Subscription Amount**") to be paid at Closing in consideration of the issue of shares and preferred equity certificates pursuant to this subscription agreement shall be equal to the amount by which the sum of: (i) the amount paid by Bidco to the Seller in consideration of the sale, transfer and delivery of the Shares; (ii) the amount required to discharge the Closing Shareholder's Loan; and (iii) the costs to be paid by Bidco in connection with the Transaction, including KKR's costs, exceeds the net funds obtained from third party finance providers for the purposes of the consummation of the Transaction.

Following the determination of the Total Subscription Amount, KKR shall determine: (i) the number of preferred equity certificates and their terms and issue price; and (ii) the number of shares in each class and their terms and issue price, to be issued pursuant to this subscription agreement in consideration of the Total Subscription Amount. The terms and issue price of all shares in each class and of all the preferred equity certificates shall be the same.

The Dalkia subscription percentage (the "**Dalkia Subscription Percentage**") shall be 15 percent or, if less, the percentage that is equal to Euros 5,000,000 (five million) expressed as a percentage of the Total Subscription Amount. The Dalkia Shareholder shall subscribe for the Dalkia Subscription Percentage of all the shares in each class, and the Dalkia Subscription Percentage of all the preferred equity certificates, to be issued pursuant to this subscription agreement in consideration of the Total Subscription Amount, and shall in consideration thereof pay the Dalkia Subscription Percentage of the Total Subscription Amount at Closing.

The KKR subscription percentage shall be 100 percent less the Dalkia Subscription Percentage (the "**KKR Subscription Percentage**"). Washington Investment Luxembourg and (with respect to a nominal amount) the KKR Funds shall, in such percentages as they shall determine in their sole discretion, subscribe for the KKR Subscription Percentage of all the shares in each class, and the KKR Subscription Percentage of all the preferred equity certificates, to be issued pursuant to this subscription agreement in consideration of the Total Subscription Amount, and shall in consideration thereof pay the KKR Subscription Percentage of the Total Subscription Amount at Closing, provided that the KKR Subscription Percentage of the Total Subscription Amount shall be reduced by Euros 12,500 (twelve thousand five hundred) to account for the initial share capital held by Washington Investment Luxembourg.

[1] Subject to review by Dalkia Luxembourg counsel.

[Washington Investment Luxembourg 2] S.à.r.l.
Société à responsabilité limitée.

L-2440 Luxembourg, 61 rue de Rollingergrund
R.C.S. Luxembourg B [***number pending***]

Subscription Agreement

for Shares and PECs

Between

[Washington Investment Luxembourg 2] S.à.r.l.

And

KKR Global Infrastructure Investors L.P. and

KKR European Infrastructure Investors L.P.

And

Washington Investment Luxembourg S.à.r.l.

And

[Dalkia Shareholder]

dated __________2011

This subscription agreement (this "**Agreement**") dated ____________ 2011[2] has been entered by and between:

(1) **[Washington Investment Luxembourg 2] S.àr.l.**, a société à responsabilité limitée, incorporated and existing under Luxembourg law with its registered office at L-2440 Luxembourg, 61 rue de Rollingergrund, and registered under number R.C.S. Luxembourg B [***number pending***] (the "**Company**");

(2) **Washington Investment Luxembourg S.àr.l.**, a société à responsabilité limitée, incorporated and existing under Luxembourg law with its registered office at L-2440 Luxembourg, 61 rue de Rollingergrund, and registered under number R.C.S. Luxembourg B [x] ("**Washington**");

(3) **KKR Global Infrastructure Investors L.P. and KKR European Infrastructure Investors L.P.** (together, the **"KKR Subscribers**"); and

(4) **[Dalkia Shareholder]** (the "**Dalkia Subscriber**").

Washington, the KKR Subscribers and the Dalkia Subscriber are, collectively, the "**Subscribers**", and the Subscribers and the Company are, collectively, the "**Parties**".

WHEREAS

(A) The Company has a share capital of Euros 12,500 (twelve thousand five hundred), comprising 1,250,000 (one million two hundred and fifty thousand) shares with a par value of Euros 0.01 (one Euro cent) each, all of which are legally and beneficially owned by Washington.

(B) The Subscribers wish to subscribe for shares of different classes in the Company and the Company wishes to accept such subscription and to issue shares of different classes to the Subscribers pursuant to, and on the terms of, this Agreement.

(C) The Subscribers wish to subscribe for PECs (as defined below) and the Company wishes to accept such subscription and to issue PECs (as defined below) to the Subscribers pursuant to, and on the terms of, this Agreement.

[2] NTD: to be entered into on the 5th Business Day prior to the Closing Date, after the satisfaction (or waiver) of all conditions precedent, other than those to be satisfied (or waived) on the Closing Date.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:

Clause 1. **Definitions, Interpretation**

1.1 Capitalised terms used herein shall have the following respective meanings:

Articles	means the amended and restated articles of the Company in the form attached as Schedule 2
Business Day	means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in France, Luxembourg or New York;
Closing Date	has the meaning ascribed to it in the SPA
EGM	has the meaning ascribed to it in Clause 5
EGM Proxy	means the proxy to be granted by each Subscriber to be represented at the EGM substantially in the form attached as Schedule 4
Instrument	means the instrument providing for the terms and conditions of preferred equity certificates (PECs) of the Company in the form attached as Schedule 3[3]
Issue Price	means the aggregate of the Share Issue Price and the PEC Issue Price
PEC	means a preferred equity certificate issued by the Company on the terms of the Instrument
PECs Issue Price	means a total of EUR[] (being EUR [] for each PEC)
Premium	means the difference between the Share Nominal and the Share Issue Price
Resolutions	means the resolutions to be passed at the EGM as set out in Clause 5
Share Issue Price	means a total of EUR[] (being EUR [] for each Subscribed Share)
Share Nominal	means the aggregate nominal value of the Subscribed Shares (the nominal value for each Subscribed Share being an amount of EUR [0.01]), being a total of EUR[]
SPA	means the agreement between [Bidco], Valmy Energies Biomasse and Dalkia France for the sale and purchase of the entire share capital of Société Valmy Défense 19

[3] Subject to Dalkia review and acceptance of terms of the PEC Instrument.

Subscribed PECs	means the [] PECs subscribed for by the Subscribers hereunder
Subscribed Shares	means [] shares in the Company of Class [A], [] shares in the Company of Class [B], [] shares in the Company of Class [C], [] shares in the Company of Class [D], [] shares in the Company of Class [E], [] shares in the Company of Class [F], [] shares in the Company of Class [G], [] shares in the Company of Class [H], [] shares in the Company of Class [I], and [] shares in the Company of Class [J].
Subscription Date	means the [second][4] Business Day before the Closing Date.

1.2 In this Agreement:

A reference to a company or other legal entity shall be construed so as to include any legal entity or entities into which such company may be merged by means of a statutory merger or into which it may be split up or demerged, by means of a statutory split-up or demerger.

A reference to the singular includes a reference to the plural and vice versa.

A reference to the masculine includes a reference to the feminine and neuter and vice versa.

A reference to "includes" or "including" means "including but without limiting the generality of the foregoing".

A reference to a Schedule or Clause means a schedule or clause of this Agreement unless expressly stated otherwise.

Clause 2. **Subscription for Shares**

2.1 Each of the Subscribers hereby undertakes to subscribe on the Subscription Date for the number of Subscribed Shares in each class set forth against its name in column 2 of Schedule 1 (and in aggregate for the number of Subscribed Shares set forth against its name in column 3 of Schedule 1) and undertakes to fully pay to the Company the portion of the Share Issue Price set forth against its name in column 4 of Schedule 1 on the Subscription Date.

2.2 Each Subscribed Share is to be issued for the Share Issue Price.

[4] NTD: This is the likely timing, but to be confirmed in the context of the preparation of the Funds Flow Memo prior to closing; however, will not be longer than 3 Business Days and will not be shorter than 1 Business Day prior to the Closing Date.

2.3 The Company accepts the subscription for the Subscribed Shares by each Subscriber and undertakes, subject to due receipt by the Company of a Subscriber's portion of the Share Issue Price on the Subscription Date, to issue to such Subscriber on the Subscription Date the Subscribed Shares set forth against its name in column 2 of Schedule 1.

Clause 3. **Subscription for PECs**

3.1 Each of the Subscribers hereby undertakes to subscribe on the Subscription Date for the Subscribed PECs set forth against its name in column 5 of Schedule 1 and undertakes to fully pay to the Company the portion of the PEC Issue Price set forth against its name in column 6 of Schedule 1 on the Subscription Date.

3.2 Each Subscribed PEC is to be issued for the PEC Issue Price.

3.3 The Company accepts the subscription for the Subscribed PECs by each Subscriber and undertakes, subject to due receipt by the Company of a Subscriber's portion of the PEC Issue Price on the Subscription Date, to issue to such Subscriber on the Subscription Date the Subscribed PECs set forth against its name in column 5 of Schedule 1.

Clause 4. **Payment of Issue Price**

Each of the Subscribers shall pay its portion of the Issue Price (as set forth against its name in column 7 of Schedule 1) to the Company by wire transfer to the following bank account on the Subscription Date[5]:

Bank Name:
IBAN:
BIC:

Clause 5. **EGM**

5.1 The Company shall forthwith convene an extraordinary general shareholder meeting (the "**EGM**") to be held on the Subscription Date with on its agenda resolutions to (i) amend and restate the articles of incorporation of the Company in the form of the Articles, (ii) increase the share capital of the Company and issue Shares to each Subscriber in accordance with Clauses 2 and 3 respectively; and (iii) allocate the Share Nominal to its share capital account and the Premium to its share premium account.

5.2 Each of the Subscribers shall execute and deliver to the Company on the date hereof the EGM Proxy in order for each Subscriber to be duly represented at the EGM.

Clause 6. **Termination**

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[5] Subject to Dalkia being satisifed as to protection of its interest in recovering funds in case Closing does not occur and to discussion as to tax review as to advisability of PECs (or loans) over shares pending Closing with understanding that PECs/shares could be capitalized at or after Closing.

6.1 The obligations of each Subscriber hereunder are irrevocable and, subject only to the adoption of the Resolutions, not subject to any condition precedent. This Agreement may be terminated only (i) by written agreement executed by all of the Parties or (ii) in the event that the SPA is terminated in accordance with its terms on or prior to the Subscription Date and in any case prior to the issuance of any Subscribed Shares or Subscribed PECs. If this Agreement is terminated pursuant to this Clause 6.1, all further rights and obligations of the Parties hereunder shall terminate without any liability of any Party to the others, provided that the rights and obligations set forth in this Clause 6.1, Clause 12 and Clause 13 shall survive, and provided, further, that nothing in this Clause 6 shall be deemed to release a Party from any liability for any breach by such Party of the terms of this Agreement pre-dating the termination and that the Parties' right to pursue all legal remedies in respect thereof shall survive such termination unimpaired.

6.2 If the SPA is terminated after the issuance of any Subscribed Shares or Subscribed PECs, the Parties shall:

6.2.1 procure that an extraordinary general shareholder meeting of the Company is convened as soon as is reasonably practicable with on its agenda resolutions to: (a) redeem the Subscribed Shares that have been issued for their Share Issue Price, and (b) reduce the share capital of the Company in the amount of such Subscribed Shares, and vote in favor of such resolutions;

6.2.2 procure that the Company redeems the Subscribed PECs that have been issued for their PEC Issue Price, minus the aggregate amount of any unreimbursed or unpaid costs and expenses incurred by the Company as reasonably determined by the Company (which amount shall be deducted from the redemption price of all of the Subscribed PECs to be redeemed, on a proportionate basis)[6]; and

6.2.3 take all such other actions as are reasonably required in connection with the foregoing.

