

## INFORMATION MEMORANDUM

### EKONDAKIN ENERGÍA Y MEDIOAMBIENTE, S.A.

(incorporated in Spain with limited liability)

### €80,000,000 Senior Secured Bonds Programme

#### INFORMATION MEMORANDUM (*DOCUMENTO DE BASE INFORMATIVO DE INCORPORACIÓN*) ON THE EVENTUAL ADMISSION (*INCORPORACIÓN*) OF SECURITIES ON THE SPANISH ALTERNATIVE FIXED-INCOME MARKET (MARF)

Ekondakin Energía y Medioambiente, S.A., (the **SPV**, the **Issuer**, the **Concessionaire** or the **Company**), a corporation (*Sociedad Anónima*) organised under the laws of Spain, registered in the San Sebastián's Companies Register in volume 2,785, sheet 205, section 8, page 39319, with tax identification number A-75172221.

The Issuer has been rated BBB- with a positive outlook by Axesora Conocer para Decidir, S.A. (**Axesora**) on 24 February 2017. A rating is not a recommendation to buy, sell or hold securities and may be subject to suspension, reduction or withdrawal at any time by the assigning rating agency.

This information memorandum (the **Information Memorandum**) constitutes a *Documento Base Informativo de Incorporación* for the purposes of admission (*incorporación*) of the Bonds to be issued to the Multilateral Trading System known as Alternative Fixed Income Market (*Mercado Alternativo de Renta Fija* or **MARF**). MARF adopts the legal structure of a multilateral trading facility (MTF), constituting an alternative, unofficial and not regulated market for the trading of fixed-income securities in accordance with the provisions of Directive 2004/39/EC.

The Issuer will request the admission (*incorporación*) of the Bonds to be issued under this Programme to trading on MARF within 30 days following the relevant Issue Date. The denomination of the Bonds shall be €100,000.

Payments on the Bonds will be made without deduction for or on account of taxes in Spain to the extent described under and subject to the customary exceptions described in "*Terms and Conditions of the Bonds — Taxation*".

The Bonds to be issued under this Programme will mature on May 30, 2047 but may be redeemed before then at the option of the Issuer in whole at any time at their principal amount together with accrued interest and, in certain circumstances, a make whole premium. The Bonds are also subject to redemption in whole or in part, at their principal amount, together with accrued interest, at the option of the Issuer at any time in the event of certain changes affecting taxation in Spain. In addition, if the Concession Agreement (as defined below) is terminated, then the Issuer shall, upon receipt of the relevant Compensation (as defined below), immediately pay such Compensation into the General Account (as defined below) and in the manner described herein redeem the Bonds in whole at their principal amount, together with accrued but unpaid interest to such date, and, in certain circumstances, a make whole premium. See "*Terms and Conditions of the Bonds – Redemption and Purchase*" for details of these and other circumstances in which the Bonds may be redeemed early. The Bonds contain certain obligations for the Issuer, as detailed in Condition 10 (*General Covenants*) of the Bonds.

The Bonds to be issued under this Programme shall constitute senior obligations of the Issuer, to be secured as provided for in Condition 7 (*Security*).

The Bonds to be issued under this Programme will be represented by book entries in Iberclear. See "*Summary of Clearance and Settlement Procedures applicable to Book-Entry Notes*".

Prospective investors should have regard to the factors described under the section of this Information Memorandum headed "*Risk Factors*" on page 16 of this Information Memorandum.

This Information Memorandum (*Documento Informativo de Incorporación*) is not a prospectus (*folleto informativo*) within the meaning of Directive 2004/39/EC and has not been registered with the National Securities Market Commission (CNMV). The offering of the Bonds does not constitute a public offering in accordance with the provisions of Article 35 of Royal Decree 4/2015 of 23 October, approving the revised text of the Securities Market Act (SML) and therefore there is no obligation to approve, register and publish a prospectus (*folleto informativo*) with the CNMV. As established by Circular 1/2015 of MARF, this issuance of Bonds is intended exclusively for professional clients and qualified investors in accordance with the provisions of Article 205 of the SML and Article 39 of Royal Decree 1310/2005 of 4 November, with regard to the admission of securities to trading on official secondary markets, public offerings or subscription and the prospectus required for this purpose (**Royal Decree 1310/2005**).

No action has been taken in any jurisdiction to permit a public offering of the Bonds or the possession or distribution of the Information Memorandum or any other offering material in any country or jurisdiction where such action is required for said purpose.

The date of this Information Memorandum is 1 June 2017

## IMPORTANT NOTICES

This Information Memorandum in relation to the Bonds includes the required information as established in Annex 1-C of Circular 1/2015 of MARF, dated 5 October, on admission and exclusion of securities on MARF and the procedures with respect to the same.

None of the Issuer nor the Commissioner has authorised anyone to provide information to potential investors different from the information contained in this Information Memorandum and other publicly available information. Potential investors should not base their investment decision on information other than that contained in this Information Memorandum and alternative sources of public information. Any information or representation not contained in this Information Memorandum must not be relied upon as having been authorised by or on behalf of the Issuer or the Commissioner.

Neither the delivery of this Information Memorandum nor any sale made in connection herewith shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer since the date hereof or the date upon which this Information Memorandum has been most recently amended or supplemented or that there has been no adverse change in the financial position of the Issuer since the date hereof or the date upon which this Information Memorandum has been most recently amended or supplemented, or that the information contained in it or any other information supplied in connection with the Bonds is correct as of any time subsequent to the date on which it is supplied or, if different, the date indicated in the document containing the same.

None of the governing body of MARF, the CNMV nor the Commissioner has approved or verified the contents of the Information Memorandum, the financial statements of the Issuer, the rating report or the risk of the issuance required under Circular 1/2015. The governing body of MARF does not acknowledge or confirm the completeness, understanding or consistency of the information included in the documentation provided to them by the Issuer in relation to this Programme.

The Bonds will be represented by book entries in Iberclear. The Issuer expressly declares that it has met the requirements for registration and settlement of the transaction in Iberclear. See "*Summary of Clearance and Settlement Procedures applicable to Book-Entry Notes*".

The Issuer accepts responsibility for the information contained in this Information Memorandum. To the best of the knowledge and belief of the Issuer (which has taken all reasonable care to ensure that such is the case), the information contained in this Information Memorandum is in accordance with the facts and does not omit anything likely to affect the import of such information.

The Issuer expressly declares that it is aware and knows the requirements and conditions necessary for admission of the Bonds on MARF under current legislation and the requirements of its governing bodies and expressly agrees to comply therewith.

This Information Memorandum does not constitute an offer of, or an invitation by or on behalf of the Issuer to subscribe or purchase, any of the Bonds. The distribution of this Information Memorandum and the offering of the Bonds in certain jurisdictions may be restricted by law. Persons into whose possession this Information Memorandum comes are required by the Issuer to inform themselves about and to observe any such restrictions.

It is recommended that potential investors fully and carefully read the Information Memorandum prior to any investment decision. Potential investors should, in addition, have regard to each original document described, or referred to, in this Information Memorandum. All descriptions of documents referred to in this Information Memorandum are qualified in their entirety by reference to the terms of the original documents.

For a description of further restrictions on offers and sales of Bonds and distribution of this Information Memorandum, see the section of this Information Memorandum headed "*Sale of the Bonds*".

The Bonds have not been and will not be registered under the U.S. Securities Act of 1933 (the **Securities Act**). Subject to certain exceptions, Bonds may not be offered or sold within the United States or to U.S. persons.

Unless otherwise specified or the context requires, all references herein to **euro** or **€** are to the single currency introduced at the start of the third stage of European Economic and Monetary Union pursuant to the Treaty on the functioning of the European Union, as amended from time to time.

### **FORWARD-LOOKING STATEMENTS**

This Information Memorandum contains various forward-looking statements regarding events and trends that are subject to risks and uncertainties that could cause the actual results, performance or achievements of the Issuer to differ materially from the information presented herein. Such forward-looking statements are based on numerous assumptions regarding the Issuer's present and future business strategies and the environment in which the Issuer will operate in the future.

When used in this Information Memorandum, the words "estimate", "project", "intend", "anticipate", "believe", "expect", "should", "plan", "targets", "aims", "will", "would", "may", "could", "continue" and similar expressions, as they relate to the Issuer, its management and the Project, are intended to identify such forward-looking statements. All statements other than statements of historical fact included in this Information Memorandum, including, without limitation, those statements regarding the Issuer's financial position, business strategy, management plans and objectives for future operations, are forward-looking statements. These forward-looking statements involve known and unknown risks, uncertainties and other factors, which may cause the Issuer's actual results, performance or achievements, or industry results, to be materially different from any future results, performance or achievements expressed or implied by these forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as at the date hereof. Save as otherwise required by any rules or regulations, the Issuer does not undertake any obligations publicly to release the result of any revisions to these forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Additional factors that could cause actual results, performance or achievements to differ materially include, but are not limited to, those discussed under the section of this Information Memorandum headed "*Risk Factors*". Any forward-looking statements contained in this Information Memorandum speak only as at the date of this Information Memorandum.

Without prejudice to any requirements under applicable laws and regulations, the Issuer expressly disclaims any obligation or undertaking to disseminate after the date of this Information Memorandum any updates or revisions to any forward-looking statements contained herein to reflect any change in expectations thereof or any change in events, conditions or circumstances on which any such forward-looking statement is based.

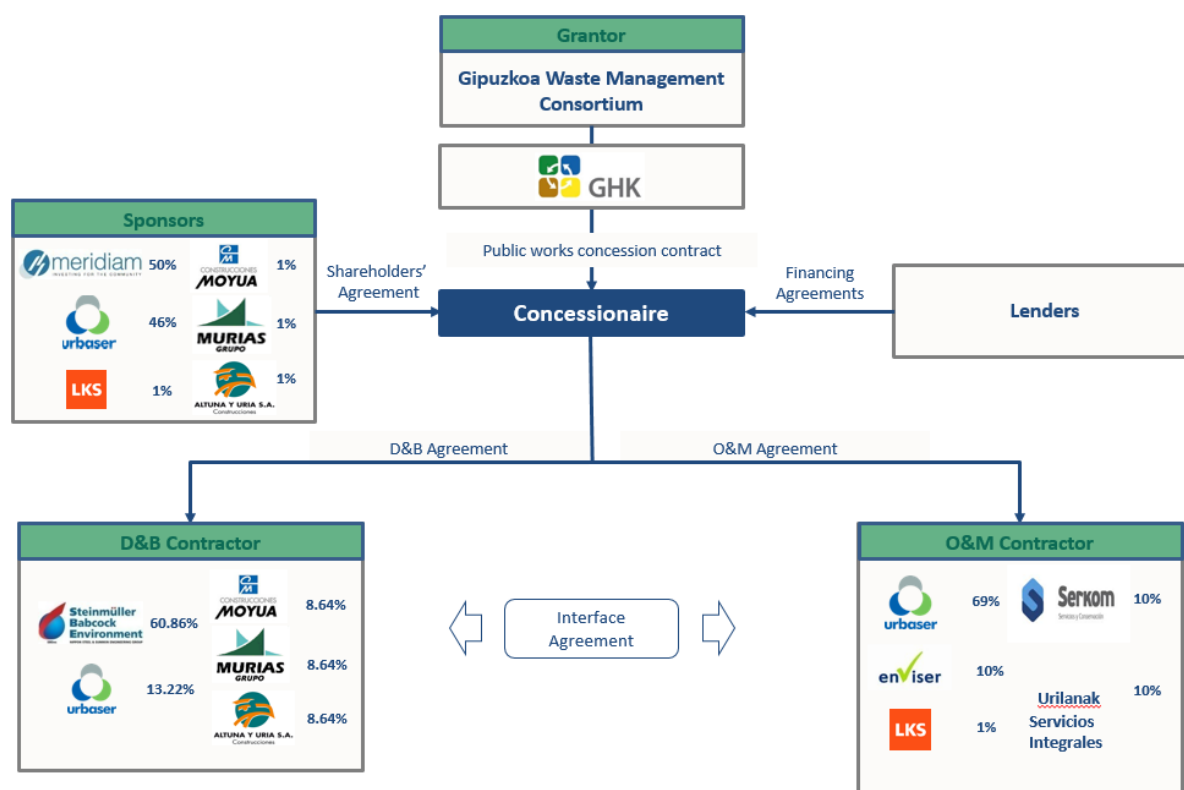
Save as required by any applicable rules or regulations, the Issuer is not under any obligation to update any forward-looking information set forth in this Information Memorandum and does not intend to do so.

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## TRANSACTION OVERVIEW

### Structure Diagram



### The Issuer

The Issuer is a special purpose company, incorporated under the laws of Spain on 8 February 2017. The registered office of the Issuer is at San Sebastián, in Paseo de Errotaburu, nº1, 5ª. The Issuer is registered at the Guipúzkoa Mercantile Registry under sheet 205, volume 2,785, page SS-39,319, with tax registration number A-75172221.

### The Project

The design, supply, construction, operation and maintenance of the residual waste treatment plant named “Complejo Medioambiental de Gipuzkoa – Fase I”. See “Description of the Project”.

## TRANSACTION PARTIES

### Issuer

Ekondakin Energía y Medioambiente, S.A.

### Shareholders

The shareholders of the Issuer are the following parties, each holding shares in the following share percentages:

Meridiam Investments S.A.S (50%)

Urbaser, S.A. (46%)

Construcciones Moyua, S.L. (1%)

Altunia y Uria, S.A. (1%)

Construcciones Muria, S.A. (1%)

	LKS Ingeniería, S. Coop. (1%)
<b>Account Bank</b>	<i>Banco Bilbao Vizcaya Argentaria, S.A.</i> or a bank or financial institution appointed as a replacement account bank in accordance with the Account Bank Agreement which has a rating for its long-term unsecured and non-credit enhanced debt obligations of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody's or a comparable rating from an internationally recognized credit rating agency.
<b>Commissioner</b>	Bondholders, S.L., whose registered office is at Valencia (46023), Avenida de Francia número 17, 1º A, has been appointed as commissioner for the holders from time to time of the Bonds.
<b>Agent</b>	Banco Bilbao Vizcaya Argentaria, S.A. (BBVA)
<b>Lenders</b>	The lenders under the Term Loan Facility Agreement.
<b>Secured Parties</b>	The Bondholders, the Lenders and the Hedging Bank.
<b>Hedging Bank</b>	Natixis, S.A.
<b>Contractor</b>	“Steinmüller Babcock Environment GmbH, Urbaser, S.A., Construcciones Moyua, S.L., Altuna y Uría, S.A. and Construcciones Murías, S.A., Unión Temporal de Empresas, Ley 18/1982, de 26 de mayo”, or “CMG Zubieta UTE”, or any new contractor appointed in accordance with a Replacement Plan.
<b>Operator</b>	Ekobal Operación y Mantenimiento, S.L.
<b>Technical Advisor</b>	G-Advisory Consultoría Técnica, Económica y Estratégica, S.L.P., or any other entity in substitution of it.
<b>Insurance Advisor</b>	Willis Towers Watson Plc.
<b>Financial Model Auditor</b>	PricewaterhouseCoopers, S.L.

## THE BONDS

<b>Currency</b>	Euro
<b>Form</b>	The Bonds will be issued in uncertificated, dematerialised book-entry form ( <i>anotaciones en cuenta</i> ) in euro in initial denominations of €100,000) that will be reduced according to the Scheduled Redemption.
<b>Registration, clearing and settlement</b>	The Bonds will be registered with the Spanish <i>Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. Unipersonal (Iberclear)</i> as managing entity of the central registry of the Spanish

clearance and settlement system (the **Spanish Central Registry**).

Investors in the Bonds who do not have, directly or indirectly through their custodians, a participating account with Iberclear may participate in the Bonds through bridge accounts maintained by each of Euroclear Bank S.A./N.V. (**Euroclear**) and Clearstream Banking, *société anonyme*, Luxembourg (**Clearstream Luxembourg**) with Iberclear.

## **Title and transfer**

In accordance with Article 16 of Royal Decree Law 878/2015 of 2 October on compensation, liquidation and recording of marketable securities represented by book-entries, on the legal regime of central securities depositories and central counterparties and on the transparency requirements of the issuers of securities admitted to trading on an official secondary market (*Real Decreto 878/2015, de 2 de octubre, sobre compensación, liquidación y registro de valores negociables representados mediante anotaciones en cuenta, sobre el régimen jurídico de los depositarios centrales de valores y de las entidades de contrapartida central y sobre requisitos de transparencia de los emisores de valores admitidos a negociación en un mercado secundario oficial*) (**RD 878/2015**), each person shown in the registries maintained by the respective Iberclear Members (or the Spanish Central Registry itself if the Bondholder is an Iberclear Member) as being a holder of Bonds shall be considered the holder of the principal amount of the Bonds recorded therein and **Bondholder** shall be construed accordingly.

One or more certificates (each a **Certificate**) attesting to the relevant Bondholder's holding of the Bonds in the relevant registry will be delivered by the relevant Iberclear Member or, where the Bondholder is itself an Iberclear Member, by Iberclear (in each case, in accordance with the requirements of Spanish law and the relevant Iberclear Member's or, as the case may be, Iberclear's procedures) to such Bondholder upon such Bondholder's request.

Each Bondholder will be treated as the legitimate owner of the relevant Bonds for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest or annotation of, or the theft or loss of, the Certificate issued in respect of it).

