DATE 26 MAY 2008

SOCIETE NATIONALE D'ELECTRICITE ET DE THERMIQUE
(Borrower)

BANCO BILBAO VIZCAYA ARGENTARIA, S.A.
CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE DE FRANCE
FORTIS BANK, SUCCURSALE EN FRANCE
(Mandated Lead Arrangers)

BANCO BILBAO VIZCAYA ARGENTARIA, S.A.
(Agent)

and

THE BANKS AND FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1
(Lenders)

FACILITY AGREEMENT
RELATING TO A EUR 350,000,000 SHORT-TERM REVOLVING CREDIT FACILITY

Lovells
Lovells LLP, 6 avenue Kléber, 75116 Paris
PAGZ/812759

En accord entre les parties, les présentes ont été reliées par le procédé ASSEMBLACT R.C. empêchant toute substitution ou addition et sont seulement signées à la dernière page.

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THIS AGREEMENT is made on 26 May 2008, between:

1. **SOCIÉTÉ NATIONALE D'ELECTRICITÉ ET DE THERMIQUE**, a company incorporated under the laws of France as a *société anonyme* with a share capital of EUR569,206,335, having its registered office at 2 rue Jacques Daguerre, 92565, Rueil Malmaison Cedex, France and registered with the Nanterre commercial and companies register under number 399 361 468, represented by Antonio Haya Segovia (*Directeur Général*), duly authorised for the purposes hereof (the "**Borrower**"),

OF THE FIRST PART,

2. **BANCO BILBAO VIZCAYA ARGENTARIA S.A.**, a credit institution incorporated under the laws of Spain as a *sociedad anonima*, having its registered office at Plaza de San Nicolas 4, 48005 Bilbao, Spain and registered with the Bilbao commercial and companies register (*Registro de Comercio de Bilbao*) under Volume 2 083, Book 1 545 Section III page 14 741, represented by Philip Paddack and Carolina Sanchez-Tabernero, duly authorised for the purposes hereof (the "**Mandated Lead Arranger**" or "**BBVA**"),

3. **CAISSE RÉGIONALE DE CRÉDIT AGRICOLE MUTUEL DE PARIS ET D'ILE DE FRANCE**, a *société coopérative* with a variable share capital, incorporated under the laws of France, having its registered office at 26 quai de la Rapée, 75012 Paris, *société de courtage d'assurances, enregistrée au registre des Intermédiaires en Assurances* under the number 07 008 015, registered with the Paris commercial and companies register under number 775 665 615, represented by Didier Leboeuf, duly authorised for the purposes hereof (the "**Mandated Lead Arranger**" or "**CADIF**"),

4. **FORTIS BANK SA/NV**, a public company incorporated in Belgium with limited liability headquartered at 3 Montagne du Parc, 1000 Brussells, registered under number 0403.199.702, acting through its branch, Fortis Bank, *Succursale en France*, headquartered at 30 Quai de Dion Bouton, 92 800 Puteaux, registered under number 480 984 541 with the Nanterre Trade Register, represented by Philippe Cassier, duly authorised for the purposes hereof (the "**Mandated Lead Arranger**" or "**Fortis**"),

   (**BBVA, CADIF** and **FORTIS** are collectively referred to as "**Mandated Lead Arrangers**"),

OF THE SECOND PART,

5. **BANCO BILBAO VIZCAYA ARGENTARIA S.A.**, a credit institution incorporated under the laws of Spain as a *sociedad anonima*, having its registered office at Plaza de San Nicolas 4, 48005 Bilbao, Spain and registered with the Bilbao commercial and companies register (*Registro de Comercio de Bilbao*) under Volume 2 083, Book 1 545 Section III page 14 741, represented by Philip Paddack and Carolina Sanchez-Tabernero, duly authorised for the purposes hereof (the "**Agent**"),

OF THE THIRD PART,

6. **THE BANKS AND FINANCIAL INSTITUTIONS** listed in Schedule 1, duly represented for the purposes hereof (the "**Original Lenders**"),

OF THE FOURTH PART.

IT IS AGREED AS FOLLOWS:

SECTION 1
INTERPRETATION

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"**Account Reference Date**" means the financial year end for the Borrower, and, where appropriate, of the Material Subsidiaries and/or the Group, as at the Signing Date 31 December of the relevant financial year.

"**Accounting Principles**" means GAAP or IFRS as the accounting principles under which the Borrower prepares its financial statements from time to time.

"**Additional Cost Rate**" has the meaning given to it in Schedule 4 (*Mandatory Cost formulae*).

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

"**Agreement**" means this agreement (including its Schedules) as amended, restated or supplemented from time to time.

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

"**Availability Period**" means the period from and including the Signing Date to and including the date falling one (1) Month before the Final Maturity Date.

"**Available Commitment**" means, in relation to the Facility, a Lender's Commitment under the Facility minus:

(a) the amount of its participation in any outstanding Loans under the Facility; and

(b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made under the Facility on or before the proposed Utilisation Date, other than that Lender's participation in any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

"**Available Facility**" means, in relation to the Facility, the aggregate for the time being of each Lender's Available Commitment in respect of the Facility.

"**Bookrunner**" means BBVA.

"**Break Costs**" means the amount (if any) by which:

(a) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

(b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the European interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

"**Business Day**" means a whole day (other than a Saturday or Sunday) on which banks are open for general business in Paris and Madrid and, in relation to any date for payment or purchase of Euro, any TARGET Day.

"**Commitment**" means:

(a) in relation to an Original Lender, the amount set opposite its name under the heading "Commitment" in Schedule 1 (*The Original Lenders and Commitments*) and the amount of any other Commitment transferred to it under this Agreement; and

(b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 6 (*Form of Compliance Certificate*).

"**Confidentiality Undertaking**" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 7 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Agent.

"**Default**" means an Event of Default or any event or circumstance specified in Clause 21 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"**Disruption Event**" means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

    (i) from performing its payment obligations under the Finance Documents; or

    (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

"**Endesa SA**" means a company incorporated under the laws of Spain with tax identity number A-28-023430 having its registered office at 60, Calle Ribera del Loira, 28042, Madrid, Spain.

"**Environmental Law**" means any applicable law or regulation which relates to:

(a) the pollution or protection of the environment;

(b) harm to or the protection of human health;

(c) the conditions of the workplace; or

(d) any emission or substance capable of causing harm to any living organism or the environment.

"**Environmental Permits**" means any permit or other Authorisation or the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

"**E. on AG**" means a company incorporated under the laws of Germany having its registered office at E.ON-Platz, 1, D-40479 Düsseldorf, Germany and registered with the Düsseldorf register (*Handelsregister*) under number HRB 22315.

"**EURIBOR**" means, in relation to any Loan in Euro:

(a) the applicable Screen Rate; or

(b) (if no Screen Rate is available for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request quoted by the Reference Banks to leading banks in the European interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in Euro for a period comparable to the Interest Period of the relevant Loan.

"**Euro**" or "**EUR**" or "**€**" means the single currency of Participating Member States.

"**Event of Default**" means any event or circumstance specified as such in Clause 21 (*Events of Default*).

"**Extension Option**" means the option specified as such in Clause 6.2 (*Extension Option*).

"**Extension Notice**" means a notice substantially in the form set out in Part III of Schedule 3 (*Requests*).

"**Facility**" means the EUR 350,000,000 short-term revolving credit facility with an Extension Option made available under this Agreement as described in Clause 2 (*The Facility*).

"**Facility Office**" means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

"**Fee Letter**" means the letter executed on the Signing Date between the Bookrunner and/or the Agent and the Borrower setting out any of the fees referred to in Clause 11 (*Fees*).

"**Final Maturity Date**" means, the Initial Maturity Date or, following the exercise of the Extension Option, the date falling three hundred and sixty four (364) days after the Initial Maturity Date.

"**Finance Document(s)**" means this Agreement, the Fee Letter, the Mandate Letter and any other document designated as such by the Agent and the Borrower.

"**Finance Parties**" means the Agent, the Bookrunner, the Mandated Lead Arrangers and each Lender.

"**Financial Covenants**" means the covenants defined in Clause 19.1 (*Financial Covenants*).

"**Financial Year**" means, in relation to the Borrower and any Material Subsidiary, the annual accounting period ending on 31st December of each year.

"**GAAP**" means generally accepted accounting principles in France.

"**Group**" means the Borrower and its Subsidiaries from time to time.

"**Holding Company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

"**IFRS**" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"**Initial Maturity Date**" means the date falling three hundred and sixty four (364) days as from the Signing Date.

"**Interest Period**" means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

"**Investment Plan**" means the investment plan of the Borrower for 2008-2012 a copy of which has been delivered to the Agent and the Lenders.

"**Lender**" means:

(a) any Original Lender; and

(b) any bank or financial institution which has become a Party in accordance with Clause 22 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

"**LMA**" means the Loan Market Association.

"**Loan**" means a loan made or to be made under the Facility including, in the event of exercise of the Extension Option, the Term Loan, or the principal amount outstanding for the time being of that loan.

"**Majority Lenders**" means:

(a) if there are no Loans then outstanding, a Lender or Lenders whose Commitments aggregate more than 66 $^{2/3}$% of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 $^{2/3}$% of the Total Commitments immediately prior to the reduction); or

(b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than 66 $^{2/3}$ % of all the Loans then outstanding.

"**Mandate Letter**" means the letter dated 24 April 2008 and executed by the Borrower, the Agent and the Original Lenders.

"**Mandatory Cost**" means the percentage rate per annum calculated by the Agent in accordance with Schedule 4 (*Mandatory Cost formulae*).

"**Margin**" means 0.35% per annum.

"**Material Adverse Event**" means an event or circumstance which has a material adverse effect on (i) the business, the activity or the financial condition of the Borrower or the Group taken as a whole or (ii) the ability of the Borrower to perform its payment or other material obligations under this Agreement, it being specified that the acquisition of the Borrower by E.on AG, either directly on indirectly, does not constitute a Material Adverse Event.

"**Material Subsidiary**" means any Subsidiary of the Borrower from time to time, but excluding (i) Bialystok (Poland), (ii) Altek (Turkey) and (iii) any Project Finance Group Member.

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

(a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

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

(c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

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

"**Participating Member State**" means any member state of the European Communities that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

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

"**Permitted Guarantee**" means any guarantee, bond or indemnity:

(a) under the Finance Documents;

(b) the endorsement of negotiable instruments for the purpose and in the ordinary course of carrying on the relevant entity's trade;

(c) guarantees in the ordinary course of business;

(d) in respect of the obligations of any member of the Group which are permitted under Clause 20.8 (*Loans out*);

(e) any guarantee permitted by the Majority Lenders; and/or

(f) guarantees in favour of a bank or financial institution to facilitate the operation of bank accounts of member of the Group maintained with such bank or financial institution on a net balance basis up to EUR5,000,000.

"**Project Finance Borrowings**" means any Financial Indebtedness to finance a project:

(a) which is borrowed by a single purpose company, partnership or other legal person (whether or not a member of the Group) where its or one or more of its Subsidiaries, principal assets and business are constituted for the needs of that project and whose liabilities in respect of the Financial Indebtedness concerned are not directly or indirectly the subject of a guarantee, indemnity or other form of assurance, undertaking or support from any member of the Group, other than equity (*fonds propres*) or subordinated shareholders loans or bonds; or

(b) in respect of which the person or persons making those Financial Indebtedness available to the relevant borrower (whether or not a member of the Group) have no recourse whatsoever to any member of the Group for the repayment of or payment of any sum relating to such Financial Indebtedness, other than equity (*fonds propres*), or subordinated shareholders loans or bonds; or

(c) which the Majority Lenders shall have agreed in writing to treat as Project Finance Borrowings for the purposes of the Finance Documents.