Clause 7. **Representations and warranties**

7.1 Each of the Subscribers hereby represents and warrants to the Company for itself that:

7.1.1 the execution of, and the performance by, such Subscriber of its obligations under this Agreement (x) complies with all relevant laws and regulations, (y) does not require, conflict with or result in a breach of any registration, licence, consent or approval of any governmental or regulatory authority or third party, and (z) does not conflict with or result in a breach of any provisions of any agreement, instrument, judgment or order by which such Subscriber is bound or of its constitutional documents;

7.1.2 such Subscriber is duly incorporated, formed or organised and validly existing under the laws of its jurisdiction of incorporation or formation and has and will have the corporate or other power and authority to make, execute, deliver and perform this Agreement and the other documents executed by such Subscriber in relation therewith, and this Agreement and the other documents executed by such

[6] Subject to Dalkia being satisfied as to likely quantum and reasonableness of costs.

Subscriber in relation therewith have been duly authorised and approved by all required corporate or other action of such Subscriber and such Subscriber has obtained all applicable governmental, statutory, regulatory or other consents, licences, authorisations, waivers or exemptions required for it to enter into and perform its obligations under this Agreement;

7.1.3 this Agreement constitutes valid and binding obligations of such Subscriber enforceable in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity; and

7.1.4 such Subscriber has full and sufficient knowledge of the Company, the Articles and the Instrument, and such Subscriber expressly acknowledges that neither the Company nor any of its subsidiaries nor any of its shareholders nor any of their respective officers, directors, employees, agents, partners, advisors, attorneys-in-fact or affiliates has made any representations or warranties to such Subscriber with respect to its investment in the Company or otherwise with respect to the value of an investment in the Company.

7.2 The Company represents and warrants to the Subscribers that[7]:

7.2.1 the execution of, and the performance by the Company of its obligations under this Agreement (x) complies with all relevant laws and regulations, (y) does not require, conflict with or result in a breach of any registration, licence, consent or approval of any governmental or regulatory authority or third party, and (z) does not conflict with or result in a breach of any provisions of any agreement, instrument, judgment or order by which the Company is bound or of its constitutional documents;

7.2.2 the Company is a *société à responsabilité limitée* duly organised and validly existing under the laws of Luxembourg and has and will have the corporate power and authority to make, execute, deliver and perform this Agreement and the other documents executed by the Company in relation therewith, and this Agreement and the other documents executed by the Company in relation therewith have been duly authorized and approved by all required corporate or other action of the Company and the Company has obtained all applicable governmental, statutory, regulatory or other consents, licences, authorisations, waivers or exemptions required for it to enter into and perform its obligations under this Agreement, subject only to the passing of the Resolutions;

7.2.3 this Agreement constitutes valid and binding obligations of the Company enforceable in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity; and

7.2.4 the Subscribed Shares and the Subscribed PECs will, upon issue in accordance with this Agreement, be issued fully paid.

[7] Definitive agreement to include representation that the Company is newly formed, has had no activity and has no liabilities.

Clause 8. **Further assurances**

Each of the Parties agrees to do such further reasonable acts and take all necessary or advisable reasonable steps for the implementation of this Agreement and to execute and deliver any and all such further agreements, instruments or documents consistent herewith, and to take any and all such further action as another Party may reasonably request, as may be necessary or desirable to consummate, evidence or confirm the agreements contained in this Agreement.

Clause 9. **Severability**

If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in this Agreement but without invalidating any of the remaining provisions of this Agreement.

Clause 10. **Variation**

10.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties. The expression "variation" shall include any variation, supplement, deletion or replacement however effected.

10.2 Unless expressly agreed, no variation shall constitute a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent that they are so varied.

Clause 11. **Counterparts**

This Agreement may be executed in any number of counterparts and by way of facsimile or scanned PDF exchange of executed signature pages, all of which together shall constitute one and the same agreement

Clause 12. **Applicable law**

This Agreement shall be exclusively governed by and construed, in all respects, in accordance with the laws of Luxembourg.

Clause 13. **Jurisdiction**

Any disputes however arising under this Agreement shall be subject to the exclusively jurisdiction of the courts of Luxembourg City.

IN WITNESS THEREOF the Parties hereto have executed this Agreement in one or multiple original counterparts, all of which together evidence the same agreement, on the day and year first written above.

The Subscribers

WASHINGTON INVESTMENT LUXEMBOURG S.ÀR.L.

Signed: ___________________________
Name:
Title:

KKR GLOBAL INFRASTRUCTURE INVESTORS L.P.

By: KKR Associates Infrastructure L.P.,
its general partner

By: KKR Infrastructure Limited,
its general partner

Signed: ___________________________
Name:
Title:

KKR EUROPEAN INFRASTRUCTURE INVESTORS L.P.

By: KKR European Infrastructure Limited,
its general partner

Signed: ___________________________
Name:
Title:

[DALKIA ENTITY]

Signed: ___________________________
Name:
Title:

IN WITNESS THEREOF the Parties hereto have executed this Agreement in one or multiple original counterparts, all of which together evidence the same agreement, on the day and year first written above.

The Company

[Washington Investment Luxembourg 2] S.àr.l.

Signed: ___________________________
Name:
Title:

Schedule 1

Subscriber	**Number of Subscribed Shares per Subscriber of each class [A] to [J]**	**Total number of Subscribed Shares per Subscriber (all classes)**	**Portion of Share Issue Price per Subscriber**	**Number of Subscribed PECs per Subscriber**	**Portion of PEC Issue Price per Subscriber**	**Portion of Issue Price per Subscriber (column 4+6)**
Column 1	*Column 2*	*Column 3*	*Column 4*	*Column 5*	*Column 6*	*Column 7*
Washington						
[KKR entities]						
Dalkia Subscriber						
Total						

Schedule 2

Articles

Schedule 3

Instrument

Schedule 4

Form of Proxy for EGM

The undersigned, [], [details]

[acting through its general partner []]

hereby irrevocably appoints as its special proxy Me Toinon Hoss, Me François Felten, Me Susanne Goldacker, Me Miriam Schinner, Me Maryline Estevez and Me Thomas Lefebvre, each acting alone and with full power of substitution (each a "**Proxyholder**")

(i) to represent the undersigned at the extraordinary general meeting of the shareholders of **[Washington Investment Luxembourg 2] S.àr.l.**, a société à responsabilité limitée, with registered office at L-2440 Luxembourg, 61, rue de Rollingergrund, and registered under number R.C.S. Luxembourg B [***pending***] (the "**Company**") to be held in Luxembourg with the following agenda,

AGENDA

[A. to amend and restate the articles of incorporation of the Company in the form of the Articles;

B. to increase the share capital of the Company and issue Shares and PECs to each Subscriber; and

C. to allocate the Share Nominal to the Company's share capital account and the Premium to its share premium account] [***Note: detailed resolutions to be inserted in due course.***]

and without limitation,

(ii) to subscribe on behalf of, and in the name of, the undersigned to [] of different classes as set forth in the table set forth in the agenda for a total subscription price of [];

(iii) in general to do and perform any and all acts and deeds which be necessary or useful in the accomplishment of the present proxy.

The undersigned further hereby expressly confirms that the undersigned hereby agrees to fully indemnify each Proxyholder, and shall keep each Proxyholder fully indemnified, against any costs, claims, expenses, losses, liabilities and damages suffered by such Proxyholder in connection with the powers granted to her in the present proxy or in the exercise of any of the powers conferred, or purported to be conferred, on her by this proxy. The undersigned further hereby expressly confirms that it agrees to ratify and confirm all documents, deeds, acts and things which any of the Proxyholder execute, do or purport to exercise or do in the exercise of any of the powers conferred, or purported to be conferred, by the present proxy.

The present proxy shall be valid until [] 2011.

Done on ________________ 2011

[ ]
Acting through

____

Represented By: …………………………

Title: ……………………………………...

Schedule 1k)

Equity Commitment Letter

[●], 2011

[Washington Investment Luxembourg 2 S.à r.l.]
[address]

[Bidco]
[Address]

Re: Equity Commitment

Dear Sirs:

Reference is made to the Share Sale and Purchase Agreement dated on or about the date hereof (as amended from time to time, the "SPA") by and among [Bidco] ("Bidco"), Valmy Energies Biomasse (the "Seller") and Dalkia France relating to the acquisition (the "Transaction") by Bidco of the entire issued share capital of Société Valmy Défense 19 (the "Company"). Initially capitalized terms used but not defined herein shall have the meanings given to them in the SPA.

1. (a) Subject to the terms of Paragraph 2, (i) each of the undersigned investment funds advised by Kohlberg Kravis Roberts & Co. L.P. (each, an "Investor" and, collectively, the "Investors") agrees that it will cause Washington Investment Luxembourg 2 S.à r.l. ("Luxco 2") to receive by way of one or more direct or indirect capital contributions (which contributions may take the form of ordinary equity, preferred equity, other equity or debt securities or shareholder loans, collectively, "Contributions"), in immediately-available, euro-denominated funds, an amount equal to the percentage set forth opposite such Investor's name in Annex 1 multiplied by the KKR Equity Amount (defined below) (for each Investor, as may be revised in accordance with this letter agreement, its "Equity Commitment") and (ii) Luxco 2 will cause Bidco to receive by way of one or more direct or indirect Contributions, in immediately-available, euro-denominated funds, an amount equal to the sum of the proceeds of the Equity Commitments, along with the proceeds of the Dalkia Equity Amount (defined below) and the net proceeds of the Financing, for Bidco's use to pay the Closing Uses on the Closing Date (or, with respect to transaction costs, except as otherwise required by the SPA, after the Closing Date as determined by Bidco).

(b) The Investors may amend Annex 1 to revise their respective existing Equity Commitments, and Bidco hereby consents to any such amendment, provided that (i) the aggregate of each of the Equity Commitments prior to such amendment equals the aggregate of each of the Equity Commitments after such amendment, and (ii) after giving effect to such amendment, the representations and warranties of each Investor in Paragraph 3 remain true. An Investor will not be under any obligation at any time to fund, or to cause there to be funded, more than its Equity Commitment. Luxco 2 will not have any obligation at any time to procure the funding of any amount to Bidco unless (and only to the extent) that funds are received by Luxco 2 as contemplated by this letter agreement.

(c) As used herein, (i) the term "KKR Equity Amount" means the amount equal to (x) the sum of (1) the Estimated Share Purchase Price, (2) the Closing Shareholder's Loan [Estimate] and (3) the amount of transaction costs payable by Bidco (as determined by Bidco in its sole discretion) (the sum of (1), (2) and (3) being the "Total Uses of Closing Funds"), less (y) the net proceeds of the Financing, less (z) the Dalkia Equity Amount; and (ii) the "Dalkia Equity Amount" means the amount of the funding to be provided to Luxco 2 by [Dalkia entity] pursuant to the Subscription Agreement.

(d) None of the Investors shall have any liability, obligation or commitment of whatever nature, known or unknown, whether due or to become due, assigned or unassigned, absolute, contingent or otherwise (collectively, "Liability") under or in respect of the Equity Commitment of any other Investor, for the Dalkia Equity Amount or for the Financing.