The Bonds will be issued without any restrictions on their transferability. In accordance with Article 13 of RD 878/2015, title to securities represented through book entries (as is the case with regard to the Bonds) may pass



through book transfer. Consequently, the Bonds may be transferred and title to the Bonds may pass (subject to Spanish law and to compliance with all applicable rules, restrictions and requirements of Iberclear or, as the case may be, the relevant Iberclear Member) upon registration in the relevant registry of each Iberclear Member and/or the Spanish Central Registry itself, as applicable.

**Clearing Systems**

Iberclear, Clearstream Luxembourg and Euroclear.

**Denomination of Bonds**

€100,000

**Status and Ranking**

The Bonds will constitute direct, general, unconditional, unsubordinated and secured obligations of the Issuer, to be secured on a first priority basis as contemplated in Condition 7 (*Security*), and upon insolvency of the Issuer will rank *pari passu* among themselves save for such obligations that may be preferred by provisions of law that are mandatory and of general application.

**Interest**

Interest on the Bonds will accrue from (and including) the relevant Issue Date. The Bonds are interest-bearing and interest will be calculated on the Principal Amount Outstanding of each Bond daily on an Actual/Actual ICMA unadjusted basis.

Interest will accrue at the fixed rate of 3,662 per cent. per annum and will be payable (i) on or prior to the Project Completion Date, monthly and (ii) after the Project Completion Date, semi-annually.

As an exception, in case the Interest period following does not commence the first day of a calendar month, such Interest period shall comprise the period between the first Drawdown or the Project Completion Date, as the case may be, and the last day of the following calendar month, for the monthly period, and until the earlier of the following calendar dates: (i) 30 December or (ii) 30 June, for the semi-annually period.

**Scheduled Redemption**

The Bonds will be redeemed in part on 30 June and 31 December in each year according to the schedule set out at Condition 14.2 (*Scheduled Redemption*). See "*Terms and Conditions of the Bonds*" below.

**Rating of the Issuer**

On 24 February 2017, the rating agency AXESOR assigned the Issuer a credit rating of BBB- with a positive outlook.

A credit rating is not a recommendation to buy, sell or hold securities and may be subject to revision, suspension

or withdrawal at any time by the assigning rating organisation. Each credit rating should be evaluated independently of any other rating and, among other things, will depend on the performance of the business of the Issuer from time to time.

### **Optional Redemption for Taxation**

The Issuer may, at its option, redeem: (i) all the affected (but not some only) of the Bonds; or (ii) only such Bonds in respect of which Additional Amounts or Withholding Tax Event are required to be paid, in each case at their Principal Amount Outstanding plus accrued but unpaid interest, pursuant to Condition 14.5 (*Early Redemption for taxation*). See "*Terms and Conditions of the Bonds*" below.

### **Optional Redemption**

The Issuer may, at any time and at its option, redeem the Bonds in whole but not in part at their Principal Amount Outstanding plus accrued interest and, in certain circumstances, a make whole premium, pursuant to Condition 14.6 (*Optional Redemption*). See "*Terms and Conditions of the Bonds*" below.

### **Mandatory Early Redemption**

There will be a Mandatory Early Redemption of the Bonds upon receipt by the Issuer of (i) compensation proceeds under the Concession Agreement on termination or (ii) insurance proceeds in excess of €25M, unless applied towards repair or reinstatement of the damage or are used to reimburse the Issuer for third party liability claims already paid pursuant to Condition 14.3 and Condition 14.4 (*Mandatory Early Redemption-Termination of Concession Agreement and Mandatory Early Redemption – Insurance Proceeds*). See "*Terms and Conditions of the Bonds*" below.

### **Events of Default**

See Condition 18 (*Events of Default*) under "*Terms and Conditions of the Bonds*" below.

### **Withholding Tax**

Payments of principal, interest and any other amounts (including, where applicable, make whole premium) payable in respect of the Bonds by or on behalf of the Issuer will be made free and clear of and without withholding or deduction for or on account of, any present or future tax imposed or levied by or on behalf of any of the relevant taxing jurisdiction (meaning the Kingdom of Spain or any political subdivision or any authority thereof or therein having power to tax or any

other jurisdiction or any political subdivision or any authority thereof or therein having power to tax to which the Issuer becomes subject in respect of payments made by it of principal and interest on the Bonds) unless required by law, statute, treaty, regulation or administrative practice of the abovementioned relevant taxing jurisdictions.. If so required by law, the Issuer shall pay such additional amounts as may be necessary in order that the net amount received by the Bondholders after the withholding or deduction shall not be less than the respective amounts which would have been receivable in respect of the Bonds in the absence of the withholding or deduction, subject to certain exceptions as described in Condition 16 (*Taxation*) under "*Terms and Conditions of the Bonds*" below.

**Issue Price**

100 per cent. of Principal Amount Outstanding plus any accrued interest, if any, in case the disbursement of any issue does not coincide with the last date of the previous Interest Period.

**Final Maturity Date**

May 30, 2047

**Purchases**

The Issuer or the Shareholders may at any time purchase Bonds in the open market or otherwise at any price. All Bonds purchased by or on behalf the Issuer under Condition 14.7 (*Open Market Purchase*) may, but need not, be cancelled at the election of the Issuer and, if so cancelled, may not be subsequently reissued or resold.

**Admission to trading and listing**

Application will be made to MARF, within 30 days following the relevant Issue Date, for the Bonds to be admitted to trading on this multilateral trading system in accordance with the rules of such system.

**Governing law**

The status of the Bonds, the capacity of the Issuer, the terms and conditions of the Bonds and all related documentation, any other contractual or non-contractual obligations of the Issuer, are governed by, and shall be construed in accordance with, Spanish law.

**Selling Restrictions**

There are restrictions on the offer, sale and transfer of the Bonds in the European Union, the United States and Spain and other relevant jurisdictions, and such other restrictions as may be required in connection with the offering and sale of the Bonds (see the section headed "*Sale of the Bonds*" below).

**Information**

The Issuer will be obliged to make available to the Information Recipients certain important information relating to the Project, including (among other information):

- (a) Within 45 days following a Calculation Date, a Compliance Certificate containing information specified in Condition 11.2 (*Compliance Certificate*);
- (b) Until the Project Completion Date, promptly provide the Technical Adviser with any information it reasonably requires to produce a quarterly construction progress report of the Project, pursuant to Condition 9.5 (*Construction Reports*);
- (c) From the Project Completion Date onwards, as soon as it becomes available and in any event within sixty (60) Business Days after December 31<sup>st</sup> provide the Information Recipients with the annual operation progress report of the Project, pursuant to Condition 9.6 (*Operation Reports*); and
- (d) After the Project Completion Date, within 30 days, before the start of each Financial Year, a budget as required by Condition 9.8 (*Budget*).

## OTHER SOURCES OF FINANCING

### Term Loan Facility Agreement

The Issuer, the Lenders, the Common Agent and the Security Agent have entered into, on the Closing Date, into a term loan facility agreement in a principal amount of up to EUR 111,537,114, divided in two tranches:

- A tranche A for a maximum amount of EUR 36,537,114.
- A tranche B for a maximum amount of EUR 75,000,000.

The Issuer's obligations in respect of the Term Loan Facility Agreement will rank *pari passu* to its obligations in respect of the Bonds.

See "*Summary of the Term Loan Facility Agreement*".

## COMMON TERMS

### Use of Proceeds

The Issuer will use the net proceeds from the Bonds issued under the Programme (together with the net proceeds of the Loans) to:

- a) paying Project Costs;
- b) covering required levels of minimum operating cash up to the Project Completion Date;
- c) the initial funding of the DSRA and the MRA;
- d) the initial working capital requirements (financed minimum treasury) after the Project Completion Date in accordance with the Base Case; and
- e) funding after the Project Completion Date a buffer for contingency amounts up to 3% of the maximum amount of the Facility and the maximum amount of the Programme (as it may be extended and/or renewed) that shall correspond to savings or efficiencies with respect to the Base Case.

### Pre-Enforcement Priorities of Payment

Prior to the enforcement of the transaction security, the Issuer may only withdraw and disbursed amounts from the General Account in the following order:

- (a) first, on a pro rata and *pari passu* basis, in and towards fees, costs and payment of expenses

owed to the Administrative Parties under the Finance Documents;

- (b) second, on a pro rata and *pari passu* basis towards payment of the Project Costs then due but unpaid (excluding Financial Costs);
- (c) third, on a pro rata and *pari passu* basis, towards payment when due of interest and fees on the Senior Debt and set-off payments on Interest Rate Hedging Agreement;
- (d) fourth, on a pro rata and *pari passu* basis, towards payment when due of the principal amount of the Senior Debt and termination payments under the Interest Rate Hedging Agreement;
- (e) fifth, towards funding of the Maintenance Reserve Account subject to available cash up to the MRA Required Balance;
- (f) sixth, funding of Debt Service Reserve Account subject to available cash up to the DSRA Required Balance;
- (g) seventh, towards making any mandatory prepayments required in relation to the Senior Debt and related termination payments under the Interest Rate Hedging Agreement;
- (h) eighth, towards payment when due of any other Financing Costs not otherwise paid pursuant to foregoing paragraphs;
- (i) ninth towards voluntary repayment of Senior Debt and associated breakage costs and close-out costs under the Interest Rate Hedging Agreement, any Bond Breakage Costs Amount and any payment in connection with the Tranche B Make Whole Payment (as this term is defined under the Term Loan Facility Agreement); and
- (j) tenth, any remaining funds shall be paid into the Distribution Account subject to the permitted distribution test, in accordance with Condition 10.16 (*Restricted Payment*).

Investors should see Condition 22 (*Bank Accounts*) for more details on the Project Accounts.

#### **Post-Enforcement Priorities of Payment**

In the event of enforcement of all security rights, the funds credited to the General Account and all amounts from time to time received or recovered by the Security

Agent shall be disbursed or applied in the following order of priority in each case only if and to the extent that any higher ranking items have been paid or provided for in full:

- (a) first, on a pro rata and *pari passu* basis, in or towards payment of unpaid fees, costs and expenses of the Administrative Parties, any administrator or a receiver appointed in connection with the enforcement of security under the Security Documents;
- (b) second, taxes and payments required by law or authorised by the Senior Creditors;
- (c) third, on a pro rata and *pari passu* basis, in or towards payment when due of interest and fees on the Senior Debt;
- (d) fourth, on a pro rata and *pari passu* basis, towards payment of the principal amount of the Senior Debt and termination payments under the Interest Rate Hedging Agreement which have not been terminated or closed out;
- (e) fifth, towards payment when due of any other Financing Costs not otherwise paid pursuant to foregoing paragraphs;
- (f) sixth, towards payment of any other Project Costs; and
- (g) seventh, any surplus to the Issuer or other person entitled to it.

## **Project Accounts**

The Issuer will be required to maintain the following bank accounts with the Account Bank in accordance with the Account Bank Agreement:

- (a) the General Account;
- (b) the Debt Service Reserve Account;
- (c) the Maintenance Reserve Account;
- (d) the Insurance Proceeds Account;  
(the **Project Accounts**);
- (e) the Bond Proceeds Account; and
- (f) the Tranche B Proceeds Account.

Investors should see Condition 22 (*Bank Accounts*) for more details on the Project Accounts.

## Restricted Payments

Subject to certain exceptions for Permitted Payment, the Issuer may only make Restricted Payments from funds standing to the credit of the Distribution Account. The Issuer will be allowed to pay amounts into the Distribution Account (i) on satisfaction of the following conditions, and a compliance certificate has been delivered in accordance with the Finance Documents confirming the same, and (ii) the transfer is in an amount which is not more than the Distributable Amount:

- (a) no Default has occurred and is continuing (which has not been cured or waived) ;
- (b) the Maintenance Reserve Account is funded to the MRA Required Balance and the DSRA is funded to the DSRA Required Balance;
- (c) the Historic DSCR on the most recent Calculation Date is at least 1.10;
- (d) the LLCR on the most recent Calculation Date is not less than 1.15;;
- (e) Project Completion Date has occurred; and
- (f) The first repayment of the Facilities has occurred.

Investors should see Condition 10.16 (*Restricted Payment*) of the section of this Information Memorandum headed "*Terms and Conditions of the Bonds*" for more details.

Amounts standing to the credit of the Distribution Account will be available for distribution by the Issuer to the Shareholders at any time, without restriction.

## Security

The Security will consist of the following first ranking Security Interests, each governed by Spanish law:

- (a) a pledge granted by the Issuer in favour of the Secured Parties over the credit rights, present and future, and receivables of the Issuer under:
  - (i) the Project Documents, (ii) certain Insurances taken out by the Issuer with regard to the Project, (iii) any letter of credit, guarantees and performance bonds (*avales*) granted in favour of the Issuer with regards to the Project including without limitation the Equity Contribution Guarantees, the Construction Performance Bonds, the Advance Payment Bond, the EPC Parent Company Guarantee and the O&M Parent Company Guarantee (iv) receivables in favour of the Issuer arising from the sale of energy; and (v) the Shareholders



Support Agreement and the Shareholder Loan Agreements;

- (b) a pledge granted by the Issuer in favour of the Secured Parties over the credit rights, present and future, and receivables of the Issuer under the Hedging Agreements;
- (c) a pledge granted by the Issuer in favour of the Secured Parties over the credit rights, present and future, under the Project Accounts;
- (d) a pledge granted by the Issuer in favour of the Bondholders over the credit rights, present and future, under the Bond Proceeds Account;
- (e) a pledge granted by the Issuer, as borrower, in favour of the Tranche B Lenders over the credit rights, present and future, under the Tranche B Proceeds Account;
- (f) a pledge granted by the Shareholders in favour of the Secured Parties over 100 percent of the Issuer's share capital; and
- (g) a pledge granted by the Shareholder in favour of the Secured Parties over the Shareholder's credit rights present and future, and receivables under the Shareholders Loans and any and all other credit rights, present and future of the Shareholders vis-à-vis the Issuer.

The Initial Security Documents shall be granted prior to the first issue of the Bonds.

Investors should see the Condition 7 (*Security*) for more details.

## **RISK FACTORS**

*The Issuer believes that the following factors may affect its ability to fulfil its obligations under the Bonds. All of these factors are contingencies which may or may not occur and the Issuer is not in a position to express a view on the likelihood of any such contingency occurring.*

*Factors which the Issuer believes may be material for the purpose of assessing the market risks associated with the Bonds are also described below.*

*The Issuer believes that the factors described below represent the principal risks inherent in investing in the Bonds, but the Issuer may be unable to pay interest, principal or other amounts on or in connection with the Bonds for other reasons, and the Issuer does not represent that the statements below regarding the risks of holding the Bonds are exhaustive. Prospective investors should also read the detailed information set out elsewhere in this Information Memorandum (including any documents incorporated by reference herein) and reach their own views prior to making any investment decision. Prospective investors should note that the risks relating to the Issuer, its industry and the Bonds summarised in the section of this document headed "Transaction Overview" are the risks*

*that the Issuer believes to be the most essential to an assessment by a prospective investor of whether to consider an investment in the Bonds.*

## **RISK FACTORS RELATING TO THE ISSUER AND PROJECT**

### ***The Issuer has limited business operations and sources of funds***

The Issuer is a special purpose vehicle with no business operations other than those in relation to the design, construction, finance, operation and maintenance of the Project. The Issuer's principal sources of funds to meet its obligations under the Bonds and the Loans will be revenues generated by the Project, the Equity and the Shareholder Loans. Other than such amounts, the Issuer will not have any other funds available to it to meet its obligations under the Bonds and/or any other payment obligations.

### ***The construction and operation of the Project requires the Issuer to obtain approvals, licenses, certificates and other permits***

In order to carry out the Project, the Issuer needs to obtain several approvals, licenses, authorizations, certificates and other administrative permits from the competent authorities. There can be no assurance that the Issuer will be able to obtain the relevant approvals at all, or on a timely basis, or that it will be able to fulfil the requirements for such approvals in all cases. This could lead to delays and, eventually, to the impossibility of developing the Project, which could have a material adverse effect on the business, the Issuer's financial conditions and its ability to make payments under the Bonds.

### ***The operation of the Project is subject to extensive regulation and several administrative controls***

The regulatory framework to which the Project is subject imposes significant actual, day-to-day compliance burdens, costs and risks. Non-compliance with such regulations could result in the revocation of permits, sanctions, fines or even criminal penalties. Compliance with regulatory requirements may result in substantial costs to the Issuer's operations that may not be recovered. In addition, it is not possible to predict the timing or form of any future regulatory or law enforcement initiatives. Changes in existing energy, waste, environmental and administrative laws and regulations may materially and adversely affect Issuer's business, products, services, margins and investments.

In addition, the Project is subject to several administrative controls by the competent administrative bodies and authorities. These public authorities may audit, review or inspect our activity. Moreover, these public authorities are entitled to interpret and apply the rules, laws and regulations to which the Project is subject to and, therefore, the Issuer's interpretation and application of the regulatory framework may differ from the views of these relevant public authorities.

To the extent any such audit, review or inspection reveals discrepancies between the interpretations and applications of the regulatory framework carried out by the Issuer and those made by the relevant public authority, the Issuer may experience a material adverse effect on its business, financial conditions and its ability to make payments under the Bonds.