"**Project Finance Group Member**" means a member of the Group which is the debtor in respect of any Project Finance Borrowings.

"**Qualifying Lender**" has the meaning given to it in Clause 12 (*Tax gross-up and indemnities*).

"**Quotation Day**" means, in relation to any period for which an interest rate is to be determined, two (2) TARGET Days before the first day of that period, unless market practice differs in the European interbank market, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the European interbank market (and if quotations would normally be given by leading banks in the European interbank market on more than one day, the Quotation Day will be the last of those days).

"**Reference Banks**" means the principal office in Paris of BNP Paribas, Société Générale and Calyon, or such other banks as may be appointed by the Agent in consultation with the Borrower.

"**Repeating Representations**" means each of the representations set out in Clauses 17.1 (*Status*) to 17.16 (*Environmental laws*) inclusively with the exception of Clauses 17.7 (*Insolvency*), 17.8 (*Deduction of Tax*), 17.9 (*No filing or stamp taxes*), 17.10 (*No default*), 17.11 (*No misleading information*), 17.12(a) and (b) (*Financial Statements*) and 17.15 (*No Security*).

"**Rollover Loan**" means one or more Loans (excluding the Term Loan):

(a) made or to be made on the same day that a maturing Loan is due to be repaid;

(b) the aggregate amount of which is equal to or less than the maturing Loan;

(c) in the same currency as the maturing Loan; and

(d) made or to be made to the Borrower for the purpose of refinancing a maturing Loan.

"**Screen Rate**" means in relation to EURIBOR, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period, displayed on the appropriate page of the Reuters01 screen at 11:00 a.m. If the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Lenders.

"**Security**" means a mortgage, charge, pledge, lien or other security interest or assignment by way of security securing any obligation of any person or any other agreement or arrangement having a similar effect.

"**Selection Notice**" means a notice substantially in the form set out in Part II of Schedule 3 (*Requests*) given in accordance with Clause 9 (*Interest Periods*).

"**Signing Date**" means the date of execution of the Agreement.

"**Specified Time**" means 11 a.m. Paris time.

"**Subsidiary**" means in relation to any company, another company which is controlled by it within the meaning of article L. 233-3 of the French *Code de Commerce*.

"**TARGET**" means Trans-European Automated Real-time Gross Settlement Express Transfer payment system.

"**TARGET Day**" means any day on which TARGET is open for the settlement of payments in Euro.

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

"**Term Loan**" has the meaning given to it in Clause 9.3 (*Consolidation of Loans*).

"**Total Commitments**" means the aggregate of the Commitments, being EUR 350,000,000 at the Signing Date.

"**Transfer Agreement**" means an agreement substantially in the form set out in Schedule 5 (*Form of Transfer Agreement*) or any other form agreed between the Agent and the Borrower.

"**Transfer Date**" means, in relation to a transfer, the later of:

(a) the proposed Transfer Date specified in the Transfer Agreement; and

(b) the date on which the Agent executes the Transfer Agreement.

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

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

"**Utilisation Date**" means the date of an Utilisation, being the date on which a Loan is to be made.

"**Utilisation Request**" means a notice substantially in the form set out in Part I of Schedule 3 (*Request*).

"**VAT**" means value added tax.

1.2 **Financial Definitions:** In this Agreement the following terms shall have the meaning set out below:

"**Consolidated EBITDA**" means, for the corresponding relevant financial statement, the consolidated operating income (*Résultat d'exploitation consolidé*) of the Group for a Financial Year determined on a consolidated basis, plus amortisation of fixed assets (*Dotation aux amortissements sur immobilisations*) under the Accounting Principles and after deducting any amounts attributable to Project Finance Borrowings.

"**Consolidated Net Interest Cost**" (*Intérêts et charges assimilées*) means for any period and in respect of the Group on a consolidated basis, the amount of all interest payable (including under interest hedging arrangements) and other financial expenses in the nature of interest (including the portion of finance lease payments which corresponds to financial expenses and interest expense relating to the remuneration of shareholders' current accounts).

"**Consolidated Net Worth**" means, at any time, referred to in the financial statements of the Borrower, the aggregate of share capital, additional paid-in capital or share premium (*Capital ou Ecarts de réévaluation*), retained earnings, *Différence de conversion*, and any other amount which constitutes stockholder's equity, excluding any treasury stock, all as referred to in financial statements of the Borrower (*Réserve légale, Réserves réglementées, Autres réserves, Différence de conversion, Report à nouveau, Résultat en attente d'affectation, Résultat de l'exercice (bénéfice ou perte))*, after deduction of any minority interests (*Intérêts minoritaires*) in any Subsidiary of the Borrower and any dividend distribution (*Acomptes sur dividendes*).

"**Consolidated Total Assets**" means, at any time, the total assets of the Group as reflected from time to time in the consolidated financial statements of the Borrower.

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

(a) moneys borrowed;

(b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP or IFRS, be treated as a finance or capital lease;

(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);

(f) any derivative transaction entered into in connection with protection against or benefit from fluctuations in any rate or price (and, when calculating the value of any derivative transaction, only the marked-to-market value shall be taken into account);

(g) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;

(h) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and/or

(i) the amount of any liability in respect of any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in paragraphs (a) to (h) inclusively above.

"**Net Debt**" means for any period and in respect of the Group on a consolidated basis, the aggregate of the moneys borrowed (*Emprunts et dettes auprès des établissements de crédit* and *Emprunts et dettes financières diverses* and *Emprunts obligataires convertibles* and *Autres emprunts obligataires*) (excluding the debt in relation to the participation or the profit-sharing of the employees, the Project Finance Borrowings, the intra-Group loans among members of the Group and the off-balance sheet liabilities) and financial leases which can be assimilated to Financial Indebtedness, less the cash (*Disponibilités*) and marketable securities (*Valeurs mobilières de placement*).

1.3 Construction

(a) Unless a contrary indication appears, any reference in this Agreement to:

(i) the "**Agent**", the "**Mandated Lead Arrangers**", any "**Finance Party**", any "**Lender**" or any "**Party**" shall be construed so as to include their successors, assigns and transferees (*ayants-droits* and *ayants-cause*);

(ii) "**assets**" includes present and future properties, revenues and rights of every description;

(iii) an "**authorised signatory**" means a legal representative or any duly authorised individual empowered to sign in the name and on behalf of the Borrower, including without limitation the chief financial officer (*directeur financier*);

(iv) "**corporate reconstruction**" includes in relation to any company any contribution of part of its business in consideration of shares (*apport partiel d'actifs*) and any demerger (*scission)* implemented in accordance with articles L. 236-1 to L. 236-24 of the French *Code de Commerce* or the equivalent under any applicable regulation;

(v) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented or extended;

(vi) "**gross negligence**" means "*faute lourde*";

(vii) a "**guarantee**" includes any "*cautionnement*", "*aval*", any indemnity, any "*garantie*" or any equivalent under any applicable regulation;

(viii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(ix) "**merger**" includes any *fusion* implemented in accordance with articles L. 236-1 to L. 236-24 of the French *Code de Commerce* or the equivalent in any relevant jurisdiction;

(x) a "**person**" includes any individual, partnership, corporation, company, association, trust, incorporated or unincorporated organisation, joint stock company, government, state or agency of a state or any grouping (whether or not having separate legal personality);

(xi) a "**regulation**" includes any law, regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

(xii) a "**security interest**" includes any type of security (*sûreté réelle*) including for the avoidance of doubt an "*hypothèque*", a "*nantissement*", a "*nantissement de compte d'instruments financiers*", a "*privilège*", a "*gage*", a "*gage-espèces*", a "*cession de créance professionnelle*" and/or transfer by way of security or any equivalent under any applicable regulation;

(xiii) "**trustee, fiduciary and fiduciary duty**" has in each case the meaning given to such term under any applicable regulation;

(xiv) "**wilful misconduct**" means "*dol*";

(xv) the Borrower's commitments to do or not to do for the account of or on behalf of a Subsidiary of the Borrower shall be construed as commitments undertaken by the Borrower to obtain the said commitments from the aforementioned Subsidiary in accordance with the provisions set out in article 1120 of the French *Code Civil*;

(xvi) a provision of regulation or law is a reference to that provision as amended or re-enacted; and

(xvii) unless a contrary indication appears, a time of day is a reference to Paris and Madrid time.

(b) Section, Clause and Schedule headings are for ease of reference only.

(c) a reference to a Section, Clause, Schedule or paragraph means a reference for a section, clause, schedule or paragraph of this Agreement.

(d) unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

(e) a Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been remedied or waived.

SECTION 2
THE FACILITY

2. THE FACILITY

2.1 **The Facility:** Subject to the terms of this Agreement, the Lenders make available to the Borrower a revolving credit facility with an Extension Option in an aggregate amount equal to the Total Commitments (which for avoidance of doubt would not exceed EUR 350,000,000).

2.2 **Finance Parties' rights and obligations**

(a) The obligations of each Finance Party under the Finance Documents are several (*conjointes et non solidaires*). Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

(b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower shall be a separate and independent debt.

(c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

3. PURPOSE

3.1 **Purpose:** The Borrower shall apply all amounts borrowed by it under the Facility towards:

(a) The financing of the investments as described in the first stage of the Investment Plan; and

(b) The financing of the payment of any transaction fees, expenses and taxes in relation to such investments.

3.2 **Monitoring:** No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 **Initial conditions precedent:** The Borrower may not deliver the first Utilisation Request unless the Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent (acting on behalf of the Lenders). The Agent shall notify the Borrower promptly upon the Agent (acting on behalf of the Lenders) being so satisfied.

4.2 **Further conditions precedent:** The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

(a) In relation to the first Utilisation, all the representations and warranties in Clause 17 (*Representations*) are true and accurate, and in relation to any other Utilisation, the Repeating Representations to be made by the Borrower are true and accurate in all material respects;

(b) In the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan, and in the case of any other Loan, no Default is continuing or would result from the proposed Loan.

4.3 **Maximum number of Loans**: The Borrower may not deliver an Utilisation Request if as a result of the proposed Utilisation, fifteen (15) or more Loans would be outstanding.

SECTION 3
UTILISATION

5. UTILISATION

5.1 **Delivery of an Utilisation Request:** The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than the Specified Time three (3) Business Days prior to the relevant Utilisation Date. As an exception, the Parties agree that the Borrower may issue the first Utilisation Request not later than 3 p.m. Paris time three (3) Business Days prior to the first Utilisation Date.

5.2 **Completion of a Utilisation Request**

(a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

(i) the proposed Utilisation Date is a Business Day within the Availability Period;

(ii) the amount of the Utilisation complies with Clause 5.3 (*Amount*); and

(iii) the proposed Interest Period complies with Clause 9 (*Interest Periods*).

(b) Only one Loan may be requested in each Utilisation Request.

5.3 **Amount:** The amount of the proposed Loan must be:

(a) A minimum of EUR 10,000,000 and an integral multiple of EUR 5,000,000 or, if less, the Available Facility; and

(b) In any event such that its amount is less than or equal to the Available Facility.

5.4 **Lenders' participation**

(a) If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

(b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

5.5 **Participation in a Loan:** Each Lender's participation in a Loan will be determined in accordance with paragraph (b) of Clause 5.4 (*Lenders' participation*).

SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATIONS

6. REPAYMENT

6.1 Repayment of Loans:

(a) Subject to Clause 6.1 (c), the Borrower shall repay any Loan on the last day of its Interest Period, it being specified that the aggregate of the Loans under the Facility shall be repaid in full on the Final Maturity Date.

(b) Rollover Loans

(i) on any date a Loan is to be repaid, each such Loan shall automatically roll over and become a Rollover Loan, unless the Borrower requests otherwise by giving notice to the Agent no later than three (3) Business Days prior to the last day of the relevant Interest Period, for each consecutive Interest Period thereafter pursuant to Clause 9.1, it being specified that each such Rollover Loan shall be repaid in full on or prior to the Final Maturity Date.

(ii) when two (2) or more Loans mature on the same date, any portion of such Loans to be refinanced under the Facility shall only be refinanced on such date by means of a single Loan.

For the avoidance of doubt, Clause 17.17 relating to the Repeating Representations will apply in the context of the roll over mechanism provided above.

(c) Term Loan

The Borrower shall repay the Term Loan on the Final Maturity Date.

For the avoidance of doubt, Clause 17.17 relating to the Repeating Representations will apply to the Term Loan.

6.2 Extension Option

(a) The Borrower may at its discretion extend the maturity of the Facility for an additional three hundred and sixty four (364) calendar days period ("**Extension Option**"), subject to the following conditions:

(i) delivery to the Agent of a duly completed and irrevocable Extension Notice not later than thirty (30) calendar days before the Initial Maturity Date (the "**Notification Date**"), but in any case not earlier than the ninetieth (90th) calendar day before the Initial Maturity Date.

(ii) the Extension Notice specifies that the Initial Maturity Date is to be extended for an additional three hundred and sixty four (364) days period;

(iii) on the Notification Date, a minimum amount of EUR200,000,000 under the Facility has been drawn;

(iv) no Default is continuing under the Finance Documents on the Notification Date and/or on the Initial Maturity Date; and

(v) delivery to the Agent on the Notification Date of a certificate executed by an authorised signatory of the Borrower evidencing compliance with all Financial Covenants set out in Clause 19.1 below.

(b) If the conditions set out in paragraph 6.2(a) above have been met, then:

(i) the Borrower shall pay to the Agent (for the account of each Lender) on the Initial Maturity Date an extension fee calculated as set out in Clause 11.4 (*Extension fee*) below; and

(ii) the Final Maturity Date will be automatically extended to the date falling three hundred and sixty four (364) calendar days after the Initial Maturity Date

(iii) the Loans outstanding on the Initial Maturity Date will be consolidated in accordance with Clause 9.3 (*Consolidation of Loans*).

7. **PREPAYMENT AND CANCELLATION**

7.1 **Illegality:** If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan:

(a) That Lender shall promptly notify the Agent upon becoming aware of that event;

(b) Upon the Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and

(c) The Borrower shall repay that Lender's participation in the Loans made available to it hereunder on the last day of the Interest Period for each Loan falling after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by regulation).

7.2 **Voluntary cancellation:** The Borrower may, without premium or penalty, if it gives the Agent not less than five (5) Business Days' (or such other shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of EUR10,000,000 and integral multiples of EUR5,000,000) of the Available Facility. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably.

7.3 **Voluntary Prepayment of Loans:** The Borrower may, without premium or penalty, if it gives the Agent not less than five (5) Business Days' (or such other shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Loan (but if in part, being an amount that reduces the amount of the Loan by a minimum amount of EUR10,000,000 and integral multiples of EUR5,000,000).

7.4 **Right of repayment and cancellation in relation to a single Lender**

(a) If:

(i) any sum payable to any Lender by the Borrower is required to be increased under Clause 12.2(c) (*Tax gross-up*); or

(ii) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13.1 (*Increased costs*); or

(iii) any Lender notifies the Agent of its Additional Cost Rate under paragraph 3 of Schedule 4 (*Mandatory Cost formulae*), the Borrower may, whilst (in the case of paragraphs (i) and (ii) above) the circumstance giving rise to the requirement or indemnification continues or (in the case of paragraph (iii) above) that Additional Cost Rate is greater than zero, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

(b) On receipt of a notice referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.

(c) On the last day of each Interest Period which ends after the Borrower has given notice under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loan to which that Interest Period relates.

7.5 **Mandatory prepayment and cancellation in relation to a single Lender:** If it becomes unlawful for the Borrower to perform any of its obligations to any Lender under paragraph (c) of Clause 12.2 (*Tax gross-up*) or under an equivalent provision of any Finance Document,

(a) The Borrower shall promptly notify the Agent upon becoming aware of that event;

(b) Upon the Agent notifying that Lender, its Commitment will be immediately cancelled; and

(c) The Borrower shall repay that Lender's participation in the Loans made to it on the last day of each Interest Period which ends after the Borrower has given notice under paragraph (a) above or, if earlier, the date specified by that Lender in a notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

7.6 **Mandatory prepayment - Exit**

(a) In the event of Change of Control of the Borrower, then:

(i) the Borrower shall promptly notify the Agent; and

(ii) if a Lender so requires and notifies the Agent within fifteen (15) days of the Borrower notifying the Agent of the event, the Agent shall, by not less than five (5) Business Days prior notice to the Borrower, cancel the Commitment of that Lender and declare the participation of that Lender in all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents, immediately due an payable, whereupon the Commitment of that Lender will be cancelled and all such outstanding amounts will become immediately due and payable.

(b) For the purpose of paragraph (a) above:

(i) "**Change of Control**" means the event a person acting alone or a group of persons, acting in concert, gains Control of the Borrower, to the extent that this person or group of persons is different from Endesa SA or E. on AG.

(ii) "**Control**" has the meaning given in article L. 233-3 of the French *Code de Commerce*.

(iii) "**acting in concert**" has the meaning given in article L. 233-10 of the French *Code de Commerce*.

7.7 **Restrictions**

(a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

(b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

(c) Unless a contrary indication appears in this Agreement, any part of the Facility which is prepaid may be re-borrowed in accordance with the terms of this Agreement, subject to the provisions of paragraph 7.7(g) below.

(d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

(e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated or redrawn.

(f) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.

(g) In the event of exercise by the Borrower of the Extension Option pursuant to Clause 6.2 (*Extension Option*), Loans drawn under the Facility as on the Initial Maturity Date will be consolidated as a term loan as provided in Clause 9.3 (*Consolidation of Loans*). Any part of the Term Loan which is prepaid after the Initial Maturity Date may not be re-borrowed.

(h) For the avoidance of doubt on the Initial Maturity Date, a Commitment of up to the difference between (i) the Total Commitments and (ii) the amount of the Term Loan, will remain available to the Borrower under the Facility on a revolving basis, subject to the conditions and relevant provisions of this Agreement.

SECTION 5
INTEREST AND FEES

8. **INTEREST**

8.1 **Calculation of interest:** The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

(a) EURIBOR;

(b) Margin; and

(c) Mandatory Cost (if any).

8.2 **Payment of interest:** The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than six (6) Months, on the dates falling at six (6) monthly intervals after the first day of the Interest Period).

8.3 **Default interest**

(a) If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue to the fullest extent permitted by law on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is one per cent (1%) higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Agent.

(b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be one per cent (1%) higher than the rate which would have applied if the overdue amount had not become due.

(c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount only if, within the meaning of Article 1154 of the French *Code Civil*, such interest is due for a period of at least one (1) year, but will remain immediately due and payable.

8.4 **Notification of rates of interest:** The Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

8.5 **Effective Global Rate (*Taux Effectif Global*):** For the purposes of Articles L. 313-4 and R. 313-1 of the French *Code Monétaire et Financier* and Articles L. 313-1 and *seq.*, R. 313-1 and R. 313-2 of the French *Code de la Consommation*, the Parties acknowledge that by virtue of certain characteristics of the Facility (and in particular the variable interest rate applicable to Loans and the Borrower's right to select the duration of the Interest Period of each Loan) the *taux effectif global* cannot be calculated at the Signing Date. However, the Borrower acknowledges that it has received from the Agent two letters containing an indicative calculation of the *taux effectif global*, based on figured examples calculated on assumptions as to the *taux de période* and *durée de période* set out in the letters. One letter indicates the *taux effectif global* relating to the Facility ending on the Initial Maturity Date, the other letter indicates the *taux effectif global* relating to the Facility in the event of exercise of the Extension Option. The Parties acknowledge that these letters form part of this Agreement.

9. INTEREST PERIODS

9.1 **Selection of Interest Periods**

(a) The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan has already been borrowed) in a Selection Notice.

(b) Each selection of Interest Period is irrevocable and must be delivered to the Agent by the Borrower not later than the Specified Time three (3) Business Days prior to the commencement of each Interest Period.

(c) If the Borrower fails to select an Interest Period in accordance with paragraph (a) and (b) above, the relevant Interest Period will be three (3) Months.

(d) Subject to this Clause 9, the Borrower may select an Interest Period of one (1), two (2), three (3) or six (6) Months or any other period agreed between the Borrower and the Agent (acting on the instructions of all the Lenders).

(e) Any Interest Period relating to Loans drawn prior to the Initial Maturity Date shall not extend beyond the Initial Maturity Date. Interest Periods relating to the Term Loan shall not extend beyond the Final Maturity Date.

(f) Each Interest Period for a Loan shall start on the Utilisation Date for such Loan. The first Interest Period of the Term Loan shall start on the Initial Maturity Date.

(g) A Loan, other than the Term Loan, has one (1) Interest Period only.

9.2 **Non-Business Days:** If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

9.3 **Consolidation of Loans:** If two (2) or more Loans are outstanding on the Initial Maturity Date and the Borrower has exercised the Extension Option pursuant to Clause 6.2 (*Extension Option*), those Loans will be consolidated into a single loan on the Initial Maturity Date (the "**Term Loan**"), repayable on the Final Maturity Date. For the avoidance of doubt, the amount of the Term Loan will be of a minimum amount of EUR 200,000,000, and such consolidation will not constitute a novation of the rights and obligations of the Parties hereunder.

10. CHANGES TO THE CALCULATION OF INTEREST

10.1 **Absence of quotations:** Subject to Clause 10.2 (*Market disruption*) below, if EURIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

10.2 **Market disruption**

(a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the rate per annum which is the sum of:

(i) the Margin;

(ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and

(iii) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

(b) In this Agreement "**Market Disruption Event**" means:

(i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine EURIBOR for the relevant Interest Period; or

(ii) before close of business in Madrid and Paris on the Quotation Day for the relevant Interest Period, the Agent receives notification from a Lender or Lenders (whose participations in a Loan exceed forty five per cent (45%) of that Loan) that the cost to it or them of obtaining matching deposits in the European interbank market would be in excess of EURIBOR.

10.3 **Alternative basis of interest or funding**

(a) If a Market Disruption Event occurs and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

(b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

10.4 **Break Costs**

(a) The Borrower shall, within three (3) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by it on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

(b) The Borrower shall only be obliged to pay Break Costs if a demand under paragraph 10.4(a) above is accompanied by a certificate of the relevant Lender confirming the amount of such Break Costs for any Interest Period in which they accrue and setting out in reasonable detail how they are calculated.

11. **FEES**

11.1 **Commitment fee**

(a) The Borrower shall pay to the Agent (for the account of each Lender) a fee computed at the annual rate of 0.13% to be applied on any undrawn and uncancelled part of that Lender's Commitment for the Availability Period.