2. The obligations of each Investor and Luxco 2 under Paragraph 1 are subject to all of the conditions precedent in clauses 3.1 and 3.2 of the SPA (except for those conditions precedent which are only able to be satisfied on the Closing Date, provided that such conditions precedent are satisfied or waived on the Closing Date) being satisfied or waived in accordance with the terms of the SPA.

3. Each party to this letter agreement hereby represents and warrants to each other as follows:

(i) such party is duly organized, validly existing and in good standing (to the extent its jurisdiction of organization recognizes the concept of good standing) under the laws of its jurisdiction of organization;

(ii) the execution, delivery and performance of this letter agreement by such party is within its corporate, limited liability company or partnership powers and has been duly authorized by all necessary action, and no other proceedings or actions on the part of such party are necessary to perform its obligations hereunder;

(iii) this letter agreement is a valid and binding obligation of such party, enforceable against it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally or by general principles of equity; and

(iv) the execution, delivery and performance by such party of this letter agreement does not and will not (1) violate the organizational documents of such party, (2) violate any applicable law or court or governmental order to which such party or any of its assets are subject or (3) require any consent or other action by any person under, constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in any breach of or give rise to any right of termination, cancellation, amendment or acceleration of, any right or obligation of such party, except for such violations, consents, actions, defaults, rights or obligations which would not adversely affect such party's ability to perform its obligations hereunder.

4. This letter agreement shall terminate and be of no further force or effect immediately and automatically upon the earlier of (i) the time of consummation of the Transaction, (ii) the time of termination of the SPA in accordance with its terms, and (iii) the Seller

or the Company or any of their respective affiliates asserting in any litigation or other proceeding any claim against any Investor or Luxco 2 or any of their respective affiliates (other than Bidco) in connection with the SPA or any transactions contemplated hereby and thereby (except to the extent expressly contemplated by the first sentence of Paragraph 5). Notwithstanding anything to the contrary in this letter agreement, this Paragraph 4 and Paragraphs 5 through 12 shall survive indefinitely any termination of this letter agreement.

5. The parties to this letter agreement acknowledge and agree that [deleted text] the Seller is hereby made a third party beneficiary of the rights granted to Luxco 2 and Bidco pursuant to this letter agreement and that the Seller shall have the right to enforce, subject to the restrictions and limitations of this letter agreement, the rights and remedies of Bidco in this letter agreement. Subject to the terms of the foregoing sentence, nothing in this letter agreement, express or implied, is intended to confer on any person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this letter agreement, except that Non-Liable Persons (as defined in Paragraph 6) shall be entitled to enforce the terms of Paragraph 6, provided that the parties hereto shall be entitled to amend the terms of this letter without the consent of any such Non-Liable Persons. Except to the extent expressly contemplated by the first sentence of this Paragraph 5, none of Luxco 2's or Bidco's creditors shall have any right to enforce this letter agreement or to cause Luxco 2 or Bidco to enforce this letter agreement, and each of Luxco 2 and Bidco hereby agrees, on behalf of itself and its successors, that in the event of any attempted enforcement of this letter agreement by it in circumstances where Luxco 2 or Bidco is controlled by its creditors, it waives all rights hereunder. No term of this letter agreement shall be enforceable by a third party except as described in this Paragraph 5.

6. Notwithstanding anything that may be expressed or implied in this letter agreement, each of Luxco 2 and Bidco, by its acceptance of the terms hereof, covenants, agrees and acknowledges that no person other the parties hereto shall have any Liability hereunder and that no recourse hereunder or under any documents or instruments delivered in connection herewith shall be had against, and no personal Liability whatsoever shall attach to, be imposed on or otherwise be incurred by, any former, current or future director, officer, employee, agent, manager, member, stockholder or affiliate of any Investor, Luxco 2 or Bidco or any former, current or future director, officer, employee, agent, general or limited partner, manager, member, stockholder or affiliate of any of the foregoing (collectively, the "Non-Liable Persons"), whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, for any obligations of any Investor, Luxco 2 or Bidco under this letter agreement or any documents or instruments delivered in connection herewith or for any claim based on, in respect of or by reason of such obligations or their creation (and notwithstanding that any party hereto is a partnership).

7. Neither this letter agreement nor any of the rights and benefits hereunder shall be assigned or otherwise transferred, in whole or in part, by any party hereto without the consent of the other parties hereto.

8. The parties hereto acknowledge and agree that each provision of this letter agreement is an essential and integral part of the entire agreement and understanding among the

parties hereto in respect of the subject matter hereof. Accordingly, if any term or other provision of this letter agreement is adjudicated to be invalid or unenforceable, all of the other terms or provisions of this letter agreement shall be void.

9. This letter agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements, written or oral, between them in respect thereof.

10. This letter agreement and all matters arising out of or relating in any way whatsoever (whether in contract, tort or otherwise) to this letter agreement shall be governed by and construed in accordance with the laws of the State of New York of the United States of America. All actions arising out of or relating to this letter agreement shall be heard and determined exclusively in any New York state or federal court, in each case, sitting in the Borough of Manhattan of The City of New York. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the Borough of Manhattan of The City of New York for the purpose of any action arising out of or relating to this letter agreement brought by any party hereto and (b) to the fullest extent permitted by law, irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, that the venue of the action is improper, or that this letter agreement or the transactions contemplated hereby may not be enforced in or by any of the above-named courts. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER AGREEMENT.

11. The obligations of the Investors under this letter agreement are several, and not joint and several, obligations of each Investor.

12. This letter agreement may be executed in counterparts.

Yours faithfully,

KKR GLOBAL INFRASTRUCTURE INVESTORS L.P.

By: KKR Associates Infrastructure L.P.,
its general partner

By: KKR Infrastructure Limited,
its general partner

By: ______________________
Name:
Title:

KKR EUROPEAN INFRASTRUCTURE INVESTORS L.P.

By: KKR European Infrastructure Limited,
its general partner

By: ______________________
Name:
Title:

KKR GLOBAL INFRASTRUCTURE INVESTORS SBS L.P.

By: KKR Associates Infrastructure SBS L.P.,
its general partner

By: KKR Infrastructure SBS Limited,
its general partner

By: ______________________
Name:
Title:

Accepted and Agreed
as of the date first above written:

[WASHINGTON INVESTMENT LUXEMBOURG 2 S.À R.L.]

By: ____________________________
Name:
Title:

[BIDCO]

By: ____________________________
Name:
Title:

Annex 1

KKR Global Infrastructure Investors L.P.	[x.xx]%
KKR European Infrastructure Investors L.P.	[x.xx]%
KKR Global Infrastructure Investors SBS L.P.	[x.xx]%
Total:	**100.00%**

Schedule 2

Smurfit Agreements

Schedule 2a)

Amendment

ADDENDUM TO THE OPERATING CONTRACTS OF 7 AUGUST 2008[1]

BY AND AMONG THE UNDERSIGNED:

1. **Smurfit Kappa Cellulose du Pin,** a *société par actions simplifiée* (simplified joint stock company) with a registered capital of 45,857,826 euros, having its registered offices at Allée des Fougères - Usine de Facture, Biganos (33380), registered in the Bordeaux Trade and Companies Register under the number 572 142 198, represented by Mr [•], duly authorised for this purpose,

hereinafter referred to as "**SKCP**",

of the first part,

AND:

2. **Société Valmy Défense 19 – SVD 19**, a *société par actions simplifiée* (simplified joint stock company) with a registered capital of 37,000 euros, having its registered offices at 37, avenue du Maréchal de Lattre de Tassigny, Saint-André-Lez-Lille (59350), registered in the Lille Trade and Companies Register under the number 497 908 632, represented by [•], in his capacity as [•], duly authorised for this purpose,

hereinafter referred to as "**SVD 19**"

of the second part,

AND:

3. **Dalkia France**, a *société en commandite par actions* (partnership limited by shares), with a registered capital of 220,047,504 euros, having its registered offices at 37, avenue du Maréchal de Lattre de Tassigny, Saint-André-Lez-Lille (59350), registered in the Lille Trade and Companies Register under the number 456 500 537, represented by [•], in his capacity as [•], duly authorised for this purpose,

hereinafter referred to as "**Dalkia France**",

of the third part,

AND:

4. **Smurfit Kappa Comptoir du Pin,** a *société par actions simplifiée* (simplified joint stock company) with a registered capital of 2,268,225 euros, having its registered offices at 12 bis, avenue Gustave Eiffel, Pessac (33600), registered in the Bordeaux Trade and Companies Register under the number 780 111 357, represented by Mr [•], duly authorised for this purpose

hereinafter referred to as "**SKCDP**",

of the fourth part,

The parties of the first to fourth parts above shall be hereinafter referred to collectively as the "**Parties**" and individually as a "**Party**".

[1] [This addendum shall be executed in French]

RECITALS:

A. SVD 19 and SKCP have entered into the following contracts dated 7 August 2008:

(i) a framework contract by and among SVD 19, SKCP and Dalkia, amended by addendum of 9 September 2008 (the "**Framework Contract"**);

(ii) a transformation contract by and among SVD 19, SKCP and Dalkia (the "**Transformation Contract"**);

(iii) a biomass supply contract by and among SVD 19, SKCDP and Dalkia (the "**Biomass Supply Contract**"); and

(iv) an contract for the loan of land by and among SVD 19, SKCDP and Dalkia (the "**Land Contract**").

hereinafter referred to together as the "**Smurfit Contracts**".

B. In the context of its global strategic analysis, the Dalkia group has decided to seek alternative financing solutions for the development of its industrial assets, while retaining the direct operation of those assets.

C. As a consequence, Dalkia France has contacted Kohlberg, Kravis Roberts and Co Ltd, which through the intermediary of [•] (the "**Investor**"), has expressed the wish to acquire 100% of SVD 19 from Valmy Energie Biomasse SAS, itself held by Dalkia France (the "**Transaction**"). The operation of SVD 19's Power Plant shall be entrusted to Dalkia France in the framework of a long-term operating and maintenance contract. Dalkia France shall also hold a stake of 15% indirectly in the Investor.

D. Under these conditions, the Parties have agreed to enter into this addendum (the "**Addendum**"), which is intended in particular:

(i) to take into account the transfer, causing novation, in favour of Dalkia France, of (a) the Framework Contract, (b) the Transformation Contract and (c) the Biomass Supply Contract (the "**Operating Contracts"**);

(ii) to terminate, correlatively, the letter guaranteeing third party compliance and substitution dated 29 September 2008 granted by Dalkia France as guarantee for the commitments of SVD 19;

(iii) to authorise the change in control over the capital of SVD 19 arising as a consequence of the Transaction or of the exercise of a pledge over the shares to be held by the Investor in SVD 19 to the benefit of **[●]**;

(iv) to organise the substitution, for the Land Contract, of an assignment of usufruct granted in favour of SVD 19 with SKCP renouncing its immediate right of accession to the buildings (the "**Usufruct**"); and

(v) to proceed with the correlative amendments of the Framework Contract.

THEREUPON, IT HAS BEEN AGREED AS FOLLOWS:

ARTICLE 1 DEFINITIONS

Those terms not expressly defined in this Addendum which belong with a capital letter shall be deemed to have the meaning given to them in the Framework Contract.