### ***The Issuer may face high costs related to compliance with environmental, health and safety laws and regulations***

The operation of the Project is subject to extensive environmental, health and safety laws and regulations relating to controlling discharges and emissions of pollutants to land, water and air, the use and preservation of natural resources, the noise impact of our operations and the use, disposal and remediation of hazardous materials. Compliance with these laws and regulations is a significant aspect of our industry, and substantial legal and financial resources are required to ensure compliance and to manage environmental risks.

The risk of substantial environmental costs and liabilities is inherent in this type of activities, and there can be no assurance that any incurrence by us of such costs and liabilities, or the adoption of increasingly strict

environmental laws, regulations and enforcement policies and practices, will not have a material adverse effect on our financial condition, results of operations or cash flows.

Although the Project has been granted with an integrated environmental authorisation, environmental regulations also require us to perform environmental impact studies as a condition of the Concession and in order to obtain and maintain the necessary regulatory licences, permits and other approvals for the operation of the Project. There can be no assurance that governmental authorities will approve these environmental studies; or laws or regulations will not change or be interpreted in a manner that increases our costs of compliance, or materially or adversely affects our operations, facilities or our plans for the companies in which we have an investment or to which we provide our services. This risk may adversely affect the Issuer's ability to make payments on the Bonds.

***Regulatory changes may have an adverse effect on economic regime of the Issuer's electricity generating activity***

The Spanish electricity sector is subject to extensive and complex regulation. Waste-to-Energy ("WtE") activities are often subject to more variable and stringent compliance standards relative to conventional projects. As such, the Project is vulnerable to changes in the existing regulations affecting the economic regime of the electricity generation activity under the Project.

This could lead to a lower compensation for the electricity delivered to the system that might not be in line with the Financial Model prepared by the Issuer and may have an adverse effect on the financial condition and the results of operations of the Issuer.

***Risks due to legal claims***

Claims may be asserted against the Issuer based on accidents occurring or mistakes made during the implementation of construction works, the operation of the Concession by the Issuer or during the provision of services. Such claims may relate to the injury or death of human beings, damage to facilities and accessories or environmental damage. They may be based on alleged acts or omissions of the Issuer and/or of its sub-contractors.

Any such claim could materially adversely affect the business, financial condition or results of operations of the Issuer, and could furthermore have a materially adverse effect on the Issuer's reputation.

The Issuer is responsible for complying with all health and safety regulations regarding the development of the Project. However, under the Construction Contract and the O&M Agreement, this risk will be passed down to the Contractor and the Operator (as the case may be, subject to their overall caps on liability).

***Inadequacy of insurance***

Although the Issuer currently benefits from insurance cover to protect against key insurable risks, such cover may not, in certain circumstances, be adequate to cover lost income, reinstatement costs, increased expenses or other liabilities that may arise in connection with certain events. This risk increases the more significant and serious the event or circumstance giving rise to the insurance claim. Moreover, there can be no assurance that such insurance cover will be available in the future at commercially reasonable rates or at all. Insurers could cease to offer current insurance cover, become insolvent or lose their licences or authorisations. Certain types of insurance cover may be cancellable on short notice by the relevant insurer, including for reasons other than non-payment of premium or breach by the insured, such as in the event of terrorism. In the event of termination of insurance cover, it may not be commercially reasonable or possible for the Issuer to obtain replacement cover immediately or to the same extent as previous cover. The Issuer may not have, or may cease to have, insurance cover in respect of a loss if the loss is not covered under, or is excluded from, an insurance policy including by virtue of a deductible applying, exhaustion of applicable cover limits or a policy operating as an excess policy or if, in respect of a loss that would otherwise be insured, the relevant insurer successfully avails itself of defences available to it, such as breach of disclosure duties, breach of warranty, breach of condition precedent, breach of policy condition, non-disclosure or misrepresentation in connection with "basis of contract" clauses or failure to give notice of a claim in accordance with the policy.

### ***No recourse against contractors***

None of the Contractor, Operator, their sub-contractors or the sub-contractors of the Issuer has any obligation to make payments under the Bonds or otherwise compensate the Bondholders for any unpaid amount under the Bonds and as such the Bondholders will have no recourse against any of them.

Notwithstanding the above, the Issuer has granted several pledges over the credit rights arising from the Construction Contract, the O&M Agreement and any other project contract to secure, among others, its obligations under the Bonds, so it allows the Bondholders to enforce these securities in accordance with the Transaction Documents.

In this regard, both, the Contractor and the Operator have entered into an EPC Direct Agreement and an O&M Direct Agreement, respectively, with the Issuer, the Lenders, the Commissioner (on behalf of the Bondholders), the Hedging Bank, the Common Agent and the Security Agent, with the purpose of regulating certain rights of the Senior Creditors with respect to the Construction Contract and the O&M Agreement (e.g. Step in rights in favour of the Security Agent or a third party appointed by the Security Agent, in certain events regarding the Issuer's rights and obligations under the Construction Contract and the O&M Agreement; and the subordination of the payments to be made by the Issuer under the Construction Contract and the O&M Agreement with respect to the Secured Documents).

### ***Dependence on third parties***

The Issuer is a party to contracts with a number of other third parties that have agreed to perform certain services in relation to the Bonds (e.g. financial institutions and insurance companies). Disruptions in such services or failures by such third parties to carry out these services could require the Issuer to obtain replacement services, which may be more costly or unavailable. The inability of the Issuer to obtain the provision of such services could have an adverse effect on its ability to make payments under the Bonds and/or early redemption of the Bonds.

In carrying out construction works and projects, operating concessions and in regard to the services it offers, the Contractor relies on external manufacturers of equipment and sub-contractors. To the extent it is impossible for the Contractor to sub-contract specific services or to acquire equipment and materials complying with the relevant plans, quality standards, specifications and cost objectives, this may affect the scheduled of the works or a satisfactory provision of services to clients. In connection therewith, there is a risk of contractual penalties, cancellations of agreements and liability claims, which could have a material adverse effect on the financial condition and the results of operations of the Issuer.

### ***Risks related to the estimate of construction costs and deadlines for completion***

In part, the Contractor offers its services at fixed prices or as a lump-sum offer, among other things, in connection with the Construction Contract. In these kinds of agreements, additional costs, incurred as a consequence of an inaccurate cost estimates or as a consequence of the budgeted costs being exceeded during the implementation of the Project (for example, due to fluctuations in the price of raw materials or to changes in the execution calendar or to design or procurement deficiencies), may lead to the Project being, in theory, less profitable than expected or to losses arising to the Issuer. However, the fact that the Construction Contract is a lump sum turnkey contract makes the Contractor the only one that assumes those risks of additional costs.

The Project is to be constructed according to a milestones plan. The Contractor shall submit a statement to the Issuer for a milestone achieved showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include: (a) such reports on progress of the Works; and (b) customary certifications by the Contractor in respect of the quality of all Work reflected in the statement and the absence of encumbrances (the "**Works Certificate**"). If a milestone is not reached due to delays attributable either to third parties or the Contractor, and so the Works Certificate is not delivered, the payment will not be

granted. This could result in a disruption in the construction of the Project. No bonus payments will be made to the Contractor for early achievement a milestone.

The inability of the Issuer to obtain the facility could have an adverse effect on its ability to make payments for the next step of the Project.

Some of the circumstances described above are beyond the Contractor's control and may lead to its inability to complete the Project at the budgeted costs or according to schedule (which may, in turn, lead to the imposition of an agreed contractual penalty). This could have a material adverse effect on the financial condition and the results of operations of the Issuer.

#### ***Reduce of operating and maintenance period***

There is a risk that the expected timing of maintenance expenditure will change due to defects found in the future. Under the Construction Contract, there is a warranty period of 36 months from the Works Acceptance and Operation Commencement Date ("*Fecha de Comprobación de Obras e Inicio de la Operación*") for defective materials from the Contractor and unlimited liability of the Contractor in relation to the repairs and remedies of the defects that are noticed after the signing of the Works Acceptance and Operation Commencement Date ("*Fecha de Comprobación de Obras e Inicio de la Operación*") and that, pursuant to the Concession Agreement and the applicable legislation, shall be borne by the Issuer. For any part of the Works repaired or replaced during the abovementioned period of 36 months, such period shall be extended by 12 months, provided that it shall not exceed 48 months after the Works Acceptance and Operation Commencement Date.

After such warranty period, the Operator shall be responsible for the rectification of any defects, other than rectification of latent defects that are the responsibility of the Contractor under the Construction Contract.

#### ***Insufficiency of the level of cover provided by the Construction Performance Bonds***

Under the Construction Contract, the Contractor assumes, subject to agreed liability caps in certain cases, all risks, responsibilities, terms, conditions, rights and obligations related to the Works established for the Issuer under the Concession Agreement. See the sections of this Information Memorandum headed "*Description of the Project*" and "*Description of the Concession Agreement and Construction Contract*".

The Contractor has posted Construction Performance Bonds (as defined in the section of this Information Memorandum headed "*Description of the Concession Agreement, the Construction Contract and the Operation and Maintenance Contract*") to secure its obligations under the Construction Contract. However, amounts payable under the Construction Performance Bonds may be insufficient to satisfy the potential liability to the Issuer in the event the Contractor does not fulfil its obligations under the Construction Contract. In such event, the Issuer would be responsible for any amount in excess due to the Authority, which could adversely affect the Issuer's ability to make payments under the Bonds.

#### ***Legal risks related to licensing and approvals***

In order to be able to carry out the Project, The Contractor may have to obtain approvals, licenses, certificates and other permits from the competent authorities in specific project phases. There can be no assurances that the Contractor will be able to obtain the relevant approvals at all, or on a timely basis, or that it will be able to fulfil the requirements for such approvals in all cases. This could lead to delays, which could have a material adverse effect on the business, the financial condition and the results of operations of the Issuer.

#### ***Change in Law***

Poor economic conditions have affected, and continue to affect, government budgets and threaten the continuation of government subsidies such as feed-in tariffs, tax benefits and other similar subsidies that benefit the Issuer's business. Such conditions may also lead to adverse changes in law, such as the amendments to the Spanish tax law affecting the Issuer's ability to deduct finance costs. The reduction or elimination of such subsidies or adverse

changes in law could have a material adverse impact on the profitability of the Project and therefore on the Issuer's ability to make payments under the Bonds.

### **Eurozone financial and political crisis**

Since the second half of 2007, disruptions in the global credit markets have created increasingly difficult conditions in the financial markets. These conditions have resulted in decreased liquidity and greater volatility in global financial markets, affecting the functioning of financial markets and having an impact on the global economy.

In Europe, despite measures have been taken by several governments, international and supranational organisations and monetary authorities to provide financial assistance to Eurozone countries in economic difficulty and to mitigate the possibility of default by certain European countries on their sovereign debt obligations, concerns persist regarding the debt and/or deficit burden of certain countries, including Spain, their ability to meet future financial obligations and the continuity of its membership in the European Union, given the diverse economic and political circumstances in each individual Member State. It remains difficult to predict the effect of these ongoing concerns on the economy and the financial system, how long the economic and political European crisis will last and to what extent the Company's business, results of operations and financial condition may be adversely affected.

### ***Volume of waste to be treated by the Project***

Waste volume depends on, and may be affected by, a wide variety of factors many of which are not within the Issuer's control, such as demographic changes, economic growth and competing waste treatment facilities, technological or social innovations affecting waste treatment that cannot be envisaged as of the date of this document and other factors. As a result, the number and type of tons to be effectively treated by the Plant may not equal forecasted levels.

Under the Concession Agreement, the Issuer fully assumes the risk of the volume of waste to be treated by the Plant at any given time and, therefore, non-compensation can be claimed to the Authority in the event there is a substantial difference between the actual volume of waste to be treated in the Project and the forecasted levels.

To this regard, any significant reduction of the volumes of waste as well as the type of waste (which may affect to the generation of energy) to be treated by the Project could lead to a lower remuneration of the Issuer as well as a minor collection of other revenues, which could adversely affect the Issuer's ability to make payments under the Bonds.

### ***Early termination of the Concession Agreement***

According to the TRLCSP (as defined in Section "*Description of the Regulatory Regime*"), there are a number of early termination events which entitle the parties to terminate the Concession Agreement: extinguishment of the legal personality of the Issuer; the declaration of insolvency; mutual agreement by the parties; Issuer's delay in meeting its deadlines; failure to comply with any essential obligation under the Concession Agreement; the Authority's delay for more than six months in complying with its payment obligations; and certain force majeure events. See the section of this Information Memorandum headed "*Description of the Regulatory Regime*".

The Concession Agreement provides that:

- On case of early termination of the Concession Agreement for reasons attributable to the Authority, the Issuer has a right to be compensated by the Authority for the amount (*importe*) of its investment (in relation to the expropriation of the Land, execution of the construction Works and purchase of the necessary goods for the operation of the Concession Agreement), taking into account depreciation (applying a straight line method for the calculation of the amortization), in relation to the time pending for the termination of the Concession Agreement. The resulting amount has to be determined by the Authority within a six-month period.

The concept of compensation for the amount of the investment is not defined in the regulatory framework applicable to the Project, nor does the regulatory framework establish a methodology for determining it. In an early termination scenario, the Issuer expects that the Authority would determine the early termination payment by reference to the economic and financial plan which makes reference to the financial statements of the Issuer. However, absent any guidelines, there can be no assurances as to how the calculations for determining the early termination payment shall be carried out by the Authority. One approach would be for the early termination payment to be determined by reference to the book value of the assets as they appear in the Issuer's financial statements, but a more conservative calculation would also be possible.

- In addition, in case the early termination of the Concession Agreement is due to the occurrence of the following events: (i) Six months' delay in the delivery of the consideration, the land or the auxiliary means by the Authority, the Issuer could decide to terminate the Concession Agreement or to request the payment of the legal rate of the outstanding amounts or the economic values agreed, from the term foreseen for the payment of the retribution to the Issuer; (ii) recovery (*rescate*) of the Concession Agreement; (iii) suppression of the service due to public interest reasons; and (iv) impossibility of performing its obligations due to agreements entered into by the Authority after the subscription of the Concession Agreement, the Issuer shall also be compensated for damages.

According to the Terms of Tender, the damage compensation would be calculated considering the following references: (i) the future cash flows from the operation of the Concession that the Issuer would fail to receive, estimated in accordance with the arithmetic average of the pre-tax profit that would be obtained until the termination of the concession. If the time remaining until termination is longer than the actual time elapsed, the latter would be considered as the reference; (ii) the applicable discount rate ensuing from the cost of the average weighted capital corresponding to the last annual accounts of the Issuer; and (iii) the loss of value of the Works and facilities that will not revert to the Authority, taking into account their level of depreciation.

- On the other hand, in case the Concession Agreement terminates for reasons not attributable to the Authority, the Authority shall pay the Issuer the amount (*importe*) representing the value of the Concession (*valoración de la concesión*) including the investment made in the construction of the Project and purchase of the necessary goods for the operation of the infrastructure. Such amount would be calculated through a new tender that would be awarded to the highest auction price (See "*Description of Regulatory Regime – Liability and compensation for termination of concession contract*").

In addition, the Concession Performance Bond (as defined in the section of this Information Memorandum headed "*Description of the Concession Agreement, the Construction Contract and the Operation and Maintenance Contract*") may be enforced by the Authority and, in some cases, the Issuer shall indemnify the Authority for any damages incurred in excess of the amount obtained from the enforcement of the Concession Performance Bond.

- In case of events of force majeure that result in the termination of the Concession Agreement, the Authority shall compensate the Issuer with the amount (*importe*) of its investment, calculated as an event of early termination attributable to the Authority as set forth above, and the higher cost in which the Issuer has incurred into as a result of the indebtedness with third parties.

Under applicable law, the Authority is empowered to make the final determination of the amount payable to the Issuer and, as a result, the amounts payable by the Authority upon early termination may not be sufficient or sufficiently timely to enable the Issuer to meet its payment obligations under the Bonds on a timely basis.

### ***Force majeure***

Various events are characterised in the Concession Agreement as force majeure events, principally war, earthquakes and flooding, which directly cause the Issuer to be unable to comply with all or a material part of its obligations under the agreement. Upon the occurrence of a force majeure event, the Issuer will be relieved from liability to the extent that it is unable to perform its obligations. In case of force majeure events that completely impede the execution of the Issuer's obligations under the Concession Agreement, the Concession Agreement will be terminated and the Authority shall compensate the Issuer as set forth above.

In the event that the term of the Concession Agreement is suspended due to a force majeure event, the Issuer will have right to compensation. In addition, in such situation, the Issuer may be able to be remunerated through an extension of the term of the Concession Agreement (up to a maximum of 10% of the initial term of the Concession Agreement), its ability to make timely payments on the Bonds may be adversely affected. .

### ***Handback***

The Concession Agreement provides that the Works are to be handed back to the Authority following the termination or expiration of the Concession Agreement in a working condition sufficiently perfect to provide the services and free of charges in accordance with the conditions set out in the Maintenance Program for the Handback (*Programa de Mantenimiento para la Reversión*), excepting for the specific conditions agreed with the Authority. In relation to this, the Authority may carry out inspections in the area of the Concession as to determine the compliance by the Issuer of its obligations under the Concession Agreement.

Failure to satisfy this condition could result in the liability of the Issuer to the Authority under the Concession Agreement. Any such expenses in excess of budgeted amounts could adversely affect the Issuer's ability to make payments under the Bonds.