(b) The accrued commitment fee is payable on the last day of each successive period of three (3) Months which ends during the Availability Period, on the last day of the Availability Period and if cancelled in full on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

11.2 **Arrangement fee:** The Borrower shall pay to the Original Lenders an arrangement fee in the amount and at the times agreed in the Mandate Letter.

11.3 **Agency fee:** The Borrower shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in the Fee Letter.

11.4 **Extension fee**: In the event of exercise of the Extension Option pursuant to the provisions of Clause 6.2 (*Extension Option*) above, the Borrower shall pay to the Agent (for the account of each Lender) on the Initial Maturity Date an extension fee computed at the rate of 0.15% of the total extended amount payable to the Lenders.

SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

12. TAX GROSS-UP AND INDEMNITIES

12.1 Definitions

(a) In this Agreement:

"Protected Party" means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"Qualifying Lender" means a Lender which:

(i) has its Facility Office in France;

(ii) is a Treaty Lender; or

(iii) fulfils the conditions imposed by French law in order for a payment of interest under a Finance Document not to be subject to (or as the case may be, to be exempt from) any Tax Deduction.

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

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

"Tax Payment" means an increased payment made by the Borrower to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

"Treaty Lender" means a Lender which:

(i) is treated as resident of a Treaty State for the purposes of the Treaty;

(ii) does not carry on business in France through a permanent establishment with which that Lender's participation in the Loan is effectively connected;

(iii) is acting from a Facility Office situated in its jurisdiction of incorporation; and

(iv) fulfils any other conditions which must be fulfilled under the Treaty by residents of the Treaty State for such residents to obtain exemption from Tax imposed on interest by France, subject to the completion of any necessary procedural formalities.

"Treaty State" means a jurisdiction having a double taxation agreement with France (the **"Treaty"**), which makes provision for full exemption from Tax imposed by France on interest payments.

(b) Unless a contrary indication appears, in this Clause 12 a reference to **"determines"** or **"determined"** means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

(a) The Borrower shall make all payments to be made by it under this Agreement without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall promptly notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall promptly notify the Borrower.

(c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from it shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) The Borrower is not required to make an increased payment to a Lender under paragraph (c) above for a Tax Deduction in respect of tax imposed by France from a payment of interest on a Loan, if on the date on which the payment falls due:

(i) the payment could have been made to the relevant Lender without a Tax Deduction if it was a Qualifying Lender, but on that date that Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or double taxation agreement, or any published practice or concession of any relevant taxing authority; or

(ii) the relevant Lender is a Treaty Lender and the Borrower making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below; or

(iii) the relevant Lender has its registered office outside France and is acting from a Facility Office in France, and the Borrower making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (h) below.

(e) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

(f) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

(g) A Treaty Lender and the Borrower which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for it to obtain authorisation to make that payment without a Tax Deduction.

(h) A Lender which has its registered office outside France and is acting from a Facility Office in France shall deliver to the Agent and to the Borrower, a declaration issued by the competent French tax authorities certifying the place of taxation of the Facility Office promptly after the Signing Date and after the beginning of each calendar year.

12.3 **Tax indemnity**

(a) The Borrower shall (within three (3) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on a Finance Party:

(1) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or

(2) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

(ii) to the extent a loss, liability or cost:

(1) is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or

(2) would have been compensated for by an increased payment under Clause 12.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in paragraph (d) of Clause 12.2 (*Tax gross-up*) applied.

(c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.

(d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 12.3 (*Tax indemnity*), notify the Agent.

12.4 **Tax Credit**: If the Borrower makes a Tax Payment and the relevant Finance Party determines that:

(a) A Tax Credit is attributable to that Tax Payment; and

(b) That Finance Party has obtained, utilised and retained that Tax Credit,

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

12.5 **Stamp taxes:** The Borrower shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

12.6 **Value added tax**

(a) All consideration expressed to be payable under a Finance Document by any Party to a Finance Party shall be deemed to be exclusive of any VAT. If VAT is chargeable, on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and such Finance Party shall promptly provide an appropriate VAT invoice to such Party).

(b) Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify the Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that it is not entitled to credit or repayment from the relevant authority of the VAT.

13. **INCREASED COSTS**

13.1 **Increased costs**

(a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within three (3) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the Signing Date.

(b) In this Agreement "**Increased Costs**" means:

(i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;

(ii) an additional or increased cost; or

(iii) a reduction of any amount due and payable under any Finance Document,

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

13.2 **Increased cost claims**

(a) A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.

(b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide the Agent and the Borrower a certificate confirming the amount of its Increased Costs.

13.3 **Exceptions:** Clause 13.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

(a) Attributable to a Tax Deduction required by law to be made by the Borrower;

(b) Compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because one of the exclusions of Clause 12.3(b) (*Tax indemnity*) applied);

(c) Compensated for by the payment of the Mandatory Cost; or

(d) Attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14. OTHER INDEMNITIES

14.1 **Currency indemnity**

(a) If any sum due from the Borrower under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

(i) making or filing a claim or proof against the Borrower;

(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation within three (3) Business Days of demand, indemnify to the extent permitted by law each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 **Other indemnities:** The Borrower shall, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

(a) The occurrence of any Event of Default;

(b) A failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 26 (*Sharing among the Finance Parties*);

(c) Funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or gross negligence by that Finance Party alone); or

(d) A Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

14.3 **Indemnity to the Agent:** The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

(a) investigating any event which it reasonably believes is a Default; or

(b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

15. MITIGATION BY THE LENDERS

15.1 Mitigation

(a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*) Clause 13 (*Increased costs*) or Schedule 4 (*Mandatory Cost formulae*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

(b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

15.2 Limitation of liability

(a) The Borrower shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).

(b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16. COSTS AND EXPENSES

16.1 **Transaction expenses:** The Borrower shall promptly on demand of the Agent pay the Agent and the Bookrunner the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and syndication of this Agreement and any other documents referred to in this Agreement subject to caps provided for in separate agreements between the Parties.

16.2 **Amendment costs:** If (a) the Borrower requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 27.9 (*Change of currency*), the Borrower shall, within three (3) Business Days of demand by the Agent, reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

16.3 **Enforcement costs:** The Borrower shall, within three (3) Business Days of demand by the Agent, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

SECTION 7 REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

17. **REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause 17 to each Finance Party on the Signing Date and, where relevant, makes the representations and warranties in relation to the Material Subsidiaries or to each member of the Group.

17.1 **Status**

(a) The Borrower is a *société anonyme*, duly incorporated and validly existing under the laws of France.

(b) Each of its Material Subsidiaries is duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

(c) It and each member of the Group has the power and authority to own its assets and carry on its business as it is being conducted.

17.2 **Binding obligations:** The obligations expressed to be assumed by it in each Finance Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4 (*Conditions of Utilisation*), legal, valid, binding and enforceable obligations.

17.3 **Non-conflict with other obligations:** The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

(a) Any law or regulation applicable to it;

(b) Its and the constitutional documents of any Material Subsidiary; or

(c) Any agreement or document binding on the Borrower or of any of its Material Subsidiaries or its or any of its Material Subsidiaries' assets, which conflict with such agreement or document is likely to constitute a Material Adverse Event.

17.4 **Power and authority:** The Borrower has the power to enter into, perform and has taken all necessary actions to authorise its entry into and performance of the Finance Documents to which it is a party and the transactions and obligations contemplated by those Finance Documents.

17.5 **Validity and admissibility in evidence:** All Authorisations required or desirable:

(a) To enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents; and

(b) To make the Finance Documents admissible in evidence in France,

have been obtained or effected and are in full force and effect.

17.6 **Governing law and enforcement**: The choice of French law as the governing law of the Finance Documents will be recognised and enforced by French courts.

17.7 **Insolvency**

No:

(a) Corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 21.7 (*Alerte, Insolvency Proceedings*); or

(b) Creditors' process described in Clause 21.8 (*Creditors' process*),

has been taken or threatened in relation to a member of the Group; and none of the circumstances described in Clause 21.6 (*Insolvency*) applies to any member of the Group.

17.8 **Deduction of Tax:** It is not required under the laws of France to make any deduction for or on account of Tax from any payment of principal or interest it may make under any Finance Document to a Qualifying Lender.

17.9 **No filing or stamp taxes:** Under the laws of France, it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in France or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

17.10 **No default**

(a) There is no Event of Default which is continuing or might reasonably be expected to result from the making of any Utilisation.

(b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Material Subsidiaries or to which its (or any of its Material Subsidiaries') assets are subject, which might constitute a Material Adverse Event.

17.11 **No misleading information**

(a) Any factual information provided by the Borrower to the Finance Parties was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

(b) To the best of the Borrower's knowledge, nothing has occurred or arisen and no information has been given or withheld that results in the provided information being untrue or misleading in any material respect.

17.12 **Financial statements**

(a) The latest established financial statements of the Borrower were prepared in accordance with the Accounting Principles consistently applied unless expressly disclosed to the Agent in writing to the contrary before the Signing Date.

(b) The latest established financial statements of the Borrower fairly represent its and the Group's financial condition and operations (consolidated) during the relevant measurement period unless expressly disclosed to the Agent in writing to the contrary before the Signing Date.

(c) There has been no Material Adverse Event in relation to its (or Group's) business, assets or financial condition since the date of the latest established financial statements of the Borrower.

17.13 ***Pari passu* ranking:** Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

17.14 **No proceedings pending or threatened:** No litigation, arbitration or administrative proceeding is current, pending or, threatened against it or any member of the Group for a total cumulated amount exceeding EUR 50,000,000, other than those with the Polish government in relation to the guaranteed investments pursuant to an assignment agreement dated 15 February 2001 for a total amount of EUR 24,200,000.

17.15 **No Security:** No Security exists over its assets or the assets of any other member of the Group except as permitted by Clause 20.5 (*Negative pledge*).

17.16 **Environmental Laws**: It is and its Material Subsidiaries are in compliance with Clause 20.3 (*Environmental compliance*) and no circumstances have occurred which could prevent such compliance in a manner or to an extent which constitutes or is likely to constitute a Material Adverse Event.

17.17 **Repetition:** The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request and the first day of each Interest Period.

18. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 18 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 **Financial statements:** The Borrower shall supply to the Agent in sufficient copies for all the Lenders:

(a) As soon as the same become available, but in any event within one hundred and twenty (120) days after the end of each Financial Year:

(i) its audited consolidated financial statements for that Financial Year (except for the financial statements for Financial Year ended on the 31December 2007 which would be unaudited); and

(ii) its audited individual financial statements for that Financial Year;

For the avoidance of doubt, audited consolidated annual financial statements of the Borrower shall be provided for the first time for the Financial Year ending on 31 December 2008, and for the Financial Year ended on 31 December 2007, the Borrower will only provide unaudited consolidated annual financial statements.

(b) As soon as the same become available, but in any event within ninety (90) days from the date falling six (6) Months after the end of each Financial Year:

(i) its unaudited consolidated financial statements for the first six (6) months of each Financial Year; and

(ii) its unaudited and individual financial statements for the first six (6) months of each Financial Year.

18.2 **Compliance Certificate**

(a) The Borrower shall supply to the Agent, with each set of financial statements delivered pursuant to paragraph (a)(i) of Clause 18.1 (*Financial statements*), a Compliance Certificate in the form agreed and set out in Schedule 6:

(i) setting out (in reasonable detail) computations as to compliance with Clause 19.1 (*Financial Covenants*) as at the date as at which those financial statements were drawn up; and

(ii) confirming that no Default has occurred and is continuing as at the date of the Compliance Certificate.