ARTICLE 2 AUTHORISATION OF TRANSFER CAUSING NOVATION OF THE OPERATING CONTRACT

SKCP and SKCDP hereby authorise the transfer of the Operating Contracts from SVD 19 to Dalkia France.

As of the date hereof, Dalkia France shall be the due holder of all of the rights and obligations transmitted by SVD 19 under the Operating Contracts, which SKCP and SKCDP hereby expressly accept.

SKCP and SKCDP, each insofar as it is respectively concerned, hereby:

(i) acknowledge that this transfer shall cause novation of each of the Operating Contracts in favour of Dalkia France, pursuant to Articles 1271 and seq. of the Civil Code;

(ii) acknowledge that they are fulfilled in their rights *(remplies de leurs droits)* towards SVD 19 and that there are no outstanding liabilities of SVD 19 towards SKCP and SKCDP; and

(iii) release SVD 19 from all past or future rights and obligations under the Operating Contracts, such rights and obligations being taken up by Dalkia France.

ARTICLE 3 TERMINATION OF THE LETTER GUARANTEEING THIRD PARTY COMPLIANCE AND SUBSTITUTION

Considering the novation of the Operating Contracts in favour of Dalkia France, the letter guaranteeing third party compliance and substitution issued by Dalkia France dated 29 September 2008 shall be terminated in its entirety, which SKCP and SKCDP hereby expressly accept.

As a consequence of the foregoing:

(i) any reference to the letter guaranteeing third party compliance and substitution appearing in the Smurfit Contracts shall be deleted; and

(ii) any intervention by Dalkia France in the Smurfit Contracts shall be deleted, it being recalled nonetheless that Dalkia France shall remain party to the Operating Contracts, in the place of SVD 19, pursuant to the transfers causing novation made in favour of it as provided for in **Article 2** above.

ARTICLE 4 AUTHORISATION OF THE CHANGE IN THE CAPITAL OF SVD 19

SKCP and SKCDP acknowledge that they have been informed of the Transaction.

Pursuant to Article 19 of the Framework Contract, Article 20 of the Transformation Contract, Article 22 of the Biomass Supply Contract and Article 14 of the Land Contract, SKCP and SKCDP hereby firmly and irrevocably authorise the change in the registered capital of SVD 19 arising from the change in control envisaged as part of the Transaction or of the exercise of a pledge over the shares to be held by the Investor in SVD 19 to the benefit of **[●]**.

SKCP and SKCDP also firmly and irrevocably authorise any direct or indirect buyback of shares in SVD 19 by Dalkia France or by one of its Affiliates, in the event that the assignment of Usufruct is not carried out by [•] 2011 at the latest.

ARTICLE 5 UNDERTAKING TO GRANT USUFRUCT

SKCP grants to SVD 19, on the date hereof, an undertaking to assign Usufruct in the form appearing in **Appendix 1**.

The completion of the assignment of Usufruct shall cause (i) the termination of the Land Contract with SKCP renouncing its immediate right of accession to the buildings, fully and automatically and without indemnity, and (ii) the nullity of those provisions of the Framework Contract which are substantially taken up in the deed of Usufruct, as referred to in Article 14 of the amended Framework Contract, appearing in **Appendix 2** hereto.

Notwithstanding any clause to the contrary in the Smurfit Contracts, SKCP and SKCDP hereby agree that the termination of the Land Contract, with SKCP renouncing its immediate right of accession to the buildings, following the completion of the assignment of Usufruct in favour of SVD 19 shall not give rise to any consequence (termination or other consequence) for the Operating Contracts.

ARTICLE 6 CORRELATIVE AMENDMENTS OF THE OPERATING CONTRACTS

Considering the foregoing amendments, the Operating Contracts shall be amended in accordance with the consolidated versions appearing in **Appendix 2**, **Appendix 3** and **Appendix 4**.

ARTICLE 7 SCOPE OF THE ADDENDUM

The recitals and appendix form an integral part of this Addendum.

Any provision of the Smurfit Contracts which is not expressly amended by this Addendum shall remain unchanged.

ARTICLE 8 GOVERNING LAW - JURISDICTION

This Contract and the obligations arising under it shall be governed by French law.

Any dispute arising out of or with respect to the conclusion, validity, performance, interpretation, termination or rescission of this Contract (or any document, deed or contract concluded by the Parties pursuant to the Contract), and similarly the indemnification of the Parties, shall be subject to the exclusive jurisdiction of the Paris Commercial Court, even in the event of multiple defendants or impleader, and any jurisdiction clauses that may appear in other commercial and administrative documents of any of the Parties shall not hinder the application of this clause.

Executed in Paris in four (4) original counterparts,
On [•] 2010.

SVD 19 ____________________ Represented by [•] [•]	Dalkia France ____________________ Represented by [•] [•]
SKCP ____________________ Represented by [•] [•]	SKCDP ____________________ Represented by [•] [•]

APPENDIX 1

UNDERTAKING TO GRANT USUFRUCT

APPENDIX 2

CONSOLIDATED VERSION OF THE FRAMEWORK CONTRACT

APPENDIX 3

CONSOLIDATED VERSION OF THE TRANSFORMATION CONTRACT

APPENDIX 4

CONSOLIDATED VERSION OF THE BIOMASS SUPPLY CONTRACT

Schedule 2b)

Usufruct

WASHINGTON PROJECT

MAIN TERMS AND CONDITIONS OF THE USUFRUCT AGREEMENT BETWEEN SVD 19 (THE BENEFICIARY) AND SKCP (THE BARE-OWNER)

("THE AGREEMENT")[1]

[SUBJECT TO PUBLIC NOTARY COMMENTS AS THE USUFRUCT SHALL BE STIPULATED IN A FORM OF A NOTARY DEED]

1. Parties	**1.** [Société Valmy Défense 19], a French *société par actions simplifiée* with a share capital of €37,000, whose registered office is located at [37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint André], incorporated under the companies and trade register of [Lille] under number 497 908 632 (the "**SVD 19**"), **(THE BENEFICIARY OF THE USUFRUCT);** **2.** Smurfit Kappa Cellulose du Pin, a *société par actions simplifiée* with a share capital of €45,857,826, having its registered office located at allée des Fougères, Usine de Facture, 33380 Biganos, registered with the companies and trade register of Bordeaux under number 572 142 198 ("**SKCP**"), **(THE BARE-OWNER);** SVD 19 and SKCP shall hereinafter be collectively referred to as the "**Parties**" and individually as a "**Party**".
2. Definitions	Capitalized terms shall be defined in the Agreement.
3. Preamble	This article shall recall the context surrounding the signature of the Agreement and emphasis on the followings points: - purpose of the project ("**Project**"): constructing and operating a power plant ("**Power Plant**"), - signature of a previous loan for use dated August 7, 2008 ("**Land Contract**"), - signature of a framework agreement dated August 7, 2008 providing (i) for certain easements and access rights to be granted to SVD 19 including accesses to be granted in the event of a Cessation of Activity of SKCP and (ii) the conditions under which

[1] If it is not possible to sign a notarized usufruct by December 31, 2010 (notably because cadastral formalities have not been completed), such agreement shall be a promise to grant an usufruct right.

	SKCP could acquire the Power Plant or under which the parties would proceed with its dismantlement, - parties have contemplated to enter into a usufruct in order to secure the rights granted by SKCP to SVD 19 over certain areas of land and in respect of certain easements as well as to confirm SKCP's acknowledgement that SVD 19 remains owner of the Power Plant; it being specified that upon signature of the Agreement, the Land Contract would be terminated with SKCP renouncing its immediate right of accession of the Power Plant.
4. Purpose	Under the terms of the Agreement, SKCP shall grant to SVD19 which accepts, in accordance with the terms and conditions below, a usufruct right over parcels of land described in article 5 ("**Usufruct**"). The parcels of land described in article 5 are granted by way of a usufruct in accordance with articles 578 to 624 of the French Civil Code.
5. Description[2]	The usufruct is granted on lots located on five (5) various parcels of land, owned by SKCP, such lots having approximately a total surface area of [20,000] m², as marked respectively in yellow on the division plan established by the chartered surveyor attached as schedule n°1 to the Agreement (hereafter the "**Land**"). The lots are extracted from the parcels of land surveyed and registered under sections AH18, AH78, AH65, AH16 and AH84 and AH82 of the Facture Plant located at Biganos. The precise description of the scope of the usufruct attached as schedule 1 to the Agreement shall be strictly limited to the area necessary for the operation of the Power Plant. SVD19 shall take possession of the Land without exception or reservation, other than those expressly provided herein, without the need to provide a more full description. SVD19 represents, having inspected the Land prior to signing the Agreement, that it has full knowledge of the Land.
6. Title deed[3]	SKCP represents that it owns the Land as a result of having acquired it by virtue of a partial business transfer made on 28 October 1994, entered into between the company La Cellulose du Pin (RCS Bordeaux B 552 046 104) and the company Comptoir de la Cellulose (RCS Bordeaux B 572 142 198), since renamed "Smurfit Kappa Cellulose du Pin".

[2] Article 2 of the Land Contract
[3] Article 3 of the Land Contract

7. Term[4]	The Agreement shall take effect on its date of signature by the Parties and remain in force for a term of thirty (30) years, running from the SKCP Start-Up Date, without prejudice to the conclusion of any agreement for the loan or letting of the Land after such expiration date in connection with new agreements between the Parties.
8. Consideration	The Usufruct shall be granted in consideration of a one-time payment by SVD 19 to SKCP of [•][5].
9. Buildings erected on the Land	SKCP waives its right of accession and acknowledges that SVD 19 is the owner of the buildings erected by SVD 19 on the Land Thus, SKCP represents that : - buildings and assets erected on the Land during the Agreement shall be regarded as the ownership of SVD 19, - buildings and assets currently erected and installed on the Land, such as the Power Plant, are owned by SVD 19, - buildings and assets erected and installed on the Land may be subject of any security, such as mortgage, as SVD 19 wishes to grant.
10. Obligations of SVD 19[6]	SVD 19 undertakes to take the Land in its existing condition, with no possible recourse against SKCP, throughout the whole term of the Agreement and even after its termination, for any reason whatsoever, notably due to its condition, latent or apparent defects, the existence of easements or misdescription of the Land. SVD 19 will safeguard and preserve the Land with due care and attention ("en bon père de famille"). SVD 19 will also object to all encroachments, infringements or any other actions by third parties that are likely to affect the ownership or enjoyment of the Land. SVD19 will keep SKCP informed of any such event or action to enable SKCP to act directly against the relevant third parties, if necessary. SVD 19 undertakes that SKCP shall not be disturbed nor any liability incurred by it by reason of the activities conducted on the Land.