### ***Capped Availability Payments***

Availability Payments (as defined below) will be made on a monthly basis by the Authority by means of the Gipuzkoako Hondakinen Kudeaketa (**GHK**), in-house limited company of the Authority, and therefore are a direct obligation of the Consorcio de Residuos de Guipúzcoa. The Issuer is exposed to the credit quality of the Authority (an association of several municipalities and the province of Guipúzcoa) and the willingness of these Local Governments to continue to make its contractual availability payments which could impact the Issuer's ability to make timely payments of the Bonds.

In addition, according to the Concession Agreement, revenues generated from the collection of Availability Payments are capped to a maximum annual amount set forth by the Issuer in its offer.

### ***Availability Payment Deductions and penalties***

The Issuer has prepared a Financial Model analysing the amounts and timing of receipt of payments under the Concession Agreement and payments due to the Contractor and the Operator and in respect of debt service, which has resulted in an expectation that the Issuer will always have sufficient excess revenues to meet the cover ratios set out in the Concession Agreement and to meet its payment obligations to Bondholders. Availability Payments, which are the main revenues of the Issuer, may be reduced if the Issuer fails to meet certain parameters of unavailability and environmental quality standards specified in the Concession Agreement (see "*Description of the Concession Agreement, the Construction Contract and the Operation and Maintenance Contract—Remuneration of the Issuer*"). In circumstances where there is a service shortfall, and deductions and/or penalties are incurred under the Concession Agreement, then the risk of deductions and/or penalties will fall on the Issuer, who passes down this risk to the Operator up to its liability cap.



In relation to the above, during the operation phase, deductions and/or penalties may be imposed to the Issuer in connection with the Availability Payments and, under this scenario, other revenues may not be sufficient to guarantee the Issuer's ability to make payments under the Bonds.

#### ***Remuneration update***

Under the Concession Agreement, the Availability and Ton Payments are annually updated based on different Spanish sectorial indexes, which measure variations in prices and costs of specific groups of goods and services. As a result, there is a risk that the indexes selected will not fully reflect the price inflation of the Project's operating costs. The Issuer's cost of financing is fixed and therefore in a deflationary scenario revenues would reduce in line with the indexed payments which would reduce the debt service coverage ratios. This risk is borne by the Issuer and could result in the Issuer's available cash flow being insufficient to meet its payment obligations in respect of the Bonds on a timely basis (see "*Description of the Concession Agreement and the Construction Contract – Remuneration of the Issuer*").

#### ***The awarding of the Concession Agreement has been challenged before the Administrative Courts***

One of the bidders (Fomento de Construcciones y Contratas, S.A. y Sartech Engineering, S.L.) appealed the awarding of the Concession Agreement carried out by the Authority, before the administrative Administrative Court of Public Contracts of Guipuzkoa ("Tribunal Administrativo Foral de Recurso Contractuales de Guipuzkoa").

Although the Administrative Court rejected the administrative appeal ("recurso especial en material de contratación") brought by such bidders, by means of resolutions issued on March 28, such decision may also be challenged before the High Court of the Basque Country within a 2 month period. In the event that such decision is challenged before the High Court of the Basque Country, there is a risk that such judicial procedure may succeed and, consequently, the awarding of the Concession Agreement may be declared null and void.

In this scenario, although the Issuer would be entitled to compensation for the construction works and supplies carried out (net of depreciation), due to the early termination of the Concession Agreement, it may affect its payment obligations under the Bonds.

#### ***The extension and modification of the integrated environmental authorisation has been challenged before the Courts***

GURASOS (Association against the Project) has challenged before the High Court of the Basque Country the extension and modification of the integrated environmental authorisation ("Autorización Ambiental Integrada") granted for the Project by the Environmental Office of the Basque Country ("Consejería de Medio Ambiente del Gobierno Vasco"). Such judicial procedure is currently pending of final decision by the High Court of the Basque Country.

In the event that such judicial procedure succeeds, the operation of the Project may be affected. In this scenario, although the Issuer might be entitled to compensations, it may affect its payment obligations under the Bonds.

#### ***The Special Town Planning Plan of Arzabaleta has been challenged before the Courts***

The Town Hall of Hernani has challenged the Special Town Planning Plan of Arzabaleta ("Plan Especial de Arzabaleta") approved by the Town of San Sebastian.

The Authority has informed us that such claim is in the initial stages of the judicial procedure.

In the event that such judicial procedure succeeds, the operation of the Project may be affected. In this scenario, although the Issuer might be entitled to compensations, it may affect its payment obligations under the Bonds.

## RISK FACTORS RELATING TO THE SECURITY

### *Enforcement of Security may be affected by restrictions under Spanish insolvency law*

Spanish insolvency law foresees a suspension of the enforcement powers held by creditors holding securities in the event of insolvency of the debtor.

Article 5bis of the Spanish Insolvency Law 22/2003 of 9 July (the **Spanish Insolvency Law**) (*Ley Concursal*) states that if a debtor notifies the commercial court (*Juzgado de lo Mercantil*) that it has started negotiating with its creditors in order to obtain their approval regarding: (i) a refinancing agreement as referred to under article 71.bis.1 of the Spanish Insolvency Law; (ii) a refinancing agreement as referred to under the Fourth Additional Provision (*Disposición Adicional Cuarta*) of the Spanish Insolvency Law; or (iii) an advance proposal of arrangement between creditors (*propuesta anticipada de convenio*), its obligation to file an application for volunteer insolvency shall be suspended for three months. Following those three months, the debtor will have an additional period of one month to submit such application.

As from the date of such notice and during such pre-insolvency period, no court or out-of-court enforcement proceedings of securities over any assets or rights of the debtor that are necessary for the continuity of its business may be initiated, and those legal proceedings initiated prior to such notice shall be suspended. Nevertheless, public law claims shall not be subject to this enforcement limitation.

In addition, no individual financial creditor may initiate enforcement actions against the debtor (and those already initiated shall be suspended) if creditors holding at least 51% of the financial liabilities against the debtor have expressly agreed to start negotiating with the debtor in order to arrange a refinancing agreement and have also agreed not to file or continue enforcement actions against the debtor while the debtor and its creditors are still negotiating.

Despite the foregoing, secured creditors will still be entitled to bring court or out-of-court enforcement proceedings against the corresponding secured assets. However, once proceedings have been initiated, they shall be immediately suspended.

Once a debtor is declared insolvent, the enforcement of security interests over assets owned by the debtor will be stayed until the first of the following circumstances occur: (a) approval of a creditors' composition agreement, unless the composition agreement has been approved by the secured creditors, in which case the composition agreement will govern, or (b) one year has elapsed since the declaration of insolvency without liquidation proceedings being initiated. This does not apply to financial collateral security granted pursuant to Royal Decree-Law 5/2005, of 11 March. The stay may be lifted if the insolvency court considers that the relevant asset is not necessary for the continuation of the debtor's professional or business activities. The secured creditor could also lose its right to enforce separately within the insolvency proceedings if it did not commence the enforcement prior to the insolvency declaration.

In determining which assets of the debtor are used for its professional or business activities, courts have generally adopted a broad interpretation and will likely include most of the debtor's assets. Nonetheless, for the purposes of such declaration, article 56 of the Spanish Insolvency Law points out that those shares or quotas (*participaciones*) in companies whose only activity is the holding of one asset and the liabilities deemed necessary for its financing shall not be deemed necessary for the continuity of the debtor's business, provided that the enforcement of securities over those shares or quotas (*participaciones*) does not lead to a termination event or an amending event that allows the insolvent debtor to maintain development of the relevant asset.

However, the interpretation of such article 56 of the Spanish Insolvency Law is controversial and there are multiple interpretations between scholars and the existing case law. Furthermore, in accordance with the Spanish Insolvency Law, any action carried out or agreement entered into by the debtor in the two years preceding its declaration of insolvency can be clawed back (rescinded) by the court if the action or agreement is considered detrimental to the insolvency estate. This may arise even in the absence of fraudulent intent.

As a general rule, the insolvency administrator or the creditors who exercise the claw back action have to prove that the act was detrimental to the insolvency estate. This notwithstanding, the following acts are presumed detrimental without there being any possibility to provide evidence to the contrary: (a) acts where no consideration is received for a disposed asset; and (b) acts that result in the early repayment or settlement of obligations which would have become due after the declaration of insolvency (unless such obligations were secured by means of a security interest). In the following cases, however, the presumption is rebuttable: (a) disposals made in favour of “specially related parties” to the debtor (including, inter alia, shareholders that meet certain requirements, group companies and legal or de facto directors); (b) the creation of a security interest securing a pre-existing obligation or a new obligation that replaces an existing one; and (c) those payments or other acts extinguishing obligations that would have become due after the declaration of insolvency and which are secured by means of a security.

Claims arising in favour of a creditor as a result of a claw back action will be subordinated if the court has determined that the creditor acted in bad faith. Other claims may also be subordinated including, inter alia, (a) claims by legal or natural persons who are “specially related parties” to the debtor (including, de facto directors) and (b) claims arising from reciprocal obligations if the court rules, based on the insolvency administrator’s report, that the creditor repeatedly obstructed compliance with the agreement against the interest of the insolvency estate. Security interests granted by the debtor to secure claims held by a “specially related party” will be cancelled by the court.

Under Spanish law, one factor considered in determining if a party is “specially related” is (a) whether such party holds, directly and indirectly, more than 10% of the capital of the debtor (for companies that are not listed) or 5% (for companies that are listed) at the time the credit right under dispute in the insolvency scenario arises or (b) in the event of companies belonging to the same group as the insolvent debtor and their common shareholders, provided that such shareholders meet, directly or indirectly, the minimum shareholding requirements set out before.

## **RISK FACTORS RELATING TO THE BONDS**

### ***Risk of subordination and priority of credits in case of insolvency proceedings***

Upon the insolvency declaration of the Issuer, the Issuer's obligations under the Bonds shall, to the extent secured, rank as special privileged credits (*créditos con privilegio especial*) up to 90% of the fair value (*valor razonable*) of the charged assets under the Security. Any amount which is not covered by the 90% of the fair value shall rank as appropriate under the Spanish Insolvency Law, as amended (i.e. any principal overflow shall rank as an ordinary claim against the Issuer and any interest overflow shall rank as a subordinated claim against the same).

These limitations shall only apply to the ranking of claims for the purposes of voting on a proposal for composition with creditors (*convenio de acreedores*) but it does not operate as a cap regarding the amounts that secured creditors may recover from the charged assets, therefore, in any event, secured creditors shall be entitled to receive 100% of the proceeds obtained from the sale of the charged assets (up to the amount secured by the relevant security is agreed, as it is statutory in the case with mortgages). Any amounts under the Bonds that are not covered by the amounts obtained from the sale of the charged assets under the Security Documents shall rank as appropriate under the Spanish Insolvency Law, as amended.

With regard to the payment of claims under the Spanish Insolvency Law, the following rules apply:

1. Before any of the creditors of the insolvency are paid, the insolvency administrators must deduct from the insolvency estate such assets and rights not affected by a special privilege as are necessary to pay the claims against the insolvency estate (*créditos contra la masa*).
2. Creditors with a special privilege (broadly speaking, secured creditors and certain labour claims) are paid out of the proceeds obtained on the sale of the charged assets or rights (or with the acquisition of the secured asset by way of payment) but to the extent their claims remain unpaid, the unpaid claims will be reclassified as appropriate.

3. Creditors with a general privilege (*créditos con privilegio general*) (broadly speaking, certain tax and labour claims among others) are paid out of assets remaining in the insolvency estate (e.g. after deducting such assets and rights not affected by a special privilege as are necessary to pay the claims against the insolvency estate and after selling the assets affected by a special privilege).
4. Ordinary creditors are paid pro rata out of the assets remaining in the insolvency estate after the creditors with a general privilege have been paid.
5. Subordinated creditors cannot be paid until all ordinary claims have been paid, and are paid out of assets remaining in the insolvency estate.

Finally, claims against the Issuer under the Bonds could be subordinated in an eventual insolvency proceeding of the Issuer to the following extent:

1. If they are reported late to the insolvency administrator of the Issuer.
2. If they are contractually subordinated to all of the Issuer's creditors.
3. With regard to interest, unless they are secured (subject to the 90% limitation described above).
4. In the claims related to monetary penalties or other monetary sanctions.
5. If they are held by persons that are specially related (*personas especialmente relacionadas*) (as defined under article 93 of the Spanish Insolvency Law) to the Issuer.

***The Bonds may not be a suitable investment for all qualified investors***

Each potential investor in the Bonds must determine the suitability of that investment in light of its own circumstances. In particular, each potential investor should:

- (a) have sufficient knowledge and experience to make a meaningful evaluation of the Bonds, the merits and risks of investing in the Bonds and the information contained in this Information Memorandum and any applicable supplement;
- (b) have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Bonds and the impact the Bonds will have on its overall investment portfolio;
- (c) have sufficient financial resources and liquidity to bear all of the risks of an investment in the Bonds, including if euro (the currency for principal and interest payments on the Bonds) is different from the potential investor's currency;
- (d) understand thoroughly the Terms and Conditions of the Bonds; and
- (e) be able to evaluate (either alone or with the help of a financial adviser) possible scenarios for economic, interest rate and other factors that may affect its investment and its ability to bear the applicable risks.

***The Bonds are obligations of the Issuer only***

None of the Bonds will be obligations of, nor will they be guaranteed or secured by, the Shareholders, or any other party or any company in the Shareholders group. Furthermore, the Bonds are direct and limited recourse obligations of the Issuer and no person other than the Issuer will accept any liability whatsoever to Bondholders in respect of any failure by the Issuer to pay any amount due under the Bonds.

***Performance by the Issuer of its obligations is dependent upon certain third parties***

The Issuer is a party to contracts with a number of other third parties that have agreed to perform certain services in relation to the Bonds. These third parties include, but are not limited to, the Account Bank, the Insurance Providers, the Authority, the Agent, the Contractor and the Operator.

The Issuer is therefore subject to all risks to which the third parties are subject, to the extent that such risks could affect the Issuer's ability to satisfy its obligations in full and on a timely basis.

***Legal investment considerations may restrict certain investments***

The investment activities of certain investors are subject to legal investment laws and regulations, or review or regulation by certain authorities. Each potential investor should consult its legal advisers to determine whether and to what extent: (i) the Bonds are appropriate legal investments for it; (ii) the Bonds can be used as collateral for various types of borrowing; and (iii) whether other restrictions apply to its purchase or pledge of the Bonds. Financial institutions should consult their legal advisers or the appropriate regulators to determine the appropriate treatment of the Bonds under any applicable risk-based capital or similar rules.

***The value of the Bonds may be adversely affected by movements in market interest rates***

Investment in the Bonds involves the risk that if market interest rates subsequently increase above the rate paid on the Bonds, this will adversely affect the value of the Bonds.

***Conflicts of interest generally***

Conflicts of interest may arise during the term of the Bonds as a result of various factors involving certain transaction parties. For example, such potential conflicts may arise because one or more of the Issuer's creditors may also act in other capacities under the Finance Documents, although the relevant rights and obligations under the Finance Documents are not contractually conflicting and are independent from one another.

***Credit ratings assigned to the Issuer may not reflect all the risks associated with an investment in the Bonds***

The rating assigned by Axesor to the Issuer reflect only the views of Axesor and in assigning the rating, Axesor takes into consideration the credit quality of the Issuer and structural features and other aspects of the transaction. There is no assurance that such rating will continue for any period of time or that it will not be reviewed, revised, suspended or withdrawn entirely by Axesor as a result of changes in, or unavailability of, information or if, in Axesor's judgment, circumstances so warrant.

The rating may not reflect the potential impact of all risks related to structure, market, additional factors discussed above, and other factors that may affect the value of the Bonds. A credit rating is not a recommendation to buy, sell or hold securities and may be revised, suspended or withdrawn by Axesor at any time.

***The Bonds are subject to exchange rate risks and exchange controls risks***

The Issuer will pay principal and interest on the Bonds in euro. This presents certain risks relating to currency conversions if an investor's financial activities are denominated principally in a currency or currency unit (the "Investor's Currency") other than the euro. These include the risk that exchange rates may significantly change (including changes due to devaluation of the euro or revaluation of the Investor's Currency) and the risk that authorities with jurisdiction over the Investor's Currency may impose or modify exchange controls. The Issuer has no control over the factors that generally affect these risks, such as economic, financial and political events and the supply and demand for applicable currencies. In recent years, exchange rates between certain currencies have been highly volatile and volatility between such currencies or with other currencies may be expected in the future. Fluctuations between currencies in the past are not necessarily indicative, however, of fluctuations that may occur in the future. An appreciation in the value of the Investor's Currency relative to the euro would decrease the Investor's Currency-equivalent yield on the Bonds, the Investor's Currency-equivalent value of the principal payable on the Bonds and the Investor's Currency-equivalent market value of the Bonds.

Government and monetary authorities may impose (as some have in the past) exchange controls that could adversely affect an applicable exchange rate. As a result, investors may receive less interest or principal than expected, or no interest or principal.

***Regulatory initiatives may result in increased regulatory capital requirements and/or decreased liquidity in respect of the Bonds***

The Basel Committee on Banking Supervision (the **Basel Committee**) published a regulatory framework in 2006 (the **Basel II Framework**). The implementation of and/or changes to the Basel II Framework may affect the capital requirements of certain investors in the Bonds and/or the liquidity of the Bonds and/or the risk weighting of the Bonds for such investors.