(b) Each Compliance Certificate shall be signed by two duly empowered representatives of the Borrower, one of whom must be the chief financial officer (*directeur financier*) and the other one a director of the Borrower.

18.3 **Requirements as to financial statements**

(a) Each set of financial statements delivered by the Borrower pursuant to Clause 18.1 (*Financial statements*) shall be certified by an authorised signatory of the Borrower as fairly representing its financial condition as at the date as at which those financial statements were drawn up.

(b) The Borrower shall procure that each set of financial statements of the Borrower delivered pursuant to Clause 18.1 (*Financial statements*) is prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the consolidated annual financial statements for the Financial Year ended 31 December 2007 provided pursuant to paragraph 1(i) of Part I of Schedule 2 (*Conditions precedent*), unless, in relation to any set of financial statements, it notifies the Agent that there has been a change in the Accounting Principles, accounting practices or reference periods and its auditors deliver to the Agent:

(i) a description of any change necessary for those financial statements to reflect the Accounting Principles, accounting practices or reference periods upon which the consolidated annual financial statements for the Financial Year ended 31 December 2007 were prepared; and

(ii) sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 19 (*Financial Covenants*) has been complied with and make an accurate comparison between the financial position indicated in those financial statements and the consolidated annual financial statements for the Financial Year ended 31 December 2007.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the consolidated annual financial statements for the Financial Year ended 31 December 2007 were prepared.

18.4 **Information - miscellaneous:** The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

(a) All documents dispatched by the Borrower to its shareholders or its creditors generally in relation to it and its Material Subsidiaries at the same time as they are dispatched;

(b) Promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, pending or threatened against it or any member of the Group which could result in the payment of a cumulated amount exceeding EUR 35,000,000 other than those with the Polish government in relation to the guaranteed investments pursuant to an assignment agreement dated 15 February 2001 for a total amount of EUR 24,200,000; and

(c) Promptly, such further information regarding the financial condition, business and operations of the Borrower or any of its Material Subsidiaries as any Finance Party (through the Agent) may reasonably request in the context and for the sole purpose of the Facility (except for such information as the Borrower may inform the Agent is confidential by operation of any applicable law or regulation or confidentiality agreement entered into prior to the Finance Party's request) and notably any change in the Account Reference Date.

18.5 **Notification of Default**

(a) The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

(b) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by its authorised signatory certifying that no Default is continuing (or if a Default is continuing, specifying it and the steps, if any, being taken to remedy it).

18.6 **Use of websites**

(a) The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (the "**Designated Website**") if:

(i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;

(ii) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and

(iii) the information is in a format previously agreed between the Borrower and the Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

(b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.

(c) The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:

(i) the Designated Website cannot be accessed due to technical failure;

(ii) the password specifications for the Designated Website change;

(iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;

(iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

(v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Borrower notifies the Agent under paragraph (c)(i) or paragraph (c)(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

(d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.

18.7 "Know your customer" checks

(a) If:

(i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Signing Date;

(ii) any change in the status of the Borrower after the Signing Date, including, without limitation, a change in the shareholding of the Borrower, in its registered office or in its legal form (*forme juridique*); or

(iii) a proposed assignment or transfer by any Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of paragraph (iii) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures as required by any law or regulation in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon reasonable request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

(b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

19. FINANCIAL COVENANTS

The Borrower undertakes from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force:

19.1 Financial Covenants

(a) **Net Interest Cost**: to maintain the ratio of Consolidated EBITDA to Consolidated Net Interest Cost at no less than 4.0 to 1.0.;

(b) **Net Debt**: to maintain the ratio of Net Debt to Consolidated EBITDA at no greater than 3.0 to 1.0.;

(c) **Consolidated Net Worth**: to maintain a Consolidated Net Worth at an amount which is not less than EUR500,000,000.

19.2 **Testing of covenants**

(a) Subject to paragraph (b) below, each of the Financial Covenants set out in Clause 19.1 (*Financial Covenants*) shall be calculated by reference to the financial statements delivered pursuant to paragraph (a)(i) of Clause 18.1 (*Financial statements*), and for the first time by reference to the unaudited consolidated annual financial statements of the Borrower for the Financial Year ended on 31 December 2007. Each of the Financial Covenants shall be indicated in each Compliance Certificate delivered pursuant to Clause 18.2 (*Compliance Certificate*).

(b) When calculating the Financial Covenants, the effect of all transactions between members of the Group shall be eliminated to the extent not already netted out on consolidation.

(c) No item shall be deducted or credited more than once in any calculation.

(d) Where an amount in any financial statement or Compliance Certificate is not denominated in Euro, it shall be converted into Euro at the rate specified in the financial statements so long such rate has been set in accordance with the Accounting Principles.

20. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 20, which are taken by the Borrower in relation of itself and, where specified below, in relation to its Material Subsidiaries and/or each member of the Group, remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

20.1 **Authorisations:** The Borrower shall promptly:

(a) Obtain, comply with and do all that is necessary to maintain in full force and effect; and supply certified copies to the Agent of any Authorisation required under any law or regulation of France to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in France of any Finance Document; and

(b) The Borrower shall (and shall ensure that each Material Subsidiary will) obtain, comply with and do all that is necessary to maintain in full force and effect, and supply certified copies to the Agent of any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its core business(es).

20.2 **Compliance with laws:** The Borrower shall (and shall ensure that each Material Subsidiary will) comply in all respects with all relevant regulations, laws, permits and licences, if failure so to comply would constitute a Material Adverse Event.

20.3 **Environmental compliance**

The Borrower shall (and shall ensure that each Material Subsidiary will):

(a) Comply with any Environmental Law;

(b) Obtain, maintain and ensure compliance with all requisite Environmental Permits;

(c) Implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so constitutes or is reasonably to constitute a Material Adverse Event.

20.4 ***Pari passu* ranking:** The Borrower shall procure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

20.5 **Negative pledge**

The Borrower shall not (and shall ensure that no member of the Group will) create or permit to subsist any Security over a whole or any part of its respective present or future business or assets except:

(a) Any Security arising by mandatory operation of law or in the ordinary course of trading;

(b) Any Security created or permitted to subsist from time to time in relation with Project Finance Borrowings by any of the Borrower or any Material Subsidiary where the assets underlying such Security are directly related to such Project Finance Borrowings;

(c) Any Security permitted by the Majority Lenders ; and/or

(d) Any Security not included in paragraphs (a) to (c) above securing Financial Indebtedness the principal amount secured thereunder does not exceed a cumulated amount of ten per cent (10%) of the Consolidated Total Assets as shown in the latest consolidated financial statements of the Borrower.

20.6 **Disposals**

(a) Subject to the provisions of paragraph (b) below, the Borrower shall not (and shall ensure that no Material Subsidiaries will), enter into a single transaction or a series of transactions (whether related or not, at one time or over a period of time) and whether voluntary or involuntary to sell, lease, transfer, contribute or otherwise dispose of (whether outright, by a sale-and-repurchase or sale-and-leaseback arrangement or otherwise) any asset.

(b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal of assets (including shares):

(i) made in the ordinary course of trading of the disposing entity;

(ii) made on arm's length terms between Material Subsidiaries;

(iii) which, together with other sales, leases, transfers or disposals (other than those permitted under paragraph (i) to (ii) above) does not exceed, either individually or in aggregate, during the whole life of the Facility, an overall limit of ten per cent (10%) of the Consolidated Total Assets as shown in the latest consolidated financial statements of the Borrower.

20.7 **Merger:** The Borrower shall not (and shall ensure that no member of the Group will) enter into any merger or corporate reconstruction with or into any person except:

(a) Any merger between the Borrower and any of its Material Subsidiaries where the Borrower is the surviving entity; or

(b) Any merger between Material Subsidiaries if the company or companies resulting from such merger remains a Material Subsidiary; or

(c) Any merger between Material Subsidiaries with companies of the E.on AG group, if the company or companies resulting from such merger remains a Material Subsidiary and provided that no Default would result from this merger.

20.8 **Loans out**

(a) Subject to paragraph (b) below, the Borrower shall not (and shall ensure that no member of the Group shall) be a creditor in respect of any Financial Indebtedness.

(b) Paragraph (a) above does not apply to:

(i) loans made to its employees in accordance with any applicable regulation and with the relevant terms of employment; or

(ii) loans granted by a member of the Group to another member of the Group on arm's length terms; or

(iii) loans granted by any member of the Group in the ordinary course of its business;

(iv) any Financial Indebtedness referred to in paragraph (e) of the definition of that term in Clause 1.2 (*Financial Definitions*) where trade credit is extended by any member of the Group on normal commercial terms and in the ordinary course of its business; or

(v) any Financial Indebtedness which is a Permitted Guarantee.

20.9 **Guarantees or indemnities**: The Borrower shall not (and shall ensure that no member of the Group will) incur or allow to remain outstanding any guarantee, bond or indemnity in respect of any obligation of any person, save for a Permitted Guarantee.

20.10 **Insurance**

(a) The Borrower shall (and shall ensure that each Material Subsidiary will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

(b) All insurances must be with reputable independent insurance companies or underwriters.

20.11 **Change of business:** The Borrower shall, and shall procure that each Material Subsidiary shall, ensure that no material change is made to the nature of its business or of the Group's business from that carried on at the Signing Date.

21. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 21 is an Event of Default (save for Clause 21.15 (*Acceleration*)).

21.1 **Non-payment:** The Borrower does not pay on the due date any amount payable pursuant to a Finance Document (except an amount the non-payment of which requires the Borrower to make a prepayment under Clause 7.5 (*Mandatory prepayment and cancellation in relation to a single Lender*)) at the place at and in the currency in which it is expressed to be payable unless:

(a) Its failure to pay is caused by:

(i) administrative or technical error; or

(ii) a Disruption Event; and

(b) Payment is made within five (5) Business Days of its due date.

21.2 **Financial Covenants:** Any requirement of Clause 19 (*Financial Covenants*) is not satisfied.

21.3 **Other obligations**

(a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (*Non-payment*) and Clause 21.2 (*Financial Covenants*)).

(b) No Event of Default under paragraph (a) above will occur if the related failure to comply is capable of remedy and is remedied within fifteen (15) Business Days after the earlier of the Agent giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

21.4 **Misrepresentation**

(a) Any representation, statement or warranty made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made or repeated.

(b) No Event of Default under paragraph (a) above will occur if the circumstances giving rise to such misrepresentation are capable of remedy and are not remedied within fifteen (15) Business Days after the earlier of the Agent giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

21.5 **Cross default**

(a) Any Financial Indebtedness of the Borrower or of any member of the Group is not paid when due nor within any originally applicable grace period.

(b) Any Financial Indebtedness of the Borrower or of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default or early termination event (however described).

(c) Any commitment for any Financial Indebtedness of the Borrower or any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default or early termination event (however described).

(d) Any creditor of the Borrower or any member of the Group becomes entitled to declare any Financial Indebtedness of the Borrower or any member of the Group due and payable prior to its specified maturity as a result of an event of default or early termination event (however described).

(e) No Event of Default will occur under this Clause 21.5 if the aggregate principal amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than EUR10,000,000 (or its equivalent in any other currency or currencies).

21.6 **Insolvency**

(a) A member of the Group is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

(b) The Borrower or any member of the Group which conducts business in France is in a state of suspension of payments (*état de cessation des paiements*) (as defined in article L. 631-1 of the French *Code de Commerce* as applicable from time to time), or the Borrower or any member of the Group becomes insolvent for the purpose of any insolvency law.