[4] Article 5 of the Land Contract unless otherwise noted
[5] Consideration for the Usufruct shall be 69% of the estimated market value of the Land. Parties to retain an assessor to value the Land.
[6] Article 6 of the Land Contract
[7] Article 6 of Land Contract and Article 5 of Framework Agreement
[8] Article 4.4 of the Framework Agreement

Supprimé : ¶

	SVD 19 undertakes to take out an insurance policy with a reputedly solvent insurance company, providing cover that is standard and suitable for a company carrying on a business such as SVD 19, covering its third party liability as occupant of the Land, the operation of the Power Plant, as well as more generally all losses and claims relating to its occupation of the Land or the operation of the Power Plant. SVD 19 shall deliver to SKCP, upon request, all insurance certificates evidencing compliance with this obligation. SVD 19 undertakes throughout the term of the Agreement, to pay all costs and charges (including in particular property taxes) relating directly to the Land. SVD 19 undertakes to carry out all of the works necessary for creating the geographical boundary of the Land (by fencing or otherwise) and to put in place access and control procedures to ensure that SVD 19 has private access and use of the Land and that the facilities are secured.[7] SVD 19 shall, where necessary and throughout the term of the Project, grant SKCP all useful easements and rights over the Land and any authorisations necessary for the realisation of the Project, at the expense of SVD 19. SVD 19 shall communicate to SKCP the rules to be complied with on the industrial site of the Power Plant (safety, security and environmental rules. [8] SVD 19 agrees to comply with rules in effect on the industrial site of SKCP and to cause its operators, subcontractors, agents and other authorized persons to comply with all the rules which shall be attached as Schedule [●] to the Agreement.[9] SKCP shall have the right to access the Land and/or the Power Plant (or any other facilities related to it) for any necessary reasons of security and control intended to ensure the proper performance of the Agreement. In addition, SKCP shall be entitled to enter the Land with any representative of a credit institution with which SKCP is bound by contract requiring it to grant a right of inspection to said institution.[10]

[9] Article 4.4 of the Framework Agreement
[10] Article 5 of the Framework Agreement
[11] Article 4.5 of the Framework Agreement
[12] Article 8.1.3 of the Framework Agreement
[13] Article 9 of the Framework Agreement
[14] Article 6.8 of the Land Contract (See also Article 5 of the Framework Agreement): confirmation of the relevance of SVD 19 commitment to grant SKCP "*all useful easements and rights over the Land and any authorisations necessary for the realisation of the Project*" since the "Project" is completed as the construction of the Plant being achieved. If SKCP wishes to keep this provision, easements and/or authorisations in question should be specified.

	In the event that voluntary changes by SVD 19 of the rules applicable to the Power Plant should give rise to costs for SKCP to bring the Factory into compliance, such compliance costs shall be borne solely by SVD 19.[11] SVD 19 shall ensure that any person intervening within the Factory, either belonging to SVD 19's staff or intervening on behalf of SVD 19, shall have automobile insurance as required by legislation and regulations in force.[12] SVD 19 shall be liable for the commencing and following up of all the administrative steps related to the operation of the Power Plant. On such basis, SVD 19 agrees to prepare and to apply promptly (or cause to prepare or apply) for the administrative permits necessary for the operation of the Plant, such as:[13] - the Prefect's order authorising operation of the Power Plant (arrêté préfectoral ICPE) ; and - the application for hooking up to RTE. SKCP agrees to provide all documents in its possession (permits, reports, certificates, property titles, etc.) necessary for preparing the various administrative files and to provide its help to SVD 19 for obtaining the administrative permits as promptly as possible. SVD 19 shall, where necessary and throughout the term of the Project, grant SKCP all useful easements and rights over the Land and any authorisations necessary for the realisation of the Project, at the expense of SVD19.[14]
11. Obligations of SKCP	SKCP shall communicate to SVD 19 the rules in effect which are effectively followed on the Site and which are, as the case may be, applicable to SVD 19 in the context of its intervention and its presence on the Site, and in particular in terms of the internal regulations and rules on health, safety and the environmental.[15] SKCP shall handle the Plant's liquid refuse subject to its compliance SKCP's specifications (namely those specified in the Transformation Agreement which will be copied over into the Agreement).[16] In the event that voluntary changes by SKCP of the rules applicable to the Factory should give rise to costs for SVD 19 to bring the Power Plant into compliance, such compliance costs shall be borne solely by SKCP.[17]

[15] Article 4.4 of the Framework Agree
[16] Article 4.3 of Framework Agreement
[17] Article 4.5 of the Framework Agreement

	SKCP undertakes to inform SVD 19 of any projected Factory Closure.[18]
12. Easements [19]	SKCP shall grant to SVD 19, necessary easements and authorizations for access, in particular to enable connections, or to install ancillary equipments located outside the Land (in particular the black liquor steam turbine) to the extent that the above is necessary to enable SVD19 to operate the Power Plant.[20] In particular, SKCP shall grant SVD 19 in the Agreement the following rights (easements) of access, connection and use: - right-of-way to the Power Plant:[●], - SVD 19's black liquor steam turbine access:[●], - storms basin:[●], - SKCP's black liquor boiler CH 10 and its auxiliaries:[●], to be granted immediately in the Agreement but only become exercisable in the particular case of a Factory Closure (as defined in the Framework Agreement) connected with SKCP ceasing to produce paper pulp. If SVD 19 requests such assets being made available to it, the assets shall be taken by SVD 19 on an "as is" basis and without any warranty (as to hidden defects, dispossession, intended use, etc.) on the part of SKCP, with the understanding that SVD 19 may alter such assets at its own expense and solely for operating purposes. - hook-ups between the Factory and the Power Plant built by SVD 19 and the black liquor turbine:[●], - transit of electricity between the Factory and the Power Plant:[●], - 63 kV station electricity:[●], - weigh-scale ("*pont bascule*"):[●], - gas pipeline: [●], - electrical feeding cable:[●], - hook-up stations for public electricity, gas connection and water connection:[●], - passage of biomass conveyors. The assets made available by the easements created hereunder shall be

[18] Article 10.2 of the Framework Agreement
[19] See Articles 5 and 10.1 of the Framework Agreement
[20] Article 7.2 of the Land Contract

	taken by SVD 19 on an "as is" basis and without any warranty (as to hidden defects, dispossession, intended use, etc.) on the part of SKCP.[21]
13. Compliance with legislation and regulation	SVD 19 represents that the configuration of the Plant and its operation shall, at all times, comply with the legislation and regulations in effect, including all environmental, health and safety regulations which may apply to this type of facility on the date of execution of the Agreement and for its entire term of application, and in particular, such shall comply with regulations for gas and noise emissions and liquid and solid refuse of all types.[22] Each Party shall ensure and maintain the compliance of its respective facilities.[23] Obligations of the Parties related to legislative and regulatory changes[24] (i) Changes related to the Plant SVD 19 shall inform SKCP of any changes in the legislation and regulations which may apply to the Plant insofar as such changes directly or indirectly affect the Factory and/or SKCP. If such changes may affect, in any respect, the reliability and/or safety, compliance and operations of the Factory, SKCP shall inform SVD 19 of the same. In this case, SKCP shall make, at its own expenses, the investments for bringing the Factory into compliance. The Parties shall take all steps necessary to limit additional costs arising from the bringing into compliance of the Factory to steps which are absolutely necessary in order to ensure such compliance of the equipment and/or operating conditions of the Factory with the new and/or amended legislation and or regulations. In case the legislative or regulatory changes applicable to the Plant should bring about either additional costs for operating the Plant or changes in the facilities of the Plant, SVD 19 shall pay any such additional costs and shall hold SKCP harmless on such basis. The Parties shall take steps to limit the additional costs thus arising to those measures which are strictly necessary in order to ensure such compliance of the facilities, equipment and/or operating conditions of the Factory or of the Power Plant with the new and/or amended legislation and or regulations.

[21] Article 10 of the Framework Agreement
[22] Article 3.2 of the Framework Agreement
[23] Article 4.2 of the Framework Agreement
[24] Articles 3.3.1 et 3.3.2 of the Framework Agreement

	(ii) Changes related to the Factory SKCP shall inform SVD 19 of any changes in the technical or regulatory environment of the Factory. If such changes may affect, in any respect, the reliability and/or safety, compliance and operation of the Plant, SVD 19 shall inform SKCP of the same. In this case, SVD 19 shall make, at its own expenses, the investments for bringing the Plant into compliance. The Parties shall take all steps necessary to limit the additional costs arising from the bringing into compliance of the Plant to steps which are absolutely necessary in order to ensure such compliance of the equipment and/or operating conditions of the Plant with the new and/or amended legislation and or regulations. In case the legislative or regulatory changes applicable to the Factory should bring about either additional costs for operating the Factory or changes in the facilities of the Plant, SKCP shall pay any such additional costs and shall hold SVD 19 harmless on such basis. The Parties shall take steps to limit the additional costs thus arising to those measures which are strictly necessary in order to ensure such compliance of the facilities, equipment and/or operating conditions of the Factory or of the Power Plant with the new and/or amended legislation and or regulations.
14. Termination	The Agreement shall be terminated upon expiry of its term as provided in Article 7 above, unless early terminated in accordance with Article 15 below. Upon termination, the right of usufruct granted to SVD 19 shall be deemed expired, consequently, and by sole virtue of the usufruct's expiration, SKCP shall automatically recover full ownership of the Land and the buildings erected on it without any indemnification due to SVD 19.
15. Early Judicial Termination for Breach	The Agreement may be early terminated by judicial termination upon request of either Party in case of material breach from the other Party.
16. Expiry of the Sale of Electrical Energy Agreement[25]	In the event that the SKCP Transformation Agreement has not expired or been terminated prior to the scheduled termination of the Sale of Electrical Energy Agreement, the Parties agree to meet and discuss the fate of the Power Plant at least twenty four (24) months before the expiry of the Sale of Electrical Energy Agreement. If they fail to agree

[25] Article 10.3 of the Framework Agreement

	on a solution, SKCP will be entitled, at the latest 12 months before the normal expiry date of the Sale of Electrical Energy Agreement, either to: (i) Notify SVD 19 its intent to continue to operate the power Plant for its own benefit. In such case: - SKCP shall (i) purchase the Usufruct from SVD 19 and SVD 19 shall sell the Usufruct at the then market price for the remaining term of the Usufruct ("**Usufruct Market Price**") and (ii) pay to SVD 19 an indemnity equal to 50% of the market value of the Power Plant; it being specified that, failing an agreement between the Parties as to such market value, the market value shall be determined by an expert appointed by mutual agreement between the Parties, and, failing such agreement, by the Presiding Judge of the Commercial Court of Paris ruling in urgent/interlocutory proceedings. In the event that SKCP does not agree with the value determined for the Power Plant by the expert, SKCP shall be entitled to reconsider its option. - SVD 19 will bear no obligation to dismantle the Power Plant, nor any other facilities; and - the transfer of the Agreement shall occur upon payment by SKCP of the above-mentioned payment and indemnity. (ii) Notify SVD 19 its intent to have the Power Plant dismantled. In such case, SKCP may either: - (A) (i) purchase the Usufruct from SVD 19 and SVD 19 shall sell the Usufruct at the then market price for the remaining term of the Usufruct ("**Usufruct Market Price**") and (ii) pay to SVD 19 an indemnity equal to the Power Plant's residual value taking into account only the acquisition value linearly depreciated over twenty (20) years; it being specified that, failing an agreement between the Parties as to such Usufruct Market Price, the said Usufruct Market Price shall be determined by an expert appointed by mutual agreement between the Parties, and, failing such agreement, by the Presiding Judge of the Commercial Court of Paris ruling in urgent/interlocutory proceedings. In the event that SKCP does not agree with the value determined for the Power Plant by the expert, SKCP shall be entitled to reconsider its option and (ii) SKCP shall dismantle the Power Plant or have it dismantled at its own expense, without this limiting the provisions of Article 17; or