The Basel II Framework has not been fully implemented in all participating countries. The implementation of the framework in relevant jurisdictions may affect the risk-weighting of the Bonds for investors who are, or may become, subject to capital adequacy requirements that follow the framework.

The Basel Committee has approved significant changes to the Basel II Framework (**Basel III**), including new capital requirements, minimum liquidity standards and a minimum leverage ratio for credit institutions. In particular, the changes include new requirements for the capital base, measures to strengthen the capital requirements for counterparty credit exposures arising from certain transactions and the introduction of a leverage ratio as well as short-term and longer-term standards for funding liquidity (referred to as the **Liquidity Coverage Ratio** and the **Net Stable Funding Ratio**, respectively). Member countries are required to implement the new capital standards from January 2013, the Liquidity Coverage Ratio from January 2015 and the Net Stable Funding Ratio from January 2018. The European authorities have implemented Basel III via the adoption of Directive 2013/36/EU (**CRD IV**) and Regulation 575/2013 (**CRR**). CRD IV and the CRR will replace the existing Capital Requirements Directives from 1 January 2014, with full implementation by January 2019; however, the proposals allow individual EU Member States to implement the stricter definition and/or level of capital more quickly than is envisaged under the CRR.

Since 1 January 2016, a new prudential regulatory regime has applied to insurers and reinsurers in the EU, as a result of the implementation of the Solvency II Directive (**Solvency II**). Under the new regime, such firms will be required to meet new capital requirements, consisting of a minimum capital requirement (MCR) and a solvency capital requirement (SCR). The calculation of the SCR requires the application of various adjustments to take account of a firm's risk profile, including stress testing of the firm's assets to determine the level of capital charge applicable to particular asset types. As a result, certain asset types will attract a higher capital charge than others.

Implementation of the Basel III and/or Solvency II framework (to the extent not already implemented in the relevant jurisdictions) and/or any further changes put forward by the Basel Committee, European or national regulators in relation to such framework may have an impact on incentives to hold the Bonds for investors that are subject to requirements that follow such framework and, as a result, they may affect the liquidity and/or value of the Bonds.

Investors should consult their own advisers as to: (i) the regulatory capital requirements in respect of the Bonds and as to the consequences to and effect on them of the Basel II Framework, Basel III, CRD IV, CRR and and Solvency II any relevant implementing measures; and (ii) any other laws and regulations applicable to the investment in, and the holding of, securities such as the Bonds. No predictions can be made as to the precise effects of such matters on any investor or otherwise.

***Change in law***

The structure of the transaction and, among other things, the issue of, and terms and conditions of, the Bonds and rating assigned to the Bonds are based on law (including tax law) and administrative practice in effect at the date hereof and having due regard to the expected tax treatment of all relevant entities under such law and administrative practice. No assurance can be given as to the impact of any possible judicial decision or change to such law, tax or administrative practice after the date of this Information Memorandum and as to whether any such change could materially adversely impact the value of the Bonds and the expected payments of interest and repayment of principal.

***There may not be an active trading market for the Bonds, in which case the ability to sell the Bonds may be limited***

The Issuer cannot assure the holders of the Bonds as to the liquidity of any market in the Bonds, their ability to sell the Bonds or the prices at which they would be able to sell their Bonds. Future trading prices for the Bonds will depend on many factors, including, among other things, prevailing interest rates, operating results and the market for similar securities.

Although an application will be made for the Bonds to be listed on MARF, the Issuer cannot assure that the Bonds will be or will remain listed. Although no assurance is made as to the liquidity of the Bonds as a result of the admission on MARF, the failure to be approved for admission or the exclusion (whether or not for an alternative admission to listing on another stock exchange) of the Bonds from MARF may have a material effect on a holder's ability to resell the Bonds, as applicable, in the secondary market.

***As the Bonds are registered with Iberclear, investors will have to rely on their procedures for transfer, payment and communication with the Issuer***

The Bonds are in dematerialised form and are registered with Iberclear. Consequently, no physical notes have been or will be issued. Clearing and settlement relating to the Bonds, as well as payment of interest and redemption of principal amounts, will be performed within Iberclear's account-based system. The investors are therefore dependent on the functionality of Iberclear's account-based system.

Title to the Bonds is evidenced by book entries, and each person shown in the Spanish Central Registry managed by Iberclear and in the registries maintained by the respective participating entities in Iberclear (the **Iberclear Members**) as having an interest in the Bonds shall be (except as otherwise required by Spanish law) considered the holder of the principal amount of the Bonds recorded therein.

The Issuer will discharge its payment obligation under the Conditions by making payments through Iberclear. Bondholders must rely on the procedures of Iberclear and its participants to receive payments. The Issuer has no responsibility or liability for the records relating to, or payments made in respect of, holders of the Bonds according to book entries and registries as described in the previous paragraph. In addition, the Issuer has no responsibility for the proper performance by Iberclear or its participants of its obligations under their respective rules and operating procedures.

## **RISK FACTORS RELATING TO TAXATION**

### ***Automatic Exchange of Information for Tax Purposes***

Pursuant to the Council Directive 2003/48/EC on the taxation of savings income (the **EU Savings Directive**), Member States were required to provide to the tax authorities of another Member State details of payments of interest (or similar income which may include distributions by a Company) paid by a person within its jurisdiction to an individual resident in that other Member State.

On 10 November 2015 the Council of the European Union adopted the Council Directive 2014/107/EU repealing the EU Savings Tax Directive from 1 January 2017, in the case of Austria and from 1 January 2016, in the case of all other Member States (subject to on-going requirements to fulfil administrative obligations such as the reporting and exchange of information relating to, and accounting for withholding taxes on, payments made before those dates).

This is to prevent overlap between the EU Savings Tax Directive and a new automatic exchange of information regime to be implemented under Council Directive 2011/16/EU on Administrative Cooperation in the field of Taxation (as amended by Council Directive 2014/107/EU), the **Directive 2011/16/EU**. Directive 2011/16/EU provides for the implementation among EU member states (and certain third countries that have entered into information exchange agreements) of the automatic exchange of information in respect of various categories of income and capital and broadly encompasses the regime known as the Common Reporting Standard (the **CRS**) proposed by the OECD as a new global standard for the automatic exchange of information between tax authorities

in participating jurisdictions. Directive 2011/16/EU is generally broader in scope than the Savings Tax Directive, although it does not impose withholding taxes.

Under the CRS, governments of participating jurisdictions are required to collect detailed information to be shared with other jurisdictions annually. A group of countries committed to the early adoption of the CRS from 1 January 2016 with the first data exchanges taking place in September 2017. All EU member states, except Austria, introduced the CRS from 1 January 2016. Austria was obliged to introduce the CRS from 1 January 2017.

### ***The proposed financial transactions tax (FTT)***

On 14 February 2013, the European Commission published a proposal (the **Commission's Proposal**) for a Directive for a common FTT in Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia (the **participating Member States**).

The Commission's Proposal has very broad scope and could, if introduced, apply to certain dealings in the Bonds (including secondary market transactions) in certain circumstances.

Under the Commission's Proposal, the FTT could apply in certain circumstances to persons both within and outside the participating Member States. Generally, it would apply to certain dealings in the Bonds where at least one party is a financial institution, and at least one party is established in a participating Member State. A financial institution may be, or be deemed to be, "established" in a participating Member State in a broad range of circumstances, including: (i) by transacting with a person established in a participating Member State; and (ii) where the financial instrument which is subject to the dealings is issued in a participating Member State.

Joint statements issued by participating Member States indicated an intention to implement the FTT by 1 January 2016, but, so far, it has not been implemented.

However, the FTT proposal remains subject to negotiation between the participating Member States, and the scope of any such tax is uncertain. Additional EU Member States may decide to participate.

Prospective holders of the Bonds are advised to seek their own professional advice in relation to the FTT.

### ***Payments made in respect of the Bonds may be subject to the Spanish withholding tax***

Article 56 of Regional Decree 47/2003, of 17 December, of the territory of Guipúzcoa sets out the reporting obligations applicable to preference shares and debt instruments issued under Law 10/2014, dated 26 June 2014, on regulation, supervision and solvency of credit institutions (**Law 10/2014**). The procedures apply to interest deriving from preferred securities (*participaciones preferentes*) and debt instruments to which Law 10/2014 refers, including debt instruments issued at a discount for a period equal to or less than 12 months.

According to section 4 of article 56 of Regional Decree 47/2003, income derived from securities registered originally in a compensation and liquidation entity domiciled within the Spanish territory (Iberclear) will be paid by the Issuer, net of Spanish withholding tax if the recipient of the payment is an individual resident in Spain for tax purposes and subject to Spanish Personal Income Tax. The Issuer will not pay any additional amounts in respect of any such withholding tax.

However, interest payments made by the Issuer in respect of the Bonds for the benefit of non-Spanish tax resident investors, or for the benefit of Spanish Corporate Income Tax taxpayers, will not be subject to Spanish withholding tax, provided that (i) the entities maintaining the bonds in its third parties accounts, or (ii) entities managing the bonds compensation and liquidation systems established in a foreign country which have signed an agreement with such compensation and liquidation entity domiciled within the Spanish territory provide the Issuer, in a timely manner, with a duly executed and completed statement in accordance with section 4 of article 56 of Regional Decree 47/2003.

If any of the obliged entities fail or for any reason are unable to deliver a duly executed and completed statement to the Issuer in a timely manner in respect of a payment of income made by the Issuer under the Bonds, such payment will be made net of Spanish withholding tax, currently at the rate of 19%.



If this occurs, affected beneficial owners would receive a refund of the amount withheld, with no need for action on their part, if the obliged entities submit a duly executed and completed statement to the Issuer no later than the tenth calendar day of the month immediately following the relevant payment date.

If the aforesaid duly executed and completed statement were not to be provided to the Issuer, beneficial owners may apply directly to the Spanish tax authorities for any refund to which they may be entitled, according to the procedures set forth in the Spanish Non-Resident Income Tax Law.

***Potential purchasers and sellers of the Bonds may be required to pay taxes or other documentary charges or duties in accordance with the laws and practices of the country where the Bonds are transferred or other jurisdictions***

Potential purchasers and sellers of the Bonds should be aware that they may be required to pay taxes or other documentary charges or duties in accordance with the laws and practices of the country where the Bonds are transferred or other jurisdictions (other than Spain). Potential investors are advised not to rely upon the tax summary contained in this Information Memorandum but to seek the advice of a tax professional regarding their individual tax liabilities with respect to the acquisition, sale and redemption of the Bonds. Only these advisers are in a position to duly consider the specific situation of the potential investor. This investment consideration has to be read in connection with the taxation sections of this Information Memorandum. Such taxes or documentary charges could also be due in case of a possible change of the tax residency of the Issuer. In addition, potential purchasers should be aware that tax regulations and their application by the relevant taxation authorities change from time to time. Accordingly, it is not possible to predict the precise tax treatment which will apply at any given time.

***U.S Foreign Account Tax Compliance Withholding***

The U.S. “Foreign Account Tax Compliance Act” (or “FATCA”) imposes a new reporting regimen and, potentially, a 30% withholding tax with respect to (i) certain payments from sources within the United States, (ii) “foreign pass-through payments” made to certain non-U.S. financial institutions that do not comply with this new reporting regime, and (iii) payments to certain investors that do not provide identification information with respect to interest issued by a participating non-U.S. financial institution. FATCA may affect payments made to custodians or intermediaries in the subsequent payment chain leading to the ultimate investor if any such custodian or intermediary generally is unable to receive payments free of FATCA withholding. It also may affect payments to any ultimate investor that is a financial institution that is not entitled to receive payments free of withholding under FATCA, or an ultimate investor that fails to provide its broker (or other custodian or intermediary from which it receives payments) with any information, forms, other documentation or consents that may be necessary for the payments to be made free of FATCA withholding. Investor should choose the custodians or intermediaries with care (to ensure each is compliant with FATCA or other laws or agreements related to FATCA) and provide each custodian or intermediary with any information, forms, other documentation or consents that may be necessary for such custodian or intermediary to make a payment free of FATCA withholding. The Issuer has no responsibility for any amount thereafter transmitted through the clearing systems and custodians or intermediaries. Furthermore, if an amount in respect of U.S. withholding tax were to be deducted or withheld from any payments on the Bonds, the Issuer would not, pursuant to the Conditions of the Bonds, be required to pay additional amounts as a result of the deduction or withholding of such tax.

## DESCRIPTION OF THE ISSUER

### Origin and identification data

The Issuer is a Spanish public limited liability company (*sociedad anónima*), incorporated on 8 February 2017 with Spanish Tax ID Number A-75172221. Data related to its registration can be found at the Guipúzkoa Mercantile Registry, volume 2,785, sheet 205, section 8, page SS-39,319. Its registered office is at San Sebastián, in Paseo de Errotaburu, nº1, 5ª, Spain.

The share capital of the Issuer is represented by 23,562,000 shares of common stock with a par value of € 1 each. The share capital is fully subscribed but only paid the 25% of them. As of the date of this Information Memorandum, the issued shares of the Issuer are owned in the following proportions: 50% Meridiam Investments SAS (11,781,000 shares), 46% Urbaser, S.A. (10,838,520 shares), 1% Construcciones Moyua, S.L. (235,620 shares), 1% Altuna y Uria, S.A. (235,620 shares), 1% Construcciones Muria, S.A. (235,620 shares) and 1% LKS Ingeniería, S. Coop. (235,620 shares).

### Principal Activities

The Issuer is a special purpose vehicle whose principal activities comprise the designing, financing, construction, maintenance and operation of the Guipuzkoa Environmental Complex, Phase I for a concession period of 35 years starting on 3 April 2017 and ending on 3 April 2052, pursuant to the Concession Agreement. The Concession Agreement was commissioned by the Gipuzkoa Waste Consortium.

### Directors

The table below sets forth the directors of the Issuer as of the date of this Information Memorandum:

Name	Board position	Date of first appointment
Meridiam Investments SAS	President	8 February 2017
Santiago Agustín Sainz de Baranda	Secretary no counsel	8 February 2017
Sergio Rodríguez Casado	Counsel	8 February 2017
David Delgado Moreno	Counsel	8 February 2017
Gorka Natxiondo Elordi	Counsel	8 February 2017
María Jesús Ramírez Gonzalo	Counsel	8 February 2017
Carlos Abilio Pérez Alonso	Counsel	8 February 2017
Constantino López Fanarraga	Counsel	8 February 2017

The directors can be reached at the Issuer's registered office.

### Biographical information

The following is the biographical information of each of the members of the board of directors:

*Mr. Sergio Rodríguez Casado:* Mr. Rodríguez Casado joined Meridiam in 2013. Previously, he worked for 15 years at BBVA including the last 7 years in the Project & Structured Finance department in Paris where he was directly involved, among other transactions in Europe, in some of the most important infrastructure transactions in France: HSL Nîmes-Montpellier, APRR's acquisition refinancing, HSL Tours-Bordeaux, HSL BPL, A63 toll road, GSM-R, Prado Sud, A19 and the APRR toll road privatisation. Mr. Rodríguez Casado graduated in Finance and Business Administration (E-2) from ICADE Business School, Comillas University (Madrid, Spain).

*Mr. David Delgado Romero:* Mr. Delgado Romero has twelve years of experience in the transportation and infrastructure sector. Mr. Delgado Romero has been working with Meridiam SAS (**Meridiam**) since 2005 and has participated, among other Projects, in the closings of Limerick Tunnel (Ireland), LIFT portfolio (UK) and led the A5 motorway (Germany) closing in March 2009. Mr. Delgado Romero has also participated in the preparation of bids and undertaken due diligence for projects in France, Portugal, Belgium, Romania, Spain and Poland. Mr. Delgado Romero is a Civil Engineer from the Polytechnic University of Catalonia where he also gained a Master of Science in Transportation. He also graduated from Harvard School of Government with a Master in Public Administration.

*Mr. Gorka Natxiondo Elordi:* Mr. Natxiondo Elordi is a Civil Engineer from the Santander University. He started his career being in charge of several real state and civil works between 2003 and 2010, becoming a manager for the construction of great capacity highways. By the end of 2010, he became director of the Middle East region in representation of a Basque Companies Association where he developed organizational and representation tasks in the offices which were created. From 2012, he joined Moyua Group as its representative for South America and East Europe, becoming in 2014 the Managing Director of Moyua Group, position which he is currently holding.

*Mr. Constantino López:* Mr. López has twenty years of experience in the environmental and infrastructure sector, especially in contracts related to waste management for public administrations. Mr. López has been the Managing Director of Enviser since 2007, a company that was acquired by Urbaser Group in 2015. He is also currently Head of Urbaser in the Basque Country. He had previously worked for 10 years in Cespa, S.A. (today, Ferrovial Services) as Head of the North and Center Technical Office, managing contracts such as Buenos Aires, Argentina between 1998 and 2000, and Getxo between 2001 and 2006. Mr. López graduated as an Industrial Engineer, Mechanics Specialty, from the Polytechnic University of Industrial Engineers of Bilbao in 1992. He also gained a Master's Degree in Business Administration from La Comercial, INSIDE (University of Deusto) in 2002 and an Executive Management Degree from the IE Business School in 2005.