(c) A moratorium is declared in respect of any indebtedness of the Borrower or any member of the Group.

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

(a) The triggering by the public auditors (*commissaire aux comptes*) of the Borrower or of any member of the Group of any alert procedure (*procédure d'alerte*).

(b) A moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower or any member of the Group.

(c) The application, with respect to the Borrower or to any member of the Group, for the appointment of a *mandataire ad hoc* or a *conciliateur* or any *procédure de conciliation* under articles L. 611-1 to L. 611-15 of the French *Code de Commerce*.

(d) A judgment for *sauvegarde*, *redressement judiciaire* or *liquidation judiciaire* is entered in relation to the Borrower or any member of the Group under articles L.620-1 to L.670-8 of the French *Code de Commerce*.

21.8 **Creditors' process**: Any of the enforcement proceedings provided for in particular in French law n° 91-650 of 9 July 1991, or any expropriation, attachment, sequestration, distress or execution affects any assets of the Borrower or of any member of the Group for an aggregate value of EUR10,000,000 which is not dismissed or withdrawn within thirty (30) calendar days.

21.9 **Analogous proceedings:** Any event or analogous proceedings to or having a similar effect to those set out in Clauses 21.6 and 21.7 occur or are taken in any jurisdiction in respect of the Borrower or any member of the Group.

21.10 **Termination of licences**: Any termination of licences in relation to the Borrower or any of its Material Subsidiaries or to any of their assets or activities which would constitute a Material Adverse Event.

21.11 **Litigation:** Any litigation, arbitration or administrative proceeding, is current, pending or threatened in relation to any member of the Group and which aggregate principal amount exceeds EUR50,000,000 other than those with the Polish government in relation to the guaranteed investments pursuant to an assignment agreement dated 15 February 2001 for a total amount of EUR 24,200,000.

21.12 **Unlawfulness and invalidity:** Except as provided in Clause 7.5 (*Mandatory prepayment and cancellation in relation to a single Lender*), it is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.

21.13 **Cessation of business:** The Borrower or any Material Subsidiary ceases or threatens to cease all or a substantial part of its business.

21.14 **Material Adverse Event:** A Material Adverse Event occurs to the extent this Material Adverse Event is not covered by another Event of Default.

21.15 **Acceleration:** On and at any time after the occurrence of an Event of Default which is continuing, the Agent may without *mise en demeure* or any other judicial or extra judicial step, and shall if so directed by the Majority Lenders, by notice to the Borrower but subject to the mandatory provisions of articles L. 620-1 to L. 670-8 of the French *Code de Commerce*:

(a) Cancel the Total Commitments whereupon they shall immediately be cancelled; and/or

(b) Declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable.

SECTION 8
CHANGES TO THE LENDERS

22. CHANGES TO THE LENDERS

22.1 Assignments and transfers by the Lenders

(a) Subject to this Clause 22, a Lender (the "**Existing Lender**") may:

(i) assign any of its rights; or

(ii) transfer any of its rights (including such as relate to that Lender's participation in each Loan) and obligations,

to another bank or financial institution (the "**New Lender**").

(b) The consent of the Finance Parties is hereby given to a transfer by an Existing Lender to a New Lender.

(c) Each assignment will be in a minimum amount of EUR10,000,000 and integral multiples of EUR5,000,000 or if less the remaining Commitment of the Existing Lender .

22.2 Conditions of assignment or transfer

(a) The consent of the Borrower is required for an assignment or transfer by an Existing Lender, provided that:

(i) in the case of an assignment, no consent is required if the assignment is to an Affiliate of a Lender or made following the occurrence of an Event of Default which is continuing, and

(ii) the Borrower hereby consents to a transfer is to an Affiliate to a Lender or made following the occurrence of an Event of Default which is continuing.

(b) The consent of the Borrower to an assignment or transfer must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent five (5) Business Days after the Lender has requested it unless consent is expressly refused by the Borrower within that time.

(c) The consent of the Borrower to an assignment or transfer must not be withheld solely because the assignment or transfer may result in an increase to the Mandatory Cost.

(d) An assignment will only be effective as among the Finance Parties on:

(i) receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender has become entitled to the same rights and will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and

(ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

(e) A transfer will only be effective if the procedure set out in Clause 22.5 (*Procedure* *for transfer*) is complied with.

(f) If:

(i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

(ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

(g) Upon any assignment or transfer pursuant to this Clause, the Agent shall, as soon as reasonably practical, provide notice of such assignment or transfer to the Borrower. The Parties hereby agree that the Transfer Agreement executed between the Existing Lender, a New Lender and the Borrower shall satisfy this obligation.

22.3 **Assignment or transfer fee:** The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of EUR 2,000 (plus any VAT if any).

22.4 **Limitation of responsibility of Existing Lenders**

(a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

(i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;

(ii) the financial condition of the Borrower or of any other member of the Group;

(iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or

(iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

(i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by a Finance Party in connection with any Finance Document; and

(ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

(c) Nothing in any Finance Document obliges an Existing Lender to:

(i) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 22; or

(ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

22.5 **Procedure for transfer**

(a) Subject to the conditions set out in Clause 22.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (b) below when the Agent executes an otherwise duly completed Transfer Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Agreement.

(b) The Agent shall only be obliged to execute a Transfer Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

(c) By virtue of the execution of a Transfer Agreement, as from the Transfer Date:

(i) to the extent that in the Transfer Agreement the Existing Lender seeks to transfer its rights and obligations under the Finance Documents, the Borrower and the Existing Lender shall be discharged to the extent provided for in the Transfer Agreement from further obligations towards one another and the Finance Parties under the Finance Documents;

(ii) the rights and obligations of the Existing Lender with respect to the Borrower shall be transferred to the New Lender, to the extent provided for in the Transfer Agreement;

(iii) the Agent, the Finance Parties, the New Lender and other Lenders shall have the same rights and obligations between themselves as they would have had had the New Lender been a Lender with the rights and/or obligations to which it is entitled and subject as a result of the transfer and to that extent the Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

(iv) the New Lender shall become a Party as a "**Lender**".

22.6 **Copy Transfer Agreement to the Borrower**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Agreement, send to the Borrower a copy of that Transfer Agreement.

22.7 **Disclosure of information**

(a) Each Finance Party shall keep any information about the Borrower, the Group and the Finance Documents strictly confidential, refrain from disclosing it to anyone and use it only for purposes of the Facility, except for such information as (i) is in the public domain as of the date hereof or becomes public knowledge other than as a direct or indirect result of any breach of the provisions hereof or (ii) is known by that Finance Party before the date such information is disclosed to it or has been lawfully obtained by that Finance Party thereafter and, in either case, as far as that Finance Party is aware, such information has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.

(b) Notwithstanding the provisions of paragraph (a) above, any Lender may disclose to any of its Affiliates and any other person:

(i) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;

(ii) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or the Borrower; or

(iii) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about the Borrower, the Group and the Finance Documents as that Lender shall consider appropriate if, in relation to paragraphs (a) and (b) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking prior to such disclosure being made.

23. CHANGES TO THE BORROWER

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

SECTION 9
THE FINANCE PARTIES

24. ROLE OF THE AGENT AND THE MANDATED LEAD ARRANGERS

24.1 Appointment of the Agent

(a) Each other Finance Party appoints the Agent to act as its agent under and in connection with the Finance Documents.

(b) Each other Finance Party authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

24.2 Duties of the Agent

(a) The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.

(b) The Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

(c) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.

(d) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent) under this Agreement it shall promptly notify the other Finance Parties.

(e) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

24.3 **Role of the Mandated Lead Arrangers:** Except as specifically provided in the Finance Documents, the Mandated Lead Arrangers have no obligations of any kind to any other Party under or in connection with any Finance Document.

24.4 No fiduciary duties

(a) Nothing in this Agreement constitutes the Agent or the Mandated Lead Arrangers as a trustee or fiduciary of any other person.

(b) Neither the Agent nor the Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

24.5 **Business with the Group:** The Agent and the Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

24.6 Rights and discretions of the Agent

(a) The Agent may rely on:

(i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and

(ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

(b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 21.1 (*Non-payment*));

(ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and

(iii) any notice or request made by the Borrower (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of the Borrower.

(c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

(d) The Agent may act in relation to the Finance Documents through its personnel and agents.

(e) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

(f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent, nor any Mandated Lead Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

24.7 **Majority Lenders' instructions**

(a) Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.

(b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.

(c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

(d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

(e) The Agent is not authorised to act on behalf of a Lender in any legal or arbitration proceedings relating to any Finance Document, without having first obtained that Lender's authority to act on its behalf in those proceedings.

24.8 **Responsibility for documentation:** Neither the Agent nor any Mandated Lead Arrangers is responsible for:

(a) The adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Mandated Lead Arrangers, the Borrower or any other person given in or in connection with any Finance Document; or

(b) The legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

24.9 **Exclusion of liability**

(a) Without limiting paragraph (b) below, the Agent will not be liable for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.

(b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause.

(c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

(d) Nothing in this Agreement shall oblige the Agent or the Mandated Lead Arrangers to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not relay on any statement in relation to such checks made by the Agent.

24.10 **Lenders' indemnity to the Agent:** Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by the Borrower pursuant to a Finance Document).

24.11 **Resignation of the Agent**

(a) The Agent may resign and appoint one of its Affiliates which is entitled to enter into credit operations ("*opérations de crédit*") in France under the provisions of the French *Code Monétaire et Financier* as successor by giving notice to the other Finance Parties and the Borrower.

(b) Alternatively the Agent may resign by giving notice to the other Finance Parties and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.

(c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within thirty (30) days after notice of resignation was given, the Agent (after consultation with the Borrower) may appoint a successor Agent entitled to enter into banking operations ("*opération de banque*") in France under the provisions of the French *Code Monétaire et Financier*.

(d) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

(e) The Agent's resignation notice shall only take effect upon the appointment of a successor.

(f) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 24. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

(g) After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.

24.12 **Confidentiality**

(a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

(b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

24.13 **Relationship with the Lenders**

(a) The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

(b) Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (*Mandatory Cost formulae*).

24.14 **Credit appraisal by the Lenders:** Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

(a) The financial condition, status and nature of each member of the Group;

(b) The legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(c) Whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

(d) The adequacy, accuracy and/or completeness of any information provided by the Borrower under or in connection with the Finance Documents and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

24.15 **Reference Banks:** If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Agent shall (in consultation with the Borrower) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

24.16 **Deduction from amounts payable by the Agent:** If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

25. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

(a) Interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

(b) Oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

(c) Oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

26. SHARING AMONG THE FINANCE PARTIES

26.1 **Payments to Finance Parties:** If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from the Borrower other than in accordance with Clause 27 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

(a) The Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery, to the Agent;

(b) The Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 27 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

(c) The Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 27.5 (*Partial payments*).

26.2 **Redistribution of payments:** The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 27.5 (*Partial payments*).

26.3 **Recovering Finance Party's rights**

(a) On a distribution by the Agent under Clause 26.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution and such Finance Parties agree that they will in that connection waive the benefit of Article 1252 of the French *Code Civil*.

(b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the Borrower shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

26.4 **Reversal of redistribution:** If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

(a) Each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 26.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and

(b) That Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the Borrower will be liable to the reimbursing Lender for the amount so reimbursed.

26.5 **Exceptions**

(a) This Clause 26 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Borrower.

(b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(i) it notified that other Finance Party of the legal or arbitration proceedings; and

(ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice or did not take separate legal or arbitration proceedings.