	- (B) Without prejudice to the foregoing (A), require that SVD 19 to dismantle the Power Plant (including eventually the black liquor boiler and SVD 19's black liquor turbine) under its responsibility and at its expenses (without prejudice to the applicability of Article 18); in such case, the Parties agree that, upon request from SVD 19, SVD 19 will be entitled to continue to benefit from the Agreement for three years and need only proceed with the dismantlement at such time at its costs, under its responsibility, promptly and without prejudice to the applicability of Article 18. Upon completion of the dismantlement, SKCP shall purchase the Usufruct from SVD 19 and SVD 19 shall sell the Usufruct at the then market price for the remaining term of the Usufruct ("**Usufruct Market Price**"); it being specified that, failing an agreement between the Parties as to such Usufruct Market Price, the market value shall be determined by an expert appointed by mutual agreement between the Parties, and, failing such agreement, by the Presiding Judge of the Commercial Court of Paris ruling in urgent/interlocutory proceedings. The Usufruct shall be transferred to SKCP upon payment by SKCP of the above-mentioned indemnities and payments.
17. Termination at Scheduled Term[26]	The Parties agree to meet at least 18 months prior to the scheduled expiration date of the Agreement, SKCP shall no later than twelve months prior to the scheduled expiration date of the Agreement (i) either notify SVD 19 of its intent to become the owner of the Power Plant in order to continue its operation on its own behalf. In such event, SKCP agrees, upon expiration of the Agreement, to pay SVD 19 an indemnity equal to the Power Plant's residual value, it being specified that failing an agreement between the Parties as to such value, the value shall be determined by an expert appointed by mutual agreement between the Parties, such decision being without any possible appeal, or failing such agreement by the Presiding Judge of the Commercial Court of Paris ruling in urgent/interlocutory proceedings with a right of appeal under statutory conditions. or (ii) give notice to SVD 19 of its decision to have SVD 19 dismantle the Power Plant. In such event, SVD 19 expressly undertakes, at its own expense, to

[26] Article 10.4 of the Framework Agreement
[27] Article 9 of the Land Contract

Supprimé : ¶

	dismantle the Power Plant or have it dismantled, promptly as of such notice and in accordance with best trade practices, without this limiting the provisions of Article 18 below.
18. Environmental Matters[27]	SKCP shall be responsible for dealing, at its own expense, with any and all pollution on the ground and in the sub-soil prior to the Land being made available SVD 19 (i.e. date on which Land was made available to SVD 19 under Land Contract) such that SVD 19 shall not be disturbed or incur any liability with respect thereto. Subject to the above paragraph: - SVD 19 shall be responsible for the state of the Land and the sub-soil, without recourse against SKCP in this regard throughout the term of the Agreement, and after its expiration for any reason whatsoever, unless it can be established that the pollution in the ground or in the sub-soil was caused by SKCP, its employees, agents suppliers or sub-contractors. - Throughout the term of the Agreement, SVD 19 shall be responsible for dealing, at its own expense, with all environmental risks resulting from the construction or operation of the Power Plant, or caused by its agents, employees, suppliers or sub-contractors, unless it can be established that the pollution in the ground or in the sub-soil was caused by SKCP, its agents, employees, suppliers or sub-contractors. - Throughout the term of the Agreement, SVD 19 shall be responsible for dealing, at its own expense, with all environmental damage attributable to SVD19, and caused to third parties due to the construction or operation of the Power Plant, and all actions or claims by third parties arising in relation to any or all of the environmental risks resulting from the construction or operation of the Power Plant. - Also SVD 19 expressly, irrevocably and definitively, waives all rights, claims and indemnities against SKCP with respect to all environmental risks, the environmental state of the Land and all environmental liability arising in connection with the occupation of the Land, the construction and/or operation of the Power Plant, unless it can be established that the pollution in the ground or in the sub-soil was caused by SKCP, its agents, employees, suppliers or sub-contractors. - If the Power Plant is dismantled, as contemplated by Article 16, for whatever reason, SVD 19 undertakes, in its capacity as the last entity to exploit the Land, to bear the costs of cleaning and returning the Land to its original state such that SKCP may not be found liable with respect thereto. SVD 19 shall, at its own expense, pay for and be responsible for dealing with all demands, injunctions or decisions of any kind by the relevant administrative authorities or third party claims with respect to any environmental liability in its capacity as the last entity to exploit the Land, in accordance with the terms of any such demands, injunctions or decisions.

	- If operations are to be continued at the Power Plant, as contemplated by Article 16, SVD 19 shall be responsible for dealing with all actions or claims of third parties with respect to any and all environmental risks arising in connection with its operation of the Power Plant, unless it can be established that the pollution in the ground or in the sub-soil was caused by SKCP, its agents, employees, suppliers or sub-contractors.
19. Financial commitments	SVD 19 shall bear the cost linked to the constitution of the usufruct (chartered surveyor, publication to land registry…).
20. Form	The agreement shall be a notarial deed and must be registered and published at the Land Register.
21. Novation	Parties acknowledge that the previous loan for use agreement (Land Contract) entered into between SKCP and SVD 19 shall be automatically deemed terminated by the signature of the Agreement, with SKCP waiving its immediate accession right to the buildings erected on the Land by SVD 19.
22. Applicable law/jurisdiction	The Agreement shall be governed by French law. The parties shall endeavor to settle amicably any dispute which could arise as soon as practicable. Failing which, disputes shall be submitted to the commercial court of Paris upon the initiative of the first party to take action.

____
[Société Valmy Défense 19]
Represented by [•]

____
SKCP
Represented by [•]

PROJET WASHINGTON

TERM SHEET DU CONTRAT D'USUFRUIT
ENTRE
SVD 19 (L'USUFRUITIER)
ET
SKCP (LE NU PROPRIETAIRE)

("LE CONTRAT")[1]

[SOUS RESERVE DE COMMENTAIRES DE LA PART DES NOTAIRES, LE CONTRAT D'USUFRUIT DEVANT PRENDRE LA FORME D'UN ACTE AUTHENTIQUE]

1. Parties	**1.** [Société Valmy Défense 19 – SVD 19], société par actions simplifiée, au capital de 37 000 euros, dont le siège social est situé [37, avenue du Maréchal de Lattre de Tassigny, 59350 Saint André], immatriculée au registre du commerce et des sociétés de [Lille] sous le numéro 497 908 632 (« **SVD 19** »), **(L'USUFRUITIER);** **2.** Smurfit Kappa Cellulose du Pin, société par actions simplifiée, au capital de 45 857 826 euros, dont le siège social est situé allée des Fougères, Usine de Facture, 33380 Biganos, immatriculée au registre du commerce et des sociétés de Bordeaux sous le numéro 572 142 198 (« **SKCP** »), **(LE NU PROPRIETAIRE)**; SVD 19 et SKCP seront ci-après désignées collectivement les « **Parties** » et individuellement une « **Partie** ».
2. Definitions	Les termes commençant par une majuscule seront définis dans le Contrat.
3. Préambule	Cet article rappellera le contexte dans lequel s'inscrit la signature du Contrat et insistera sur les points suivants : - l'objet du projet (le « **Projet** »), à savoir la construction et l'exploitation d'une centrale (la « **Centrale** »), - la signature antérieure d'une convention de mise à disposition de terrain en date du 7 août 2008 (le « **Contrat Terrain** »), - la signature d'un contrat cadre en date du 7 août 2008 prévoyant (i) des servitudes et droits d'accès devant être consentis à SVD 19, y compris des accès devant être consentis en cas de Cessation d'Activité de SKCP et (ii) les conditions dans lesquelles SKCP

[1] S'il est impossible de signer un acte authentique d'usufruit d'ici le 31 décembre 2010 (en raison notamment de la non réalisation des formalités cadastrales), le contrat prendra la forme d'une promesse d'octroi d'un droit d'usufruit ou d'une cession sous condition suspensive (à déterminer)

	pourrait acheter la Centrale ou selon lesquelles les Parties procéderaient à son démantèlement, - les Parties ont envisagé de conclure un usufruit afin de sécuriser les droits consentis par SKCP à SVD 19 sur certaines parcelles et relativement à certaines servitudes et de confirmer la reconnaissance par SKCP que SVD 19 demeure propriétaire de la Centrale ; étant précisé que la signature du Contrat entraînerait la résiliation du Contrat Terrain, SKCP renonçant à son droit d'accession immédiat à la Centrale.
4. Objet	Aux termes du Contrat, SKCP cède à SVD 19, qui l'accepte, un droit d'usufruit sur les parcelles de terre désignées à l'article 5 du Contrat, conformément aux modalités énoncées ci-après (l'« **Usufruit** »). L'Usufruit des parcelles de terrain désignées à l'article 5 du Contrat est consenti conformément aux articles 578 à 624 du Code civil.
5. Désignation[2]	L'Usufruit est constitué sur des lots situés sur cinq (5) parcelles de terrain, propriété de SKCP, ces lots ayant une surface totale d'environ [20,000] m², tels que délimités respectivement sous teinte jaune au plan de division établi par le géomètre expert, joint en annexe 1 au Contrat (ci-après le « **Terrain** »). Lesdits lots sont prélevés sur les parcelles de terrain cadastrées en sections AH18, AH78, AH65, AH16 et AH84 et AH82 de l'Usine de Facture sise à Biganos. La désignation précise de l'emprise de l'Usufruit jointe en annexe 1 au Contrat sera strictement limitée à la zone nécessaire à l'exploitation de la Centrale. SVD19 prendra possession du Terrain sans aucune exception ni réserve, autres que celles expressément prévues aux termes des présentes, sans qu'il soit nécessaire d'en faire une plus ample description. SVD19 déclare connaître parfaitement le Terrain pour l'avoir vu et inspecté préalablement à la signature du Contrat.
6. Origine de la propriété[3]	SKCP déclare que le Terrain lui appartient pour lui avoir été apporté aux termes d'un acte d'apport partiel d'actif en date du 28 octobre 1994, conclu entre la société La Cellulose du Pin (RCS Bordeaux B 552 046 104) et la société Comptoir de la Cellulose (RCS Bordeaux B 572 142 198), renommée depuis « Smurfit Kappa Cellulose du Pin ».

[2] Article 2 du Contrat Terrain
[3] Article 3 du Contrat Terrain

7. Durée[4]	Le Contrat prend effet à sa date de signature par les Parties pour une durée de trente (30) années commençant à courir à compter de la Date de Mise en Service SKCP, sans préjudice de la conclusion de tout accord de mise à disposition ou de location du Terrain postérieurement à ladite expiration dans le cadre de nouveaux accords entre les Parties.
8. Prix	L'Usufruit sera consenti moyennant un versement unique de SVD 19 à SKCP d'un montant de [●][5].
9. Constructions édifiées sur le Terrain	SKCP renonce expressément à son droit d'accession et reconnaît que SVD 19 est propriétaire des constructions qu'elle a édifiées sur le Terrain. Par conséquent, SKCP déclare que : - les constructions et actifs édifiés pendant la durée du Contrat seront considérés comme étant la propriété de SVD 19, - les constructions et actifs actuellement édifiés et installés sur le Terrain, tels que la Centrale, sont la propriété de SVD 19, - SVD 19 pourra consentir toute sûreté (notamment hypothécaire) sur les constructions et actifs édifiés et installés sur le Terrain.
10. Obligations de SVD 19[6]	SVD19 s'engage à prendre le Terrain dans l'état où il se trouve, sans recours possible contre SKCP, et ce pendant toute la durée du Contrat ou encore après sa résiliation, pour quelque cause que ce soit, notamment à raison de son état, de vices apparents ou cachés, d'existence de servitudes ou encore d'erreur dans la désignation du Terrain. SVD19 veillera en bon père de famille à la garde et à la conservation du Terrain. SVD19 s'opposera, en outre, à tous empiètements, usurpations ou autres actions de tiers susceptibles d'affecter la propriété ou la jouissance du Terrain. SVD 19 tiendra informée SKCP de tout événement ou action de cette nature afin de lui permettre d'agir directement contre les tiers concernés, le cas échéant. SVD19 s'engage à ce que SKCP ne soit ni inquiétée ni recherchée en raison des activités exercées sur le Terrain.