*Mr. Carlos Abilio Pérez Alonso:* Mr. Abilio Pérez Alonso has over twenty years of construction and environmental services related experience and currently serves as Director of Waste Treatment. In this role, he is responsible for the safe and efficient operation of all of Urbaser's waste treatment facilities. He joined Urbaser in 1991 and has worked on numerous waste treatment related projects ranging from the construction of landfills, transfer stations and composting plants to the design and operation of advanced MSW treatment technologies. He holds a Master in Management and Business Administration from IESE (Universidad de Navarra) Madrid and is a civil engineer, with a specialty in structures and foundations. He graduated in 1990 at the E.T.S.I. Caminos, Canales y Puertos, Polytechnic University of Madrid.

*Mrs. María Jesús Ramírez:* Mrs. Ramírez has over twenty years' experience in the Municipal Waste Treatment sector. She was the General Manager of Tirmadrid, S.A. (owned by Urbaser Group), the company which manages Madrid's Waste to Energy plant, for fifteen years. During the last three years she has worked for Urbaser as the Chief Operations Officer of the Spanish Treatment Area. Urbaser owns more than fifty Municipal Waste Treatment facilities in Spain. Mrs. Ramírez qualified as a Forestry Engineer from Technical University in Madrid, she has a Master's Degree in Environmental Engineering and Management from EOI School of Industrial Organization in Madrid, and she graduated from IESE Business School in Madrid.

## **Officers**

The table below sets forth the officers of the Issuer as of the date of this Information Memorandum:

<b>Name</b>	<b>Function</b>
MS. Maria Jesús Ramirez Gonzalo	Chief Executive Officer (CEO)
Mr. Alexandre Miguel Pérez Matos	Chief Financial Officer (CFO)
Mr. Carlos Padin Garcia	Chief Technical Officer (CTO)

The officers can be contacted at the Issuer's registered office.

### ***Biographical information***

The following is the biographical information of each of the members of our senior management team:

CFO:

*Mr. Alexandre Miguel Pérez Matos:* Mr. Pérez Matos has over ten years' experience in finance and accounting roles at financial institutions and project companies. He previously acted as chief financial officer for Sociedad Concesionaria Autovia de la Plata (A66) in Spain and Transmontana Motorway Concession in Portugal.

CTO:

*Mr. Carlos Garcia Padin:* Mr. Garcia Padin has over ten years' experience in designing and constructing waste treatment facilities. He previously acted as process director in the re-construction of Evere's facility (MBT of 400,000 t/y capacity) in Marseille (France).

### **Management and control**

The Issuer is managed and controlled in Spain. As of the date of this Information Memorandum, the Issuer is subject to, and complies with, the Spanish Corporate Companies Act.

### **Employees**

As of the date of this Information Memorandum, the Issuer has three employees. The CEO and CTO are working for the Issuer through service provider contracts entered into with Urbaser.

### **Shareholders**

Meridiam Investments S.A.S (50%)

Urbaser, S.A. (46%)

Construcciones Moyua, S.L. (1%)

Altunia y Uria, S.A. (1%)

Construcciones Muria, S.A. (1%)

LKS Ingeniería, S. Coop. (1%)

### **Financial Statements**

The Issuer has no previous Financial Statements since it is a newly incorporated company.

### **Insurance**

The SPV has currently in place a Construction All Risks policy contracted with XL Catlin for the value of construction cost and for the whole project throughout the construction period. This is a DIC/DIL policy contracted to extend and improve the coverage provided by the existing CAR policy initially purchased by the Principal (GHK). This is an All Risk insurance, Third Party Liability and Advance Loss of Profits. The sums insured are: For Construction All Risk: up to EUR 210,010,884.53 (Works value + Pre-existing Property: EUR 200,823,547 + 9,187,337.53); For Third Party Liability: with a limit of € 30 million per occurrence, with no limitation on the number of occurrences; sublimit per victim: EUR 750,000 (employers' liability) and for Advance Loss of Profits (ALOP): EUR 41.803.326 for an indemnity period of 18 months.

Additionally, the other insurances that compose the Insurance Program designed for the Concession Gipuzkoa Environmental Complex, Phase 1 (CMG1) are the following:

Marine Inland Transit and Air Cargo+ Marine Delay in Start –Up contracted with XL Catlin with a limit for Marine cargo of EUR 10 million per conveyance and for Marine DSU of EUR 41,803,326 for an indemnity period of 18 months.

Professional Indemnity contracted with Generali España, SA with a limit of indemnity of EUR 10 million per loss and in the aggregate.

Environmental Liability contracted with XL Catlin with a limit of indemnity of EUR 20 million per loss and for the insurance period.

#### **Technical Adviser**

G-Advisory Consultoría Técnica, Económica y Estratégica, S.L.P., or any other entity in substitution of it.

#### **Tribunal, administrative and arbitration proceedings**

- Administrative appeal no. 2/2017 filed by one the bidders (Fomento de Construcciones y Contratas, S.A. y Sartech Engineering, S.L.) before the administrative Administrative Court of Public Contracts of Guipuzkoa (“*Tribunal Administrativo Foral de Recurso Contractuales de Guipuzkoa*”) against the awarding of the Concession Agreement carried out by the Authority. Although the Administrative Court rejected the administrative appeal (“*recurso especial en material de contratación*”) brought by such bidders, by means of resolutions issued on March 28, such decision may also be challenged before the High Court of the Basque Country within a 2 month period.
- Plaintiff GURASOS appealed before Supreme Tribunal of Justice of the Basque Country (“*Tribunal Superior de Justicia del País Vasco*”) against the Environmental Office of the Basque Country (“*Consejería de Medio Ambiente del Gobierno Vasco*”) the extension and modification of the integral environmental authorization (“*Autorización Ambiental Integrada*”) of the waste treatment plant. Due to the non-response of the administration (“*silencio administrativo*”), plaintiff submitted an administrative litigation appeal. Currently, we are waiting for the sentence to be issued by the Supreme Tribunal of Justice of the Basque Country.
- Protective order no. 280/2016: Plaintiff GURASOS requested before the Court of administrative litigation No.2 of Donostia – San Sebastián (“*Juzgado de lo Contencioso Administrativo nº2 de Donostia – San Sebastián*”) a protective measure regarding the suspension of the execution of the agreement issued by the General Assembly of the Authority by means of which they approved the contracting. The court dismissed the petition. Recently, the Supreme Tribunal of Justice of the Basque Country (“*Tribunal Superior de Justicia del País Vasco*”) dismissed the appellation request presented by the plaintiff regarding the first dismissal of the petition.
- Plaintiff GURASOS requested a protective measure before the Court of administrative litigation No.3 of Donostia – San Sebastián (“*Juzgado de lo Contencioso Administrativo nº3 de Donostia – San Sebastián*”) regarding the suspension of the adjudication procedure of the contract. The court ordered to delay the decision until the Supreme Tribunal of the Basque Country decides about the appellation request regarding the Protective Measure proceeding 280/160. Due to the fact that the latter dismissed the protective measure request under proceeding 280/160, the court of administrative litigation No.3 also dismissed the protective measure requested.
- The Town Hall of Hernani has challenged the Special Town Planning Plan of Arzabaleta (“*Plan Especial de Arzabaleta*”) approved by the Town of San Sebastian. The Authority has informed us that such claim is in the initial stages of the judicial procedure.

## DESCRIPTION OF THE REGULATORY REGIME

*The Project is developed through a concession for public works regime. The operation of the new Guipuzkoa Environmental Complex, which is granted to the Issuer under an administrative concession, is subject to the ongoing control of the public authorities that grant the concessions.*

*In addition, the regulatory environment of our business activities is shaped by EU directives and regulations. Each of our business activities—particularly, standalone energy generation—is subject to a specific set of regulation. The following summary is a description of the legal regime developed through the concession for public regime, but also primary industry-related regulations applicable to our business.*

### **a) Public regulatory regime**

#### ***Applicable legislation***

The construction and operation of public infrastructures pursuant to concessions granted by public authorities are regulated in Spain by public laws which govern the construction, maintenance and operation of public infrastructures and contractual arrangements between private parties and Spanish public authorities. Public laws also impose certain requirements and limitations with respect to various types of contracts entered into with public authorities.

In general, contracts entered into with public authorities in Spain are currently governed by the Public Sector Contracts Law, a consolidated text approved by Legislative Royal Decree 3/2011 of 14 November (the **TRLCSP**). Prior to the effectiveness of this restated text, public contracts had been governed by Law 30/2007, dated 30 October, on public sector contracts (the **LCSP**). In this regard, the Project is subject to the TRLCSP.

#### ***Public tender process and award***

Concessions for public infrastructures are awarded through a public tender process. Pursuant to the relevant legislation, the public authorities enter into contracts for the concessions with private parties selected through the public tender process. Under the public tender process, interested parties may submit their bids for the concession. The specific conditions of the concession contract are set forth in the terms of tender (*Pliegos de Cláusulas Administrativas y Pliego de Prescripciones Técnicas*) and in the contract itself. These conditions may differ and establish particular legal, economic and technical terms for each type of contract and for each project. The specific legal and contractual regime applicable to each concession contract is determined by the contract and the terms of tender for the concession, as well as the relevant legislation in effect at the time the concession was awarded (the terms of tender of the Project will be referred to as **Terms of Tender**).

#### ***Type of contract***

The relevant legislation contemplates that public infrastructures may be operated generally under three different types of contracts: (i) a contract for the management of a public service without works (a “*brown field*” concession); (ii) a contract for the management of a public service with works; and (iii) a contract for a concession of public works. In this context, “works” refers to the construction of the Project (a “*green field*” concession).

The primary type of contract used for the building and subsequent operation of public infrastructure is a contract for a concession of public works, which is the type of contract that has been used in the Project.

#### ***Term and renewal of administrative concessions***

Contracts for a concession of public works have a maximum term of 40 years, extendable in certain circumstances for 15% of the initial term. For any concession, the contract and the terms of tender will establish the contract’s term, which term may not exceed the maximum term permitted by the relevant legislation. The Concession’s term is for 35 years, counted from the day following signing of the agreement (i.e. until 3 April 2052).

In certain circumstances, the term may be extended provided that such possibility of extension had been contemplated in the terms of tender and that the maximum term permitted by the relevant legislation is not

exceeded. In this regard, the Terms of Tender establishes that the Concession term can only be extended when the financial balance of the Concession is restored due to a *force majeure* or *factum principis* event (and limited to a maximum of 10% of the initial term of the Concession Agreement). In addition, the term of the Concession may also be extended until the new concession agreement is awarded up to a maximum of one year, with the purpose of guaranteeing the continuity of the service.

After the term of the contract expires (including the envisaged extensions), the contract may not be renewed without undergoing a public tender process.

### ***Risk assumption***

The works are executed and the concessions are operated at the concessionaire's risk (*riesgo y ventura*).

### ***Modifications of the Concession***

The Authority may introduce changes in the Concession Agreement for public interest, duly justifying its necessity. These modifications may not affect the essential conditions of the contract. In this regard, extensions on the purpose of the contract that cannot be integrated into the initial project through an amendment thereof or consisting in providing independent use or directed to satisfy new purposes, may not be considered as modification of the contract.

Under the applicable regulations, a public contract can only be modified in the following cases:

- (a) when such modification (and its terms, limits and percentage of the price of the agreement that can be modified, among other requirements) is expressly set out in the tender documents or concession itself;  
or

in any other event, under the following circumstances:

- (i) the service is not adequate to satisfy the needs it was intended to cover due to mistakes included in the project or technical specifications;
- (ii) inadequacy of the project or of the specifications due to objective reasons consisting of geological, hydrological, archaeological, environmental or similar conditions which determine its unsuitability, which are discovered after contract award and which were not foreseeable by exercising all care in accordance with good professional practice when the project or technical specifications were drafted;
- (iii) force majeure or an unexpected event that rendered it impossible to provide the service;
- (iv) when it is convenient to incorporate new technical developments that will improve the provision of the service and which were not available in the market prior to the awarding of the contract;  
or
- (v) it is necessary to adjust the provision of the service to new technical, environmental, urban, safety or accessibility conditions passed after the granting of the concession.

The modification cannot alter the essential conditions set out for the bidding and the awarding of the concession. In this sense, it can be understood that such essential conditions are altered in the following cases:

- (a) when the modification substantially amends the functions and essential characteristics of the provision to which the concession agreement refers;
- (b) when the modification alters the relationship between the service and its price, based on the terms on which such relationship was initially settled;
- (c) when a different professional qualification or solvency requirements are needed after the modification;

- (d) when the modifications of the concession agreement (aggregated in the case of prior modifications) are equal to or exceed 10% (above or below) the awarding price of the Concession; or
- (e) in any other case in which it can be presumed that if the modification was known prior to awarding the concession agreement, additional potential bidders could have been interested in the tender procedure or that actual bidders would have filed a completely different bid.

### ***Economic and Financial Plan***

Bidders in the tender process are required to submit an economic and financial plan for the concession together with their bid. This plan shall explain and guarantee the economic viability of the bid. It includes, among other, the balance sheet, the profit and loss account, a debts planning, cash flow statement during the construction of the Project (See the section of this Information Memorandum headed “*Description of the Concession Agreement, the Construction Contract and the Operation and Maintenance Contract - Concession Agreement – Economic and Financial Plan for the Concession*”).

### ***Concept of economic-financial rebalancing***

The public authority that awards a concession contract has the authority to interpret the terms of the contract and to amend the terms of the contract for “reasons of public interest”. As a result, the authority cannot amend the contract based on any political initiative but only under these limited circumstances (see “*Modifications of the concession*” above).

The concept of reasons of public interest is not clearly defined in case law, and there is a risk in the interpretation of this concept by the awarding authority. In any event, the awarding authority must justify the existence of the reason of public interest in each particular case, and this interpretation may be challenged in court.

In general, contracts are executed on the “principle of risk and venture” of the contractor, whereby the contractor must assume the consequences that, in economic terms, may arise from the execution of the contract, as they were agreed. Under Spanish law, the concept of financial rebalancing arises as a means to modulate the application of the “principle of risk and venture” since its strict application could imply serious damage for the contractor and for the public interest in certain events that could result in the breach of the concession, and accordingly, of the public service inherent in it.

The public authority may rebalance the economic terms of the contract upon the occurrence of three general types of events if such events result in a change which is detrimental to the concessionaire in the fundamental economic balance that existed when the contract was awarded (and not just in a mere reduction of the expected profits of the concessionaire):

- (a) modification based on public interest reasons and in the events referred to above (see “*Modifications of the concession*” above);
- (b) the authority’s acts (*factum principis*) or force majeure events which directly lead to a substantial breach of the economy of the contract; and
- (c) when any of the events occur or circumstances arise that, according to the terms of tender, might lead to restoring the economic balance.

The concessionaire can make a claim to the public authority for financial rebalancing and must provide evidence of the event and demonstrate the repercussions that result from the imbalance of the previously agreed terms. The public authority may apply various measures to rebalance the economic-financial terms of the contract. In general, the public authority will provide compensation for the imbalance that such amendments, measures or events imply for the concessionaire or the loss and damage caused. The scope of the rebalancing will be the amount necessary, in terms of prices, costs or other elements, to adjust, reasonably, the economic-financial situation to that agreed in the concession contract. The degree of compensation (complete or partial) granted will depend, essentially, on the cause of the imbalance.



The TRLCSP generally contemplates, depending on the circumstances, the following measures to achieve rebalancing:

- (a) amending the tariffs payable by users;
- (b) in certain circumstances, amending the term of the contract (however, this would be subject to the maximum legal term for the concession); and
- (c) amending the clauses that contain the substantive economic terms of the contract.

The terms of tender and the terms of the concession contract may specifically limit the scope of the circumstances under which a claim for financial rebalancing is available. The terms of tender and the terms of the concession contract may specifically limit the scope of the circumstances under which a claim for financial rebalancing is available. In this regard, according to clause 44.2 of the Terms of Tender of the Concession, only the following will give right to the restoration of the Concession's financial balance:

- (a) The modification of the conditions set out in the Terms of Tender for the operation of the Guipuzkoa Environmental Complex with the corresponding need to restore the economic-financial balance of the Concession Agreement;
- (b) The breach by the Authority of any obligation set out in the Terms of Tender and the contractual documentation;
- (c) Force Majeure events implying, directly, a substantial change in the economy of the Concession Agreement;
- (d) Specific and discriminatory regulatory changes;
- (e) “*Factum principis*” events (decisions issued by the Spanish Administrations which could affect the economic regime of the exploitation of the Project's infrastructures);
- (f) Additional costs or delays in terms due to changes unilaterally implemented by the Authority;
- (g) Delay in making available the land for the Project; and
- (h) Any other events deriving from the modification of the Concession Agreement and with economic impact.

The recognition of the financial rebalancing in favour of the concessionaire generally implies an amendment to the terms of the contract. Therefore, the rebalancing provisions are considered to be effective from the moment of the contract amendment, without prejudice to the possibility of taking into consideration when the change that prompted the rebalancing occurred when deciding the scope of the rebalancing.

#### ***Concession tariffs and other remuneration arrangements***

The Terms of Tender and the Concession Agreement establish the tariff scheme to remunerate the concessionaire. The Issuer's remuneration regime is a monthly fee based on the availability of the infrastructures and the quality of the service (Availability Payments) and a variable fee linked to the volume of waste tons treated by the Project (Ton Payments). Also, the Terms of Tender admit additional income independent from the Issuer's base remuneration, arising from (i) the sale of the surplus of energy generated by the Project, (ii) remuneration obtained from the electrical energy system, and (iii) other incomes obtained from the sale of ferrous metals, aluminium, among others (see “*Description of the Concession Agreement and the Construction Contract – Remuneration of the Issuer*”).