SECTION 10
ADMINISTRATION

27. PAYMENT MECHANICS

27.1 **Payments to the Agent**

(a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

(b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to Euro, in a principal financial centre in a Participating Member State or London) with such bank as the Agent specifies.

27.2 **Distributions by the Agent:** Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 27.3 (*Distributions to the Borrower*) and Clause 27.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to Euro, in the principal financial centre of a Participating Member State or London).

27.3 **Distributions to the Borrower:** The Agent may (with the consent of the Borrower or in accordance with Clause 28 (*Set-off*)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

27.4 **Clawback**

(a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

(b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, as provided in Clause 27.1(a), then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

27.5 **Partial payments**

(a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of it under the Finance Documents in the following order:

(i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent and of the Finance Parties under the Finance Documents;

(ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;

(iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and

(iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

(b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.

(c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

27.6 **No set-off by Borrower:** All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

27.7 **Business Days**

(a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

(b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

27.8 **Currency of account**

(a) Subject to paragraphs (b) to (e) below, Euro is the currency of account and payment for any sum due from the Borrower under any Finance Document.

(b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that Loan or Unpaid Sum is denominated on its due date.

(c) Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

(d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

(e) Any amount expressed to be payable in a currency other than Euro shall be paid in that other currency.

27.9 **Change of currency**

(a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

(i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and

(ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the European interbank market and otherwise to reflect the change in currency.

27.10 **Disruption to Payment Systems**

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

(a) The Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;

(b) The Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

(c) The Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

(d) Any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 33 (*Amendments and waivers*);

(e) The Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 27.10; and

(f) The Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

28. SET-OFF

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

29. NOTICES

29.1 **Communications in writing:** Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

29.2 **Addresses:** The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

(a) In the case of the Borrower, that identified with its name below;

(b) In the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Lender; and

(c) In the case of the Agent, that identified with its name below,

or any substitute address and fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five (5) Business Days' notice.

The Borrower:
Société Nationale d'Electricité et de Thermique

Address:	2 rue Jacques Daguerre 92565, Rueil Malmaison Cedex France
Attention:	Mr. Patrick PERISSE *Trésorier Groupe*
Phone:	(+33) 01 47 52 39 53
Fax:	(+33) 01 47 52 39 76
E-mail:	patrick.perisse@endesafrance.fr

The Agent:
BBVA

Address:	BBVA – Operaciones Mercado de Capitales Vía de los Poblados s/n, Planta Baja 28033 Madrid Spain
Attention:	Mr. Javier Granero / Mrs. María González
Phone:	(+34) 91 537 86 21 / (+34) 91 374 41 84
Fax:	(+34) 91 537 09 47 / (+34) 91 374 41 40
E-mail:	jgranero@grupobbva.com / mdgonzalez@grupobbva.com / admonprestamos.sindicados@grupobbva.com

29.3 **Delivery**

(a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 29.2 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).

(c) All notices from or to the Borrower shall be sent through the Agent.

29.4 **Notification of address and fax number:** Promptly upon receipt of notification of an address or fax number or changes of address or fax number pursuant to Clause 29.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

29.5 **English language**

(a) Any notice given under or in connection with any Finance Document must be in English.

(b) All other documents provided under or in connection with any Finance Document must be:

(i) in English; or

(ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

29.6 **Electronic communication**

(a) Save for Utilisation Requests and Selection Notices, any communication to be made between the Agent and a Lender or the Borrower under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the relevant Lender or the Borrower (as the case may be):

(i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

(ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

(iii) notify each other of any change to their address or any other such information supplied by them.

(b) Any electronic communication made between the Agent and a Lender or the Borrower will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender or the Borrower to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

30. CALCULATIONS AND CERTIFICATES

30.1 **Accounts:** In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

30.2 **Certificates and Determinations:** Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

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

31. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

32. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

33. AMENDMENTS AND WAIVERS

33.1 Required consents

(a) Subject to Clause 33.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.

(b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

33.2 Exceptions

(a) An amendment or waiver that has the effect of changing or which relates to:

(i) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);

(ii) an extension to the date of payment of any amount under the Finance Documents;

(iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

(iv) an increase in or an extension of any Commitment;

(v) any provision which expressly requires the consent of all the Lenders;

(vi) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 22 (*Changes to the Lenders*) or this Clause 33; or

(vii) Clause 26 (*Sharing among the Finance Parties*).

shall not be made without the prior consent of all the Lenders.

(b) An amendment or waiver which relates to the rights or obligations of the Agent may not be effected without the consent of the Agent.

SECTION 12

GOVERNING LAW AND ENFORCEMENT

34. GOVERNING LAW

This Agreement is governed by French law.

35. ENFORCEMENT

35.1 Jurisdiction

(a) The *Tribunal de Commerce de Paris* has non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").

(b) This Clause 35.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from (i) taking proceedings relating to a Dispute in any other French courts with jurisdiction and (ii) taking interim measures ("*mesures conservatoires*") or enforcement proceedings in any foreign court with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

35.2 **Election of Domicile:** Without prejudice to any other mode of service allowed under any relevant law:

(a) The Agent irrevocably elects domicile at BBVA, Paris Branch, with registered office at 29 avenue de l'Opéra, 75001 Paris, for the purpose of serving any judicial or extra-judicial documents in relation to any action or proceedings referred to 35.1(a) above; and

(b) The Borrower irrevocably elects domicile at its registered office at 2 rue Jacques Daguerre, 92565 Rueil Malmaison Cedex, France, for the purpose of serving any judicial or extra-judicial documents in relation to any action or proceedings referred to above.

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

SCHEDULE 1

THE ORIGINAL LENDERS AND COMMITMENTS

NAME OF LENDER	COMMITMENT (EUR M)
BANCO BILBAO VIZCAYA ARGENTARIA, S.A., PARIS BRANCH 29 avenue de l'Opera 75001 Paris	**100**
CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE DE FRANCE 26 quai de la Rapée, 75012 Paris	**47.5**
AUXIFIP 1/3 rue du Passeur de Boulogne, 92861 Issy les Moulineaux Cedex 9	**17.5**
FORTIS BANK, SUCCURSALE EN FRANCE 30 quai de Dion Bouton, 92 824 Puteaux	**65**
BNP PARIBAS 5 bis place de La Défense, 92974 Paris La Défense Cedex	**50**
NATIXIS 5 place de la Défense 92400 Courbevoie	**40**
BRED BANQUE POPULAIRE 18 quai de la Rapée, 75012 Paris	**30**
	Total: 350

SCHEDULE 2
CONDITIONS PRECEDENT

PART I
CONDITIONS PRECEDENT TO FIRST UTILISATION

1. **IN RELATION TO THE BORROWER**

(a) Original *K-bis* extract dated not more than one (1) month prior to the Signing Date.

(b) A copy of the up-to-date constitutive documents (*statuts à jour*) of the Borrower.

(c) A (i) list of directors, (ii) list of shareholders, (iii) list of authorised signatories, and (iv) passport copy of the authorised signatory.

(d) **Power(s) of attorney**: evidence that the person(s) who will sign the Finance Documents on behalf of the Borrower is(are) (an) authorised signatory(ies).

(e) A copy of minutes of the resolution of the Borrower's board of directors, dated on or prior to the Signing Date:

(i) authorising and approving the transactions and matters contemplated in the Finance Documents (including, if relevant, any Utilisation Request); and

(ii) authorising and approving the execution, delivery and performance thereof;

(f) Specimen of the signature of each person referred to in paragraph (d) above and of each person duly authorised by the Borrower to sign the Finance Documents and bind the Borrower thereunder and to deliver any notification or notice thereunder (and including any Utilisation Request, Selection Notice and Extension Notice).

(g) Certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the Signing Date.

(h) The unaudited consolidated and individual annual financial statements for the Financial Year ended 31 December 2007 of the Borrower and a Compliance Certificate established by reference to those financial statements.

(i) A copy of the first stage of the Investment Plan as updated and/or amended from time to time.

(j) A copy of a list of the Subsidiaries of the Borrower.

(k) A copy of a document of the CRE (*Commission de régulation de l'énergie*) listing the Borrower as an electric producer in France, it being specified that this condition precedent has already been satisfied.

(l) Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.

2. **LEGAL OPINIONS**

(a) A legal opinion of Lovells LLP, legal advisers to the Agent as to French law, on enforceability/validity of the Agreement and substantially in the form distributed to the Lenders prior to the Signing Date.

(b) A legal opinion of Clifford Chance Europe LLP, legal advisers to the Borrower, as to French law, on capacity/authority of the Borrower, substantially in the form distributed to the Lenders prior to the Signing Date.

PART II

CONDITIONS PRECEDENT TO FURTHER UTILISATIONS

1. No [Default][1] / [Event of Default][2] is continuing or would result from the proposed Utilisation.

2. A certificate confirming that the Repeating Representations are true and accurate in all material respects.

---

1 in relation to a Loan (other than a Rollover Loan)

2 in relation to a Rollover Loan

SCHEDULE 3
REQUESTS

PART I
UTILISATION REQUEST

From: [Borrower]

To: [Agent]

Date: [___]

Dear Sirs,

Facility Agreement relating to a EUR350,000,000 Short-Term Revolving Credit Facility dated 26 May 2008 (the "Agreement")

1. We refer to the Agreement. This is an Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date:	[___] (or, if that is not a Business Day, the next Business Day)
Amount:	[___] or, if less, the Available Facility
Interest Period:	[___]

3. We confirm, in accordance with the provisions of Clause 4.2 (*Further conditions precedent*), that on the date of this Utilisation Request and on the proposed Utilisation Date:

   (a) All the representations and warranties in Clause 23 (*Representations*) are true and accurate;[1]

   (b) The Repeating Representations are true and accurate in all material respects[2];

   (c) No Default is continuing or would result from the proposed Loan.

4. The proceeds of this Loan should be credited to [***bank account's details***].

5. This Utilisation Request is irrevocable.

Yours faithfully,

____

Société Nationale d'Electricité et de Thermique
By: [___]
Title: [___]

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[1] In relation to the first Utilisation.
[2] In relation to any other Utilisation.

PART II
SELECTION NOTICE

From: [Borrower]
To: [Agent]
Date: [__]

Dear Sirs,

Facility Agreement relating to a EUR350,000,000 Short-Term Revolving Credit Facility dated 26 May 2008 (the "Agreement")

1. We refer to the Agreement. This is a Selection Notice. Terms defined in the Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.

2. We refer to the Loan(s) with an Interest Period ending on [__].

3. We request that the next Interest Period for the above Loan(s) is [___].

4. This Selection Notice is irrevocable.

____

Société Nationale d'Electricité et de Thermique
By: [___]
Title: [___]

PART III

EXTENSION NOTICE

From: [Borrower]
To: [Agent]
Date: [__]

Dear Sirs,

Facility Agreement relating to a EUR350,000,000 Short-Term Revolving Credit Facility dated 26 May 2008 (the "Agreement")

1. We refer to the Agreement. This is an Extension Notice. Terms defined in the Agreement have the same meaning in this Extension Notice unless given a different meaning in this Extension Notice.

2. We wish to extend the Initial Maturity Date for an additional three hundred and sixty four (364) days period.

3. For this purpose, pursuant to Clause 6.2 of the Agreement, we hereby confirm the following:

   (a) At the date hereof, [the amount of EUR [___]] [a minimum of EUR 200,000,000] under the Facility has been drawn and any prepayment on this amount will not be reinstated;

   (b) No Default is continuing under any Finance Document; and

   (c) The Agent has been provided with a certificate executed by an authorised signatory evidencing compliance with all Financial Covenants set out in Clause 19.1 of the Agreement.