[4] Article 5 du Contrat Terrain, sauf stipulation contraire.
[5] La contrepartie de l'Usufruit représentera 69% de la valeur de marché estimée du Terrain. Les Parties devront désigner un expert pour déterminer la valeur du Terrain.
[6] Article 6 du Contrat Terrain.

	SVD 19 s'engage à souscrire, auprès d'une compagnie d'assurance notoirement solvable, une assurance conforme aux usages et adéquate eu égard à l'activité de SVD 19 couvrant sa responsabilité civile en sa qualité d'occupant du Terrain, l'exploitation de la Centrale ainsi que plus généralement tous sinistres liés à son occupation du Terrain ou à l'exploitation de la Centrale. SVD 19 remettra à SKCP, sur simple demande de celle-ci, tous certificats d'assurance justifiant du respect de la présente obligation. SVD19 s'engage à payer, pendant toute la durée du Contrat, les coûts et charges (en ce compris notamment les impôts fonciers) de toute nature grevant le Terrain. SVD 19 s'engage à réaliser tous travaux nécessaires à la délimitation géographique du Terrain (par voie de clôture ou autrement) et à mettre en place les procédures d'accès et de contrôle garantissant, au profit de SVD 19, le caractère privatif de l'accès et de l'utilisation du Terrain et la sécurisation de ses installations.[7] SVD 19 octroiera, le cas échéant, à SKCP pour toute la durée du Projet, les servitudes utiles et droits sur le Terrain et toutes autorisations qui seraient nécessaires pour la réalisation du Projet, et ce aux frais de SVD 19. SVD 19 communiquera à SKCP les règles à respecter sur le site industriel de la Centrale (règles en matière d'hygiène, de sécurité et d'environnement).[8] SVD 19 s'engage à respecter et à faire respecter par ses sous-traitants, préposés et autres mandataires, l'ensemble des règles en vigueur sur le site industriel de SKCP effectivement suivies sur le site qui figurent en Annexe [●] du Contrat.[9] SKCP aura le droit d'accéder au Terrain et/ou à la Centrale (ou toutes autres installations y afférentes) pour toutes raisons impérieuses de sécurité et de contrôle visant à s'assurer de la bonne exécution du Contrat. Par ailleurs, SKCP aura le droit d'accéder au Terrain avec tout

[7] Article 6 du Contrat Terrain et Article 7 du Contrat Cadre.
[8] Article 4.4 du Contrat Cadre.
[9] Article 4.4 du Contrat Cadre.
[10] Article 5 du Contrat Cadre.
[11] Article 4.5 du Contrat Cadre.
[12] Article 8.1.3 du Contrat Cadre.
[13] Article 9 du Contrat Cadre.
[14] Article 6.8 du Contrat Terrain (cf. également Article 5 du Contrat Cadre) : Confirmation de la pertinence du maintien de l'engagement de SVD 19 d'octroyer à SKCP « *les servitudes utilisées et droits sur le Terrain et toutes autorisations qui seraient nécessaires à la réalisation du Projet* » dès lors que le « Projet » est terminé, la construction de la Centrale étant achevée. Dans l'hypothèse où SKCP souhaiterait son maintien, il conviendrait de préciser en détail toute servitude et/ou toute autorisation dont il est question.

	représentant d'un établissement de crédit auquel SKCP est liée par toute convention lui imposant d'accorder un droit d'inspection audit établissement.[10] Dans l'hypothèse où des modifications volontaires par SVD 19 des règles applicables à la Centrale engendreraient pour SKCP des coûts de mise en conformité de la Centrale, lesdits coûts de conformité seront exclusivement à la charge de SVD 19.[11] SVD 19 s'assurera que toute personne intervenant au sein de l'Usine, soit appartenant au personnel de SVD 19, soit intervenant pour le compte de SVD 19, dispose de l'assurance automobile requise par la législation et la réglementation en vigueur.[12] SVD 19 est responsable de l'instruction et du suivi de l'ensemble des démarches administratives afférentes à l'exploitation de la Centrale. A ce titre, SVD 19 s'engage à préparer, et à demander, dans les meilleurs délais, (ou à faire préparer ou demander) les autorisations administratives nécessaires à l'exploitation de la Centrale, telles que notamment[13] : - l'arrêté préfectoral d'autorisation d'exploiter la Centrale (arrêté préfectoral ICPE) ; et - la demande de raccordement à RTE. Dans ce cadre, SKCP s'engage à fournir tous les documents en sa possession (autorisations, rapports, certificats, titre de propriété, etc.) nécessaires à la constitution des différents dossiers administratifs et à apporter son soutien à SVD 19 pour l'obtention desdites autorisations administratives dans les meilleurs délais. SVD 19 octroiera, le cas échéant à SKCP pour toute la durée du Projet les servitudes utilisées et droits sur le Terrain et toutes autorisations qui seraient nécessaires à la réalisation du Projet, et ce aux frais de SVD 19.[14]
11. Obligations de SKCP	SKCP communiquera à SVD 19 les règles en vigueur effectivement suivies sur le Site et, le cas échéant, applicables à SVD 19, dans le cadre de ses interventions et de sa présence sur le Site, et notamment en matière de règlement intérieur, d'hygiène, de sécurité et d'environnement[15]. SKCP traitera les rejets liquides de la Centrale sous réserve de leur conformité au cahier des charges de SKCP (notamment celui qui figure dans le Contrat de Transformation qui sera repris dans le Contrat).[16] Dans l'hypothèse où des modifications volontaires par SKCP des règles

[15] Article 4.4. du Contrat Cadre.
[16] Article 4.3 du Contrat Cadre.

	applicables à l'Usine engendreraient pour SVD 19 des coûts de mise en conformité de la Centrale, lesdits coûts de mise en conformité seront exclusivement à la charge de SKCP.[17] SKCP s'engage à informer SVD 19 de tout projet de Cessation d'Activité de l'Usine.[18]
12. Servitudes[19]	SKCP octroiera à SVD 19 les servitudes et autorisations d'accès qui seraient nécessaires, notamment pour effectuer tous branchements ou pour l'installation des équipements annexes situés en dehors du Terrain (en particulier la turbine à vapeur liqueur noire) dans la mesure où cela est nécessaire pour permettre à SVD 19 d'exploiter la Centrale.[20] Aux termes du Contrat, SKCP devra notamment octroyer à SVD 19 les droits suivants (servitudes) d'accès, de connexion ou d'usage : - droit d'accès à la Centrale : [●], - accès à la turbine à vapeur liqueur noire de SVD 19 : [●], - bassin de rétention orages : [●], - chaudière à liqueur noire CH 10 et ses auxiliaires SKCP: [●], devant être consenties immédiatement aux termes du Contrat mais qui ne seront exerçables que dans l'hypothèse d'une Cessation d'Activité de l'Usine (telle que définie dans le Contrat Cadre) liée à l'arrêt de fabrication de pâte à papier par SKCP. Dans le cas où SVD 19 demanderait cette mise à disposition, les actifs seront pris par SVD 19 « en l'état » et sans garantie (vices cachés, éviction, destination) aucune de la part de SKCP, étant entendu que SVD 19 pourra modifier, à ses frais, ces actifs pour les seuls besoins de l'exploitation, - raccordements entre l'Usine et la Centrale construite par SVD 19 et la turbine liqueur noire: [●], - transfert d'électricité entre l'Usine et la Centrale: [●], - turbine 63 kW: [●], - pont bascule : [●], - réseau gaz: [●], - cables électriques : [●], - poste de raccordement aux réseaux publics d'électricité, de gaz

[17] Article 4.5 du Contrat Cadre.
[18] Article 10.1 du Contrat Cadre.
[19] Cf. Articles 5 et 10.1 du Contrat Cadre.
[20] Article 7.2 du Contrat Terrain.

	naturel et d'eau : [●], - passage des convoyeurs biomasse. Les actifs mis à disposition aux termes des servitudes consenties aux présentes seront pris par SVD 19 « en l'état » et sans garantie (vices cachés, éviction, destination, etc.) aucune de la part de SKCP.[21]
13. Conformité à la législation et à la réglementation	SVD 19 s'engage à ce que la configuration de la Centrale, ainsi que son exploitation soient à tout moment conformes à la législation et à la règlementation en vigueur, notamment toutes règles environnementales, d'hygiène et de sécurité, susceptibles de s'appliquer à ce type d'installation à la date de signature du Contrat et durant toute sa durée d'application, et à ce titre notamment respecteront les règles en matière d'émissions gazeuses, sonores et des rejets liquides et solides de toute nature.[22] Chaque Partie assurera et maintiendra la conformité de ses installations respectives.[23] Obligations des Parties relatives aux évolutions législatives et réglementaires [24]: (i) Evolutions législatives et réglementaires relatives à la Centrale SVD 19 informera SKCP de toute évolution de la législation et de la règlementation susceptibles de s'appliquer à la Centrale, pour autant que ces évolutions affectent ou sont susceptibles d'affecter directement ou indirectement l'Usine et/ou SKCP. Si ces changements sont susceptibles d'affecter, de quelque façon que ce soit, la fiabilité et/ou la sécurité, la conformité et le fonctionnement de l'Usine, SKCP en avisera SVD 19. Dans cette hypothèse, SKCP réalisera, à ses frais, les investissements de mise en conformité de l'Usine. Les Parties feront en sorte de limiter les coûts supplémentaires ainsi engendrés aux mesures strictement nécessaires pour assurer ladite mise en conformité des installations et/ou des conditions d'exploitation de l'Usine aux législations et règlementations nouvelles et/ou modifiées. Au cas où des modifications législatives ou règlementaires applicables à la Centrale entraîneraient, soit des surcoûts d'exploitation de la Centrale, soit des modifications des installations de celle-ci, SVD 19 prendra à sa charge ces éventuels surcoûts sans que SKCP ne puisse

[21] Article 10. du Contrat Cadre.
[22] Article 3.2 du Contrat Cadre.
[23] Article 4.2. du Contrat Cadre.
[24] Article 3.3.1 et 3.3.2 du Contrat Cadre.