#### ***Authorisations and change of control clauses***

Under some contractual arrangements, public authorities impose certain restrictions on the transfer of ownership of the concessionaire and the guarantees and security interests that the concessionaire can grant to third parties. . In some cases, a concession contract may contain a change of control clause, which prohibits the transfer of the

ownership of the concessionaire without the prior approval of the public authority. In addition, public authorities may terminate the concession in the event that insolvency or winding-up proceedings are instituted against the concessionaire.

General public procurement laws (including LCSP and TRLCAP), do not regulate transfers of shares in companies holding contracts or concessions. Although a legal theory of the Council of State (the supreme consultative council of the Spanish government) attempts to consider changes of control through the transfer of shares the same as events of assignment of contracts or concessions (thus requiring authorisation of the municipality for such transfer), the successive public procurement laws passed have not adopted this approach. However, the terms of tender and specific contracts may contain provisions requiring prior communication and authorisation for direct or indirect transfers of shares. Additionally, the public authorities may choose to apply this theory of the Council of State which would require prior authorisation for direct or indirect changes of control of the concessionaire, even though this is not explicitly required in the terms of tender, the contract or applicable regulations.

In this regard, in accordance to the Terms of the Tender, any transaction, or accumulated transactions, implying that the buyer obtains a position that allows him to influence in an effective way the management or control of the concessionaire, and in any event, any transfer representing more than 20% of the shareholding would be subject to prior authorization of the Authority. In the rest of cases, any subsequent change in the shareholding is subject to prior notice to the Authority (see section of this Information Memorandum headed “*Description of the Concession Agreement and the Construction Contract - Concession Agreement - Capital structure*”).

#### ***Assignment of the concession***

The TRLCSP generally contemplates that the concessionaire has the right to assign the concession, provided it has obtained the authority’s prior and express authorisation. In addition, the following requirements shall be met: (i) the assignor has executed at least 20% of the concession’s amount; (ii) the assignee has the capacity to enter into contracts with a public administration and the solvency required for the concession (and is not prohibited from entering into the contract); and (iii) the assignment is executed through a public deed.

#### ***Pledge of the credits rights***

The concessionaire is entitled to pledge the economic rights arisen for the termination of the concession provided that: (i) it has obtained prior authorisation from the Authority and such authorization has been published in the Spanish Official Gazette (or in the corresponding regional or provincial Gazette) and (ii) the debt guaranteed by the pledge is related to the concession.

#### ***Termination of the concession***

Under the current regulatory regime, a concession contract can be terminated under the following circumstances (see “*Description of the Concession Agreement – Early Termination of the Concession Agreement*”):

- (a) extinguishment of the legal personality of the concessionaire;
- (b) court order of insolvency in a “*concurso*” proceeding or in any other proceeding;
- (c) foreclosure proceedings are taken in respect of the concession and either the proceedings fail or there are no interested third parties;
- (d) mutual agreement between the authority and the concessionaire;
- (e) seizure of the Concession by the authority for a term exceeding that foreseen in the applicable regulations;
- (f) six months’ delay in the delivery of the consideration, the land or the auxiliary means by the Authority;
- (g) recovery (*rescate*) of the concession by the authority (recovery includes the unilateral and discretionary provision by the authority declaring the concession terminated, notwithstanding the concessionaire’s proper fulfilment of its obligations);

- (h) suppression of the service for public interest reasons;
- (i) impossibility to exploit the concession under its original terms as a consequence of decisions made by the authority after the awarding of the concession;
- (j) abandonment, withdrawal and non-compliance with essential conditions of the concession;
- (k) impossibility of performance of the obligation on the initially agreed terms or certain probability of causing serious damage to the public interest should the obligation continue to be performed on such terms, where it is impossible to amend the contract; and
- (l) any other circumstances expressly contemplated in the contract.

Termination is not automatic. The authority has to follow a procedure which can generally last between two and six months. The authority can adopt cautionary measures related to the termination procedure.

The termination of the concession due to any of the above-mentioned causes will be declared by the authority (ex officio or at the request of the concessionaire). The declaration of insolvency or the opening of the liquidation phase, as well as the causes referred to in paragraphs (e), (g), (h) and (i) above will always lead to the termination of the concession. In any other cases, the party who is not responsible for the termination can decide to ask for the concession's termination.

Mutual agreement can only be a cause for termination when the concession is not under seizure by the authority due to a serious infringement by the concessionaire, and provided that public interest reasons do not make it unnecessary or inconvenient. In addition, where mutual agreement is the cause of termination, creditors will have no control in respect of such termination other than under the terms of any other financing documents.

In the case of merger, prior administrative authorisation is mandatory for the acquirer or remaining company to continue operating the concession and replace the prior concessionaire in all its rights and obligations. In case of demerger, contribution or assignment of companies, the concession can only continue with the resulting company when expressly authorised as so by the authority, taking into account the requirements for the awarding in relation to the degree of development of the concession at the time any of the referred transactions takes place.

#### ***Liability and compensation for termination of concession contract***

In the event of termination of a concession contract due to breach by the public authority, the authority will be liable for the payment to the concessionaire of an amount representing the investment made in expropriations, construction works and purchase of the necessary goods for the operation of the infrastructure. In determining the amount of such investment, the amortisation of the investment will be calculated under a straight line method and according to the time remaining to the termination of the concession.

On the other hand, in case of early termination of the concession not attributable to the Authority, the public authority will pay to the concessionaire an amount representing the investment the concessionaire has made in expropriations, construction works and purchase of the necessary goods for the operation of the infrastructure, calculated through a new tender process that would be awarded to the highest auction price. The initial price of such tender will be fixed in accordance with the following rules:

- (i) The initial price will be established according to the future cash flows that the concessionaire expects to obtain from the operation of the concession, in the period remaining from the contract termination until its reversion, adjusted to the discount rate of the Treasury's for ten-year bonds, increased in three hundred basic points. The reference value in order to calculate the abovementioned average profit shall be the most recent data available published by the Bank of Spain in the Public Debt Market Gazette (*Boletín del Mercado de Deuda Pública*).
- (ii) The debt instrument for the calculation of reasonable profit and differential may be modified by the Executive Commission of the Government for Economic Affairs (*Comisión Delegada del Gobierno para Asuntos Económicos*), following a report from the National Evaluation Office, in order to adjust it to the risk and profit conditions observed in the public sector contracts.

(iii) The future net cash flows shall be quantified in accordance with the cash flows that would be obtained by the concessionaire until the termination of the concession. If the time remaining until termination is longer than the actual time elapsed, the latter would be considered as the reference. No price update according to the estimated future inflation shall be incorporated.

(iv) The value of the cash flows will be the one the General Account Plan (*Plan General de Contabilidad*) establishes in the Cash Flow Statement (*estado de flujos continuos*) as Cash Flows from exploitation activities, without including in any case the payments and receipts of interests, dividends and payments related to profit tax.

In the event that the contract is terminated before the end of the construction, the initial price of the tender shall be equivalent to 70% of the amount of the investment executed. For these purposes, the investment amount shall refer to the amount included in the last approved annual accounts increased by the amount resulting from the works certifications submitted from the year-end closing of the last approved annual accounts until the termination moment. From the resulting amount shall be deducted the amount related to the capital grants received by the beneficiary which purpose has not been accomplished.

According to the Concession Agreement, the amount to be paid to the concessionaire will correspond with the awarding price of the tender and will have to be paid within three months from the awarding date of the new tender.

In the event that the tender procedure is unsuccessful, a new procurement procedure will be called in a one month period from the previous tender and for half of the initial price. Where the second tender procedure results unsuccessful, unless the original concessionaire brings a new purchaser within three months from the unsuccessful bidding procedure, the amount to be paid to the concessionaire will correspond with the initial price of such second tender.

Likewise, a termination of the contract due to the intentional breach by the concessionaire will result in the concessionaire being liable for indemnifying the authority for the loss and damage caused. Such indemnification will be enforced first against the performance bond provided by the concessionaire to the public authority.

With regard to the termination cause referred to in paragraph (f) of the section “*Termination of the concession*”, above, the concessionaire can opt between the termination of the concession (with the consequences explained in the next paragraph) or to be paid the legal interest of the pending amounts (together with the principal), to be counted as from the date which the payment should have been made or the goods should have been granted.

With regard to the termination causes referred to in paragraphs (g), (h) and (i) of the section “*Termination of the concession*” and without prejudice to what has been stated under the first paragraph above of this section, the authority will indemnify the concessionaire for all damages suffered. Such damages will include loss of profit, which would be estimated in accordance with the arithmetic average of pre-tax profit that would be obtained by the concessionaire until the termination of the concession and the loss of value of the works and installations that will not revert to the authority, taking into account their level of depreciation. If the time remaining until termination is longer than the actual time elapsed, the latter would be considered as the reference.

The authority can also decide the termination of the contracts related to: (i) the use of complementary areas; and (ii) the commercial exploitation agreements (paying the relevant compensation, that will be assumed by the concessionaire when the termination cause is attributable to the same). In the case of mutual agreement, the agreement between the parties will prevail (see “*Description of the Concession Agreement – Compensation upon termination of the Concession Agreement*”).

## **b) Environmental Regulation**

### ***Industrial emissions***

In January 2011, the European Parliament and Council passed Directive 2010/75/EC, which regulates industrial emissions through an integrated framework of pollution prevention and control (the **IED**). The IED replaces Directive 2008/1/EC (the **IPPC Directive**) whilst also subsuming Directive 2001/80/EC (the **LCP Directive**).

As part of the IED's integrated pollution prevention and control mechanism, the IED regulates air, water and ground pollution. The IED also contains provisions designed to prevent waste generation in an effort to advance a comprehensive framework of environmental protection. Finally, the IED establishes rigorous deadlines for compliance; subject to temporary derogation mechanisms available under the IED, we must comply with the new air emissions requirements by 1 January 2016.

The IED was implemented in Spain through Law 16/2002 of July 1, 2002 and Royal Decree 815/2013 of October 18, 2013. This Law for pollution prevention and control was subsequently repealed by a consolidated text approved by Legislative Royal Decree 1/2016. The Project falls under the required permits and environmental controls set out in these specific regulation.

### ***Environmental Liability Directive***

The European Parliament and Council's Directive 2004/35/EC on environmental liability regulates prevention, avoidance and remediation relating to environmental damage (the **ELD**). The ELD framework is based on the "polluter pays" principle, which holds that an operator whose activity has caused or may threaten to cause environmental damage should be financially liable to the extent of damage, independently on whether the operator has incurred in negligence or not. Under this regime, operators will be obliged to return affected sites to their original condition.

The ELD was implemented in Spain by Law 26/2007 of October 23, 2007 and Royal Decree 2090/2008 of December 22, 2008. Law 26/2007 is aimed at preventing and remedying environmental damages under the principles of "prevention" and "polluter pays" and establishes a number of preventive and reparative administrative obligations and applies generally to operators whose activities cause environmental damage or an imminent threat of environmental damage.

Further, the Project is subject to Law 22/2011 of July 28, 2011 on Waste and Contaminated Soils (*Ley 22/2011, de 28 de julio, de Residuos y Suelos Contaminados*) concerning both contaminated soils and the management of hazardous waste. The infringement or the failure to comply with the obligations stated in the abovementioned regulations may trigger administrative sanctions, including fines, the disqualification to carry out certain activities, and the obligation to compensate for damages and restore the environment to the status it had before the relevant infringement.

### **c) Waste to Energy**

#### ***Spanish Framework***

The new Electricity Act 24/2013 of December 26, which repealed the former Electricity Act 54/1997, of November 27, sets out the main provisions governing all aspects of the electricity industry.

Generally, the applicable legal framework in Spain for WtE Facilities is set out in the following legal sources:

- (i) Royal Decree Law 9/2013, of July 12, 2013, containing urgent measures to guarantee the financial stability of the electricity system (**RDL 9/2013**). This regulation establishes the remuneration principles to be applied to existing renewable energy, generation and WtE Facilities in operation on the date on which it came into force.
- (ii) Law 24/2013, of December 26, 2013, on the Electricity Sector (**2013 Electricity Act**). This law sets out the general rules applicable to the entire electricity sector, and incorporates the main principles set out by RDL 9/2013.
- (iii) Royal Decree 413/2014, of June 6, 2014, governing electricity production from renewable energy sources, combining heat, power and waste (**Royal Decree 413/2014**). This decree implements the rules contained in both RDL 9/2013 and the 2013 Electricity Act regarding the specific remuneration regime applicable to WtE Facilities.

#### ***Calculation of the Remuneration to be received by eligible WtE Energy Facilities***

Pursuant to the 2013 Electricity Act, the principles driving the new economic regime are that the incentives that eligible renewable, cogeneration and WtE producers receive should be equivalent to the costs that cannot be

recovered on the electricity market where said facilities compete with conventional technologies. The new economic regime seeks to allow a “well-run and efficient undertaking” to recover the costs of building and running a facility, plus a reasonable return on investment (the “Reasonable Rate of Return”). In order to reach this Reasonable Rate of Return, renewable energy producers, cogenerators and WtE may receive, in addition to the price obtained in the Spanish wholesale market, a specific level of remuneration that covers the costs (investment and operation) that they are unable to recover on the Spanish electricity market.

In particular, the remuneration system is based on the fact that the eligible producers shall receive two (2) different amounts. The first one is the remuneration received on the basis of the pool price. The second one, known as the “Specific Remuneration Regime” (*“Régimen Retributivo Específico”*), will only be awarded to installations that do not reach the minimum required to cover the costs to compete on an equal footing with other traditional technologies in the market achieving reasonable returns, and this value depends on several parameters determined in accordance with the type and specific category of each plant (the **Installation Type Codes** or **IT**), which are approved through the corresponding Ministerial Order..

On the other hand, Royal Decree 413/2014 sets up certain limits on operation hours that have a financial impact:

- (i) Operation threshold: a minimum number of hours are defined for each type of plant. If such minimum number of hours is not reached, there will be no specific remuneration.
- (ii) Minimum operation hours: it is the number of hours to be reached in order to receive 100% of the specific compensation foreseen. Therefore, if the number of hours falls within the operation threshold and the minimum number of hours, only part of the remuneration will be received, in proportion to the operation hours.
- (iii) Maximum operation hours: number of hours over which no specific remuneration for operation will be paid.

In addition to these annual limits and thresholds, specific limits for the first, second, and third quarter are also set every year.

2013 Electricity Act establishes that the awarding of the specific remuneration regime to new facilities shall be granted in a competitive basis. For such purpose, the Spanish Government has called auctions for the allocation of capacity to be awarded with the incentivised regime or “Specific Remuneration”: In early 2016, the Spanish Government called to grant 500 MW of wind power and 200 MW of biomass and in May 2017 a 2,000 MW renewable auction was held.

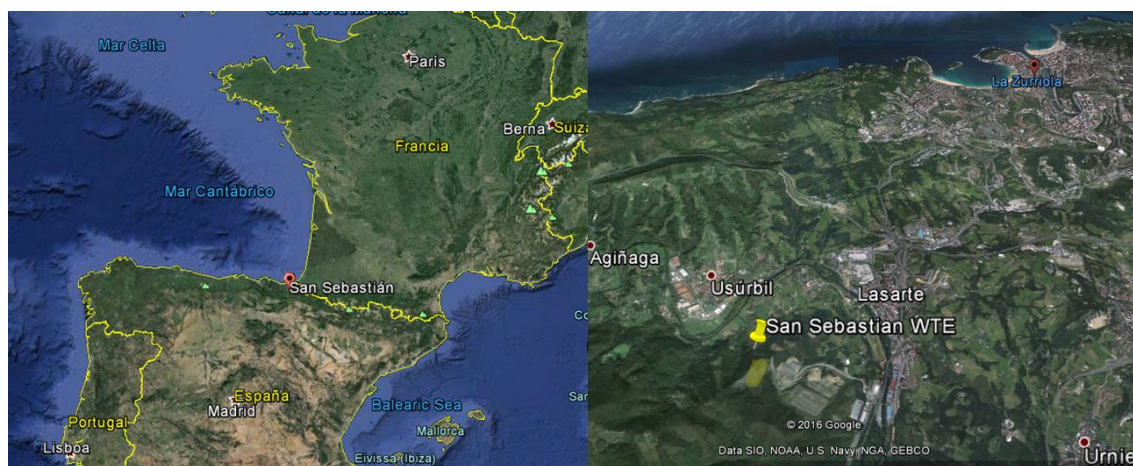
At the moment of drafting this Offering Circular the Project is not eligible to be included in the Specific Remuneration Regime and no auction for the allocation of specific remuneration capacity has been announced involving WtE technologies.

## DESCRIPTION OF THE PROJECT

*This overview highlights selected information appearing elsewhere in this Information Memorandum. This overview does not contain all of the information that is important to prospective investors in the Bonds or that prospective investors should consider in making an investment decision and is qualified in its entirety by, and should be read in conjunction with, the more detailed information, including information in the Annexes hereto, appearing elsewhere in this Information Memorandum. Prospective investors should carefully consider the information set forth under "Risk Factors" herein.*

### General aspects

The Gipuzkoa Waste Consortium (the **Authority**) was created in 2007 by eight joint local authorities (the municipalities of Debagoiena, Debarrena, San Marcos, Sasieta, Urola Erdia, Urola Kosta and Tolosaldea) and the Provincial Government of Gipuzkoa to manage domestic waste from transfer stations up to its final treatment at the relevant plants. Each joint local authority is in charge of waste collection in its township and transport to the different transfer stations. At the same time, the Authority created the company Gipuzkoako Hondakinen Kudeaketa (**GHK**) to carry out the transport, treatment and discharge of waste beyond the transfer stations.