4. This Extension Notice is irrevocable.

____
Société Nationale d'Electricité et de Thermique
By: [___]
Title: [___]

SCHEDULE 4
MANDATORY COST FORMULAE

1. The Mandatory Cost is an addition to the interest rate to compensate the Lenders for the cost of compliance with:

   (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other Governmental Authority which replaces all or any of its functions); or

   (b) the requirements of the European Central Bank.

2. On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (the "**Additional Cost Rate**") for each Lender in accordance with the following provisions of this Schedule. The Mandatory Cost will be the rate calculated by the Agent to be the weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loans) and will be expressed as a percentage rate per annum.

3. The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.

4. The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Agent as the per cent, per annum rate resulting from the application of the formulae:

   (a) for Sterling Loans: $$\frac{AB + C(B - D) + E \times 0.01}{100 - (A + C)}$$

   (b) for Loans in any other currency: $$\frac{E \times 0.01}{300}$$

   where:

   A is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements;

   B is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, if the Loan is an Unpaid Sum, the additional rate of interest specified in paragraph (a) of Clause 8.3 (*Default interest*)) payable for the relevant Interest Period on the Loan;

   C is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England;

   D is the percentage rate per annum payable by the Bank of England to the Agent on interest bearing Special Deposits; and

E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.

5. For the purposes of this Schedule:

(a) **"Eligible Liabilities"** and **"Special Deposits"** have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;

(b) **"Fees Rules"** means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;

(c) **"Fee Tariffs"** means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and

(d) **"Tariff Base"** has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.

6. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 per cent. will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.

7. If requested by the Agent, each Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.

8. Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply, in writing on or prior to the date on which it becomes a Lender, its jurisdiction of incorporation and the jurisdiction of its Facility Office and any other information that the Agent may reasonably require for such purpose. Each Lender shall promptly notify the Agent in writing of any change to the information provided by it pursuant to this paragraph.

9. The percentages of each Lender for the purpose of A and C above and the rates of charge of each Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.

10. The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.

11. The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 7 and 8 above.

12. Any determination by the Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.

13. The Agent may from time to time, after consultation with the Borrower and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions). Any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

SCHEDULE 5
FORM OF TRANSFER AGREEMENT

This Transfer Agreement is made on [_____]

BETWEEN:

(A) [_____] (the "**Existing Lender**")

AND:

(B) [_____] (the "**New Lender**")

WHEREAS:

(1) The Existing Lender has entered into a revolving loan facility in an aggregate amount equal to three hundred and fifty million Euros (EUR350,000,000) under a facility agreement dated 26 May 2008, entered into between Société Nationale d'Electricité et de Thermique, as Borrower, the Financial Institutions listed in Schedule 1 to that Facility Agreement as Lenders, Banco Bilbao Vizcaya Argentaria, S.A. ("**BBVA**"), Caisse Régionale de Crédit Agricole Mutuel de Paris et d'Ile de France and Fortis Bank, Succursale en France as Mandated Lead Arrangers, and BBVA acting as Agent of the Lenders (the "**Facility Agreement**").

(2) The Existing Lender wishes to transfer and the New Lender wishes to acquire [all] [the part specified in Schedule 1 of this Transfer Agreement] of the Existing Lender's Commitment, rights and obligations referred to in Schedule 1 to this Transfer Agreement.

(3) Terms defined in the Facility Agreement have the same meaning when used in this Transfer Agreement.

IT IS AGREED AS FOLLOWS:

(A) The Existing Lender and the New Lender agree to the transfer of [all] / [the part specified in Schedule 1 of this Transfer Agreement] of the Existing Lender's Commitment, rights and obligations referred to in Schedule 1 to this Transfer Agreement in accordance with Clause 22.5 (*Procedure for transfer*) of the Facility Agreement[1].

(B) The proposed Transfer Date is [___].

(C) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 29.2 (*Addresses*) are set out in Schedule 1 of this Transfer Agreement.

(D) The New Lender acknowledges the limitations on the Existing Lender's liabilities set out in paragraph (c) of Clause 22.4 (*Limitation of responsibility of Existing Lenders*) of the Facility

---

1 The New Lender may, in the case of a transfer of rights by the Existing Lender under this Transfer Agreement, if it considers it necessary to make the transfer effective as against third parties, arrange for it to be notified by way of *signification* to the Borrower in accordance with article 1690 of the French *Code Civil*.

Agreement.

(E) The New Lender confirms to the other Finance Parties represented by the Agent that it will assume the same obligations to those Parties as it would have been under if it was a Lender

(F) This Transfer Agreement is governed by French law. The Tribunal of Commerce of Paris shall have jurisdiction in relation to any dispute concerning it.

SCHEDULE 1
Commitment/rights and obligations to be transferred
[*insert relevant details*]
[*Facility Office address, fax number and attention details for notices and account details for payments*]

[Existing Lender]
By:

[New Lender]
By:

This Transfer Agreement is accepted by the Agent and the Transfer Date is confirmed as [_____].
[Agent]
By:

[Société Nationale d'Electricité et de Thermique]
By:

SCHEDULE 6
FORM OF COMPLIANCE CERTIFICATE

To: BBVA as Agent

From: Société Nationale d'Electricité et de Thermique as Borrower

Date: [___]

Dear Sirs,

Facility Agreement relating to a EUR350,000,000 Short-Term Revolving Credit dated 26 May 2008 (the "Agreement")

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

2. We confirm that as at [___] the Consolidated EBITDA was [__]. Therefore, as at [___]:

   (a) The Consolidated EBITDA to Consolidated Net Interest Cost ratio was no less than [4.0 to1.0][1];

   (b) The Net Debt to Consolidated EBITDA ratio was no greater than [3.0 to1.0][2];

   (c) The Consolidated Net Worth was not less than EUR[500,000,000][3];

3. We confirm that no Default has occurred and is continuing at the date hereof.

Signed: [_____]
authorised signatory
Of
Société Nationale d'Electricité et de Thermique

Signed: [_____]
authorised signatory
Of
Société Nationale d'Electricité et de Thermique

[*to be signed by two directors one of whom must be the Chief Financial Officer of the Borrower*]:

---

1 Please set out in reasonable detail computations as to the compliance with the Financial Covenant set out in Clause 19.1(a)

2 Please set out in reasonable detail computations as to the compliance with the Financial Covenant set out in Clause 19.1(a)

3 Please set out in reasonable detail computations as to the compliance with the Financial Covenant set out in Clause 19.1(a)

SCHEDULE 7
LMA FORM OF CONFIDENTIALITY UNDERTAKING

LMA CONFIDENTIALITY LETTER

[Letterhead of Agent/Lender]

To:

	[insert name of Potential Lender/counterpart]

Re: **The Facility**

Borrower: ***Amount:*** ***Agent:***

Dear Sirs,

We refer to the revolving loan facility in an aggregate amount equal to three hundred and fifty million Euros (EUR350,000,000) (the "**Facility**") under a facility agreement dated 26 May 2008, entered into between Société Nationale d'Electricité et de Thermique, as Borrower, the Financial Institutions listed in Schedule 1 to that Facility Agreement as Lenders, Banco Bilbao Vizcaya Argentaria, S.A. ("**BBVA**"), Caisse Régionale de Crédit Agricole Mutuel de Paris et d'Ile de France and Fortis Bank, Succursale en France as Mandated Lead Arrangers, and BBVA acting as Agent of the Lenders (the "**Facility Agreement**").

We understand that you are considering participating in the Facility. In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

1. **Confidentiality Undertaking**: You undertake:

   (a) To keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;

   (b) To keep confidential and not disclose to anyone the fact that the Confidential Information has been made available or that discussions or negotiations are taking place or have taken place between us in connection with the Facility;

   (c) To use the Confidential Information only for the Permitted Purpose;

   (d) To use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(b) below) acknowledges and complies with the provisions of this letter as if that person were also a party to it; and

   (e) Not to make enquiries of any member of the Group or any of their officers, directors, employees or professional advisers relating directly or indirectly to the Facility.

2. **Permitted Disclosure:** We agree that you may disclose Confidential Information:

   (a) To members of the Participant Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the Participant Group;

(b) (i) Where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the Participant Group are listed or (iii) where required by the laws or regulations of any country with jurisdiction over the affairs of any member of the Participant Group; or

(c) With the prior written consent of us and the Borrower.

3. **Notification of Required or Unauthorised Disclosure:** You agree (to the extent permitted by law) to inform us of the full circumstances of any disclosure under paragraph 2(b) or upon becoming aware that Confidential Information has been disclosed in breach of this letter.

4. **Return of Copies:** If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2(b) above.

5. **Continuing Obligations:** The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease (a) if you become a party to or otherwise acquire (by assignment or sub participation) an interest, direct or indirect in the Facility or (b) twelve months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub-paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).

6. **No Representation; Consequences of Breach, etc:** You acknowledge and agree that:

(a) Neither we nor any of our officers, employees or advisers (each a "**Relevant Person**") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or any member of the Group or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or any member of the Group or be otherwise liable to you or any other person in respect to the Confidential Information or any such information; and

(b) We or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person or member of the Group may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. **No Waiver, Amendments, etc:** This letter sets out the full extent of your obligations of

confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege under this letter will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this letter. The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. **Inside Information:** You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to insider dealing and you undertake not to use any Confidential Information for any unlawful purpose.

9. **Nature of Undertakings:** The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the Borrower and each other member of the Group.

10. **Governing Law and Jurisdiction:** This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of France and the parties submit to the jurisdiction of the Tribunal de Commerce de Paris.

11. **Definitions:** In this letter (including the acknowledgement set out below):

"**Confidential Information**" means any information relating to the Borrower, the Group, and the Facility including, without limitation, the information, provided to you by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, other than from a source which is connected with the Group and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality;

"**Group**" means the Borrower and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies;

"**Participant Group**" means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies; and

"**Permitted Purpose**" means considering and evaluating whether to enter into the Facility.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.
Yours faithfully

____

For and on behalf of
[Agent/Lender]

To: [Agent/Lender]

We acknowledge and agree to the above:

____

For and on behalf of
[Potential Lender/counterpart]

Execution page

Signed in Paris on 26 May 2008

In Paris in nine (9) originals.

THE BORROWER:

SOCIETE NATIONALE D'ELECTRICITE ET DE THERMIQUE
By: Antonio Haya Segovia

THE AGENT:

BANCO BILBAO VIZCAYA ARGENTARIA,SA
By: Philip Paddack
Carolina Sanchez-Tabernero

THE ORIGINAL LENDERS:

BANCO BILBAO VIZCAYA ARGENTARIA, SA PARIS BRANCH
By: Philip Paddack
Carolina Sanchez-Tabernero

CAISSE REGIONALE DE CREDIT AGRICOLE MUTUEL DE PARIS ET D'ILE DE FRANCE
By: Didier Leboeuf

AUXIFIP
By: Didier Rocaboy

FORTIS BANK, SUCCURSALE EN FRANCE
By: Philippe Cassier

BNP PARIBAS
By: Alain Breffeil

NATIXIS
By: Catherine OLIVIER Jean Louis [illegible]

BRED BANQUE POPULAIRE
By: ~~Pierre~~ Luc Mérat
Serge Garnier

[redacted]

En accord entre les parties, les présentes ont été reliées par le procédé ASSEMBLACT R.C. empêchant toute substitution ou addition et sont seulement signées à la dernière page.