	être inquiétée à ce titre. Les Parties feront en sorte de limiter les coûts supplémentaires ainsi engendrés aux mesures strictement nécessaires pour assurer ladite mise en conformité des installations et/ou des conditions d'exploitation de l'Usine ou de la Centrale aux législations et règlementations nouvelles et/ou modifiées. (ii) Evolutions législatives et règlementaires relatives à l'Usine SKCP informera SVD 19 des changements dans l'environnement technique ou règlementaire de l'Usine. Si ces changements sont susceptibles d'affecter, de quelque façon que ce soit, la fiabilité et/ou la sécurité, la conformité et le fonctionnement de la Centrale, SVD 19 en avisera SKCP. Dans cette hypothèse, SVD 19 réalisera à ses frais, les investissements de mise en conformité de la Centrale. Les Parties feront en sorte de limiter les coûts supplémentaires ainsi engendrés aux mesures strictement nécessaires pour assurer ladite mise en conformité des installations et/ou des conditions d'exploitation de la Centrale aux législations et règlementations nouvelles et/ou modifiées. Au cas où des modifications législatives ou règlementaires applicables à l'Usine entraîneraient, soit des surcoûts d'exploitation de l'Usine, soit des modifications des installations de la Centrale, SKCP prendra à sa charge ces éventuels surcoûts sans que SVD 19 ne puisse être inquiétée à ce titre. Les Parties feront en sorte de limiter les coûts supplémentaires ainsi engendrés aux mesures strictement nécessaires pour assurer ladite mise en conformité des installations, équipements et/ou conditions d'exploitation de l'Usine ou de la Centrale aux législations et règlementations nouvelles et/ou modifiées.
14. Résiliation	Le Contrat prendra fin à l'arrivée du terme prévu à l'article 7, sauf cas de résiliation anticipée prévus à l'article 15 ci-dessous. A l'arrivée du terme, le droit d'usufruit consenti à SVD 19 sera réputé avoir expiré, en conséquence et par le seul effet de la survenance du terme, SKCP retrouvera la pleine propriété du Terrain ainsi que les constructions édifiées par SVD 19 sur celui-ci, et ce, sans qu'aucune indemnité ne soit due à SVD 19.
15. Résiliation judiciaire anticipée pour manquement	Le Contrat pourra être résilié de manière anticipée par voie de résiliation judiciaire sur demande de l'une des Parties, en cas de manquement grave de l'autre Partie à ses obligations aux termes du Contrat.

16. Expiration de la Convention de Cession d'Electricité[25]	Dans l'hypothèse où le Contrat de Transformation SKCP ne serait pas expiré ou résilié à la date normale d'expiration de la Convention de Cession d'Electricité, les Parties conviennent de se rencontrer, au moins 24 mois avant la date normale d'expiration de la Convention de Cession d'Electricité. A défaut d'accord sur une solution, SKCP pourra, au plus tard 12 mois avant la date d'expiration de la Convention de Cession d'Electricité, soit : (i) Notifier à SVD 19 son intention de poursuivre l'exploitation pour son propre compte. Dans cette hypothèse : - SKCP devra (i) acquérir l'Usufruit auprès de SVD 19 et SVD 19 devra céder l'Usufruit, pour la durée restante du Contrat, au prix de marché applicable à cette date (« **Valeur de Marché de l'Usufruit** ») et (ii) payer à SVD 19 une indemnité égale à 50% de la valeur de marché de la Centrale ; étant précisé qu'à défaut d'accord entre les Parties sur lesdites valeurs de marché, celles-ci seront fixées à dire d'expert désigné d'un commun accord des Parties et, à défaut par le Président du Tribunal de Commerce de Paris statuant en la forme des référés. Dans l'hypothèse où SKCP serait en désaccord avec la valeur attribuée à la Centrale par l'expert, SKCP pourra reconsidérer son option ; - SVD 19 n'aura aucune obligation quant au démantèlement de la Centrale ou de toutes autres installations ; et - la cession du Contrat interviendra lors du versement par SKCP du prix et de l'indemnité visées ci-dessus. (ii) Notifier à SVD 19 sa décision de démanteler la Centrale. Dans cette hypothèse, SKCP pourra soit : - (A) (i) acquérir l'Usufruit auprès de SVD 19 et SVD 19 SVD 19 devra céder l'Usufruit, pour la durée restante du Contrat, au prix de marché applicable à cette date (« **Valeur de Marché de l'Usufruit** ») et (ii) verser à SVD 19 une indemnité égale à la valeur résiduelle de la Centrale en tenant compte des seules valeurs d'acquisition amorties linéairement sur une période maximum de 20 ans; étant précisé qu'à défaut d'accord entre les Parties sur ladite Valeur de Marché de l'Usufruit, celle-ci sera fixée à dire d'expert désigné d'un commun accord des Parties et, à défaut, par le Président du Tribunal de Commerce de Paris statuant en la forme des référés. Dans l'hypothèse où SKCP serait en

[25] Article 10.3 du Contrat Cadre.

	désaccord avec la valeur attribuée à la Centrale par l'Expert, SKCP pourra reconsidérer son option, et (ii) SKCP pourra réaliser ou faire réaliser, à ses frais, le démantèlement de la Centrale sans préjudice des stipulations de l'Article 17 ; ou - (B) Sans préjudice du paragraphe (A) ci-dessus, demander à SVD 19 de prendre à sa charge et à ses frais (sans préjudice de l'application des stipulations de l'Article 18) le démantèlement de la Centrale (y compris le cas échéant, de la chaudière à liqueur noire et de la turbine à vapeur liqueur noire de SVD 19); dans cette hypothèse, les Parties conviennent que, sur demande de SVD 19, cette dernière continuera à bénéficier de l'Usufruit pour une période de trois ans et fera son affaire du démantèlement au terme de cette période, à ses frais, dans les meilleurs délais sans que SKCP ne puisse être inquiétée de ce chef, le tout sans préjudice des stipulations de l'Article 18. A l'achèvement du démantèlement, SCKP procédera à l'acquisition de l'Usufruit auprès de SVD 19 et SVD 19 devra céder l'Usufruit, pour la durée restante du Contrat, au prix de marché applicable à cette date (« **Valeur de Marché de l'Usufruit** ») ; étant précisé qu'à défaut d'accord entre les parties sur ladite Valeur de Marché de l'Usufruit, celle-ci sera fixée à dire d'expert désigné d'un commun accord des Parties et, à défaut, par le Président du Tribunal de Commerce de Paris statuant en la forme des référés. Le Contrat sera transféré à SKCP après paiement à SKCP des indemnités et versements visés ci-dessus.
17. Date Normale d'Expiration [26]	Les Parties conviennent de se rencontrer au moins 18 mois avant la date prévue d'expiration du Contrat. SKCP pourra, au plus tard douze mois avant la date d'expiration prévue du Contrat : (i) soit notifier à SVD 19 son intention de devenir le propriétaire de la Centrale afin d'en poursuivre l'exploitation pour son propre compte. Dans cette hypothèse, SKCP convient, lors de l'expiration du Contrat, de verser à SVD 19 une indemnité égale à la valeur résiduelle de la Centrale, étant précisé qu'à défaut d'accord entre les Parties sur ladite valeur, celle-ci sera fixée à dire d'expert désigné d'un commun accord des Parties, cette décision étant sans recours possible ou, à défaut, par le Président du Tribunal de Commerce de Paris statuant en forme des référés, avec faculté de recours dans les conditions légales.

[26] Article 10.4 du Contrat Cadre.

	ou (ii) notifier à SVD 19 sa décision de faire démanteler la Centrale par SVD 19. Dans cette hypothèse, SVD 19 s'engage expressément, à ses seuls frais, à démanteler ou faire démanteler la Centrale dans les règles de l'art et dans les meilleurs délais à compter de cette notification, sans préjudice des stipulations de l'Article 18 ci-après.
18. Responsabilité Environnementale[27]	SKCP fera son affaire personnelle, à ses frais, de toute pollution éventuelle du sol et du sous-sol antérieure à la mise à disposition du Terrain à SVD 19 (c'est-à-dire la date à laquelle le Terrain a été mis à la disposition de SVD 19 aux termes du Contrat Terrain), de manière à ce que SVD 19 ne soit pas inquiétée de ce chef. Sous réserve du paragraphe ci-dessus : - SVD 19 fera son affaire de l'état du Terrain et de son sous-sol, sans recours possible contre SKCP de ce chef, pendant toute la durée du Contrat, et même après la fin de celui-ci, pour quelque motif que ce soit, sauf s'il peut-être établi que la pollution du sol ou du sous-sol relève du fait de SKCP, de ses salariés, préposés, fournisseurs ou sous-traitants. - Pendant toute la durée du Contrat, SVD19 fera son affaire personnelle, à ses frais, de l'ensemble des risques environnementaux résultant de la construction ou de l'exploitation de la Centrale ou de l'effet de ses préposés, salariés ou de celui de ses fournisseurs ou sous-traitants, sauf s'il peut-être établi que la pollution du sol ou du sous-sol relève du fait de SKCP, de ses salariés, préposés, fournisseurs ou sous-traitants. - Pendant toute la durée du Contrat, SVD19 fera son affaire personnelle, à ses frais, de tous dégâts environnementaux imputables à SVD19, causés à des tiers du fait de la construction ou de l'exploitation de la Centrale, et de tous recours ou réclamations de tiers du chef de l'ensemble des risques environnementaux résultant de ladite construction ou de ladite exploitation de la Centrale. - Par ailleurs, SVD19 renonce expressément, de manière irrévocable et définitive, à tous recours, réclamations ou indemnités à l'encontre de SKCP au titre des risques environnementaux, de la situation environnementale du Terrain et de toute responsabilité environnementale résultant de l'occupation du Terrain, de la construction et/ou de l'exploitation de la Centrale, sauf s'il peut-être établi que la pollution du sol ou du sous-sol relève du fait de SKCP, de ses salariés, préposés, fournisseurs ou sous-traitants.

[27] Article 9 du Contrat Terrain.

	- En cas de démantèlement de la Centrale, tel qu'envisagé à l'Article 16, pour quelque raison que ce soit, SVD19, en sa qualité de dernier exploitant du Terrain, s'engage à supporter les frais de nettoyage et remise en état du Terrain de telle manière à ce que SKCP ne puisse être inquiétée à ce titre. SVD19 prendra à sa charge et fera son affaire personnelle, à ses frais, de toutes demandes, injonctions ou décisions de toute nature des administrations compétentes ou réclamations de tiers au titre de toute responsabilité environnementale en sa qualité de dernier exploitant du Terrain et ce conformément aux prescriptions desdites demandes, injonctions ou décisions. - En cas de poursuite de l'activité de la Centrale, telle qu'envisagée à l'Article 16, SVD19 fera son affaire personnelle de tous recours ou réclamations de tiers du chef de l'ensemble des risques environnementaux liés à son exploitation de la Centrale, sauf s'il peut-être établi que la pollution du sol ou du sous-sol relève du fait de SKCP, de ses salariés, préposés, fournisseurs ou sous-traitants.
19. Charges	Les coûts liés à la constitution de l'Usufruit seront à la charge de SVD 19 SVD (expert, division cadastrale, enregistrement, publicité …).
20. Forme	Le contrat sera établi par acte authentique, enregistré et publié au bureau des hypothèques compétent.
21. Novation	Les Parties conviennent que la précédente convention de mise à disposition de terrain (Contrat Terrain) conclue entre SKCP et SVD 19 sera résiliée de plein droit par la signature du présent Contrat, SKCP renonçant à son droit immédiat d'accession sur les bâtiments édifiés par SVD 19 sur le Terrain.
22. Droit applicable-juridiction compétente	Le Contrat est régi par le droit français. Les Parties conviennent de se rapprocher afin de trouver dans les plus brefs délais une solution amiable à tout litige qui pourrait survenir. A défaut, les litiges seront soumis à la compétence du [Tribunal de Commerce de Paris] à l'initiative de la partie la plus diligente.

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[Société Valmy Défense 19]
Représentée par [•]

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SKCP
Représentée par [•]