On 25 March 2016, the Authority published in the Official Journal of the European Union a public call for bids in respect of the “finance, design, supply, construct, operation and maintenance of the residual waste treatment plant named “Complejo Medioambiental de Gipuzkoa – Fase 1” (the **Plant** or the **Project**).

On 28 July 2016, the General Assembly of the Gipuzkoa Waste Consortium approved the terms and conditions of the tender documents of the Project, which were published on 29 July 2016 in the website of the Public Procurement in Euskadi.

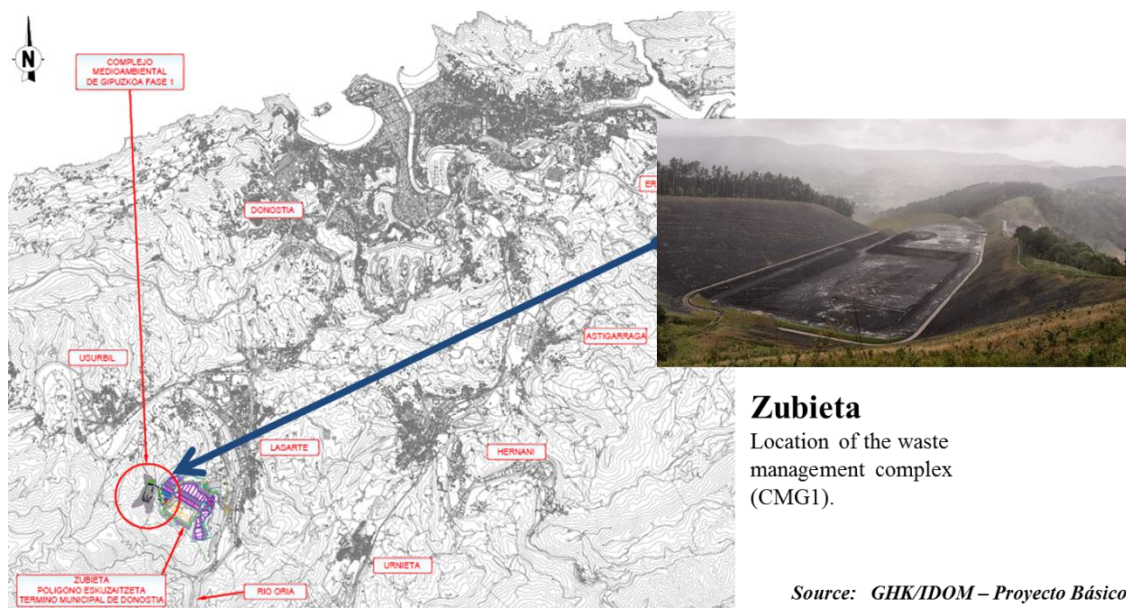
A consortium made up of Meridiam, Urbaser, Moyua, Murias, Altuna y Uría and LKS (the **Bidding Consortium**) presented its bid on 27 October 2016 and was selected as the preferred bidder on 27 December 2016. The Issuer, owned by Meridiam (50%), Urbaser (46%), Moyua (1%), Murias (1%), Altuna y Uría (1%) and LKS (1%), was incorporated on 8 February 2017 under Spanish law, as a public liability company (“Sociedad Anónima”).

The project involves the design, construction, operation and maintenance of a residual waste treatment plant in San Sebastián, Spain, for a concession period of 35 years from the signing of the Concession Agreement, with a construction period of 26 months plus 4 months of commissioning.

### The Project

The Plant will be located near the city of Donostia-San Sebastián, on a plot of 323,000 m<sup>2</sup> in the industrial area of Arzaleta (Zubieta), with access from the road coming off the Bugati junction, on the N-1 highway.





The Plant has been structured to have a nominal waste treatment capacity of 201,968 tons/year, assuming an extra 20% to design capacity (242,362 tons/year). It will be comprised mainly of:

- a. Mechanical-Biological Treatment Plant (**MBT**).
- b. Waste-to-Energy Plant (**WTE**).
- c. Auxiliary installations.
- d. Common areas and services.

The MBT Plant is designed to process 162,185 tons/year of the remaining fraction of the household waste (**HW**).

The first objective is to recover the recyclable materials through a mechanical treatment consisting of two automatic lines. The percentage of recyclable materials to be recovered from the total waste fed into this process is 7.6%.

The waste stream coming from the mechanical separation is directed to the biodrying process. Here the most biodegradable fraction of the waste is aerobically broken down. After this process, the mass loss rate of the waste in this process is 25% and the moisture content is up to 20%. Therefore, the amount of waste destined for energy recovery is reduced and its calorific value increases.

The WTE Plant consists of two incineration lines of 12.5 tons/h each. It is designed to treat 194,192 tons/year coming from the remaining fraction of the Commercial and Industrial Waste (**C&IW**), the Waste Water Treatment Plant dry sludge, the waste from the MBT and the reject material from waste treatment plants. The heat generated in the combustion process is used to produce electricity, getting a nominal power of 24.3 MW.

### Operation and maintenance (O&M)

The O&M services of the Plant will be performed under a fixed price, turnkey O&M agreement, signed between the Issuer and the Operator, a limited liability company formed by Urbaser (69%), Urilanak Servicios Integrales, S.L., (a local entity under Altuna y Uria) (10%), Serkom Gestión y Servicios Grupo Moyua, S.L. (a local entity under Moyua) (10%), Enviser (a local entity under Urbaser) (10%) and LKS (1%).

A team of 70 workers will be employed to carry out the operation and maintenance of the Plant. Other tasks, such as exceptional maintenance, planned revisions, preventive maintenance of key equipment and office maintenance will be subcontracted according to the future needs of the Plant, and the total number of personnel may therefore vary over time.



The WTE Plant will work 365 days a year, 24 hours a day (excluding the planned 15 day stop for maintenance).

The staff from the MBT will work 5 days a week with one daily shift. Thus, there will be no need to stop the operation of the Mechanical Treatment due to maintenance works. However, the biodrying process will be a continuous automated process. Hence, it will work 24 hours a day, 365 days a year.

Furthermore, the reception of the waste and the entry control to the Plant will have an operating regime that covers 24 hours a day, 365 days per year.

### **Lifecycle and reinvestment expenditure**

Total annual maintenance costs amount to approximately 1.8% of the initial Capital Expenditure (CAPEX). This includes fixed maintenance costs, variable maintenance costs, replacement CAPEX and lifecycle costs.

Both fixed and variable maintenance costs refer to routine preventive inspections while the lifecycle costs apply to the major maintenance.

The WTE equipment forms the largest portion (82%) of the lifecycle costs, as expected in a project of this nature. This includes the following components of the WTE:

- Feeding Hopper & Bottom Ash Extractor
- Furnace
- Superheater
- Boiler piping, electrical and others
- Water Walls
- Economiser
- Other electromechanical equipments such as the turbine, the air cooler condenser, and the FGT Equipment

The useful life of this type of waste plants can be easily extended beyond 30 years provided that an adequate maintenance is applied, including the necessary replacement CAPEX.

### **Concession Agreement**

The Concession Agreement relating to the Project was signed by the Authority and the Issuer on 3 April 2017. Under this agreement, the Issuer's remuneration during the operation and maintenance phase of the Plant will consist of the availability payment and the payments per ton. The availability payment is a monthly payment that the Contracting Authority, through GHK, will pay the Issuer for undertaking the works and services that form the object of the Contract. The total availability payment for the duration of the contract amounts to 21,672,069€, and will be subject to the adjustments from compliance with availability and environmental standards detailed below. The payments per ton are variable monthly payments linked to the volume of tons accepted and treated in the MBT and WTE Plants. The payments per ton of the MBT and WTE plants amount to 3.80€/t and 11.80€/t, respectively.

In addition, the Issuer will be entitled to receive revenues from the sale of surplus electrical energy, as well as from the sale of the recovered metals and other recyclable materials. In this case, the recyclable's revenue risk will be assumed by the Operator.

### **Availability and environmental criteria**

The Availability Payment is subject to two possible deductions: the environmental breach and the operation unavailability monthly deductions; established in order to guarantee both the environmental compliance and the availability standards set in the Tender Documents.

The monthly environmental breach deduction is calculated as the sum of four individual environmental deductions caused by non-compliance with the environmental parameters: gas, noise, water discharge and waste.

The operation unavailability deduction is determined according to the amount of tons per hour (subject to a maximum of hourly tons) rejected at the access control due to the impossibility of treatment and lack of storage capacity in the Plant, due to causes attributable to the Operator.

In any case, the O&M agreement includes the back-to-back guarantees of availability and environmental compliance needed in order to avoid the application of deductions. Moreover, the Operator would assume both possible deductions up to the maximum penalty established in the O&M agreement.

### **Construction Contract**

The Construction Contract sets out the principal terms and conditions for the design, supply, construction and commissioning of the Plant residual waste treatment plant. The contract will be a fixed price, turnkey, date certain contract, between the Issuer and the Contractor. The Contractor is an U.T.E. (*“Unión Temporal de Empresas”*) incorporated by Urbaser, Moyua, Altuna y Uría, Murias and Steinmüller Babcock Environment GmbH in joint and several liability; with a share capital distribution of 13.23% Urbaser, 60.86% SBE, and the remaining 25.91% corresponding to the local construction companies.

The works of the Plant are divided into three different units:

- Waste to Energy Plant:

These works are under SBE's responsibility, an experienced company involved in the design and manufacturing of thermal waste treatment and flue gas cleaning equipment. The company has more than 1,600 reference plants worldwide.

- Mechanical Biological Treatment Plant:

Urbaser, a leading company in waste management and treatment, is in charge of the MBT lot. The activity of the company is divided into two main areas, Urban Services and Waste Treatment. Urbaser achieved a turnover of 1.6 billion Euros in 2015, with more than 30,000 employees and over 80 waste treatment facilities operating around the world; managing more than 30 million tons of waste per year.

- Civil works:

These works will be undertaken by the local companies Moyua, Altuna y Uria, and Murias.

Moyua is a construction company founded in 1927 in San Sebastian. The company's main line of business is construction, although it's involved in other business areas such as real-estate development, franchise and services. The annual turnover of Moyua Group from its construction activities reached 49 million Euros in 2015.

Having a business track record of more than fifty years, Altuna y Uria is one of the most consolidated companies that operate in the Basque Country's construction sector. Besides Spain, the company is present in countries such as France, Angola and Peru. The pillar of its business, the construction activity, accounts for 80% of its annual turnover, which reached 56 million Euros in 2015.

Murias was established in 1973 in San Sebastian, and has focused its activity on construction in both public and private sectors. In the last decade, it has also gained experience in administrative concessions and management of infrastructures and services. Nowadays, the company is expanding its business to other countries such as France, where it is currently working on some projects related to real-estate development. The company's annual turnover reached 63 million Euros in 2015.

## **DESCRIPTION OF THE CONCESSION AGREEMENT, CONSTRUCTION CONTRACT AND OPERATION AND MAINTENANCE CONTRACT**

### **CONCESSION AGREEMENT**

The Concession Agreement, including the Terms of Tender related to the Project, was entered into between the Authority and the Issuer on 3 April 2017. The Concession Agreement is governed by the provisions of the TRLCSP. See the section of this Information Memorandum headed “*Description of the Regulatory Regime*”. Under the Concession Agreement, the Issuer is required to draft, manage, construct, maintain and operate the Project for a period of 35 years (the **Concession**). Except as otherwise and specifically provided in the Concession Agreement, all costs incurred by the Issuer in performing its obligations under the Concession Agreement are borne by the Issuer.

The scope of the Concession Agreement includes: (i) the full engineering service for the construction of the Project, including the drafting of the execution project; (ii) the preparation of all the documentation required for the licenses, authorizations and permits applications and for the submission of official projects; (iii) the management of the construction works; (iv) the construction of the Project; (v) the fabrication and/or supply of all the equipment, systems and installations of the Project; (vi) the operation and maintenance of the infrastructure; and (vii) the financing of all the costs derived from the construction, operation and maintenance of the Project.

#### **Term of the Concession Agreement**

The Concession Agreement will terminate on the date (the **End Date**) falling 35 years after the subscription of the Concession Agreement. The End Date will be on 3 April 2052, unless the Concession Agreement is terminated earlier in accordance with its terms. The term may be suspended due to a force majeure event that breaks the economic balance of the Concession Agreement. In this sense, the term of the Concession Agreement may only be extended as a consequence of restoring the economic balance of the Concession Agreement, up to a maximum of 10% of its initial term.

In addition, the term of the Concession may be extended until the new concession agreement is awarded up to a maximum of one year, with the purpose of guaranteeing the continuity of the service.

#### ***Concession Performance Bond***

The Issuer was required to post a performance bond for the benefit of the Authority, for an amount equal to five per cent (5%) of the estimated value of the Concession Agreement to secure its obligations under the Concession Agreement (the **Concession Performance Bond**).

The Concession Performance Bonds have been as 6 concession performance bonds for an aggregate amount equal to €10,879,150, as a definitive guarantee in favour of the Administration, to secure the obligations under the Concession Agreement.

The Issuer has issued an insurance (“*crédito y caución*”) in favour of the Authority with the counter guarantee (“*contra aval*”) to the insurance company of Meridiam Infraestructure Europe III SLP.

Once the Works have started and during the period provided for its development, the Concession Performance Bond may be reduced gradually and inversely proportional to the remaining term of the Concession Agreement until it amounts to two per cent (2%) of the estimated value of the Concession Agreement by the End Date of the Concession, as follows:

Construction phase and first year of operation and maintenance of the Project: five per cent (5%) of the estimated value of the Concession Agreement;

From the end of the first year of operation and maintenance of the Project and during the following four years: four per cent (4%) of the estimated value of the Concession Agreement;

From the fifth year of operation and maintenance of the Project and during the following ten years: three per cent (3%) of the estimated value of the Concession Agreement;

From the end of the fifteenth year of operation and maintenance of the Project, until the End Date of the Concession: two per cent (2%) of the Concession Agreement.

As described below, the Operator shall issue a definitive guarantee that will replace the Bond described above.

The Concession Performance Bond will remain until the end of the warranty period (one year after the End Date of the Concession).

If, as a consequence of the modification of the Concession Agreement, its value is varied, the Concession Performance Bond shall be readjusted so as to remain proportional to the value of the Concession Agreement.

### ***Obligations of the Issuer***

Under the Concession Agreement, the principal obligations of the Issuer include (but are not limited to):

- (a) responsibility for the full engineering service for the construction of the Project, including the drafting of the execution project, in compliance with the Concession Agreements, the Terms of Tender and the Environmental authorization granted;
- (b) responsibility for the execution of the works and the commissioning of the Project in accordance with the Terms of Tender;
- (c) responsibility for the compliance with the performance levels and the quality and quantity of wastes, including (i) full availability of the facilities and its operation, (ii) treatment capacity of the Project, (iii) performance of the facilities (generation of electricity and heat, recovery of recyclable materials, etc.), (iv) consumptions, (vi) environmental limits (gas emissions, discharges, etc.);
- (d) responsibility for obtaining all necessary permits, licences and authorisations assumed in the Concession Agreement, at its own cost;
- (e) maintenance of suitable insurance coverage throughout the term of the Concession Agreement;
- (f) provide to the Authority all the documentation related to the execution of the Concession Agreement;
- (g) responsibility for the technical and economic audits to be carried out;
- (h) during the first three years of the Concession Agreement, responsibility for carrying out environmental awareness campaigns to promote an adequate waste management;
- (i) liability for any compensation due in case of damages to third parties caused as a consequence of the development of the Concession provided that such damages are attributable to the Issuer (not derived from a direct order of the Authority);
- (j) delivery to the Authority, at the end of the term of the Concession Agreement, of the Project and all the ancillary facilities in perfect condition so as to permit the continuity of the services;
- (k) maintenance of suitable insurance coverage throughout the term of the Concession Agreement (any amendment to the insurances is subject to prior authorisation by the Authority), including:
  - (i) contractors' "all risks" insurance;
  - (ii) accident cover insurance;
  - (iii) civil liability insurance for professional risks; and
  - (iv) property damage insurance.

Unless expressly stated otherwise in the Concession Agreement, the Issuer assumes all risks and responsibilities for compliance with the above obligations, and any other obligations imposed upon it under the Concession Agreement, at its own cost.

### ***Obligations of the Authority***

Under the Concession Agreement, the Authority will have the following principal obligations (but are not limited to):

- (a) to put at disposal of the Issuer the areas required to construct the Project;
- (b) to deliver to the Issuer for its treatment the whole fraction of the waste produced in its area of performance;
- (c) to pay to the Issuer its remuneration by means of GHK<sup>1</sup> (Availability Payments and Ton Payments);
- (d) To restore the economic balance of the Concession Agreement for “reasons of public interest” and for other justified grounds (such as force majeure), according to the legal limits established by TRLCSP.

### ***Modifications of the Concession***

The Concession can only be modified for public interest reasons in accordance with the terms foreseen in the TRLCSP (see “*Description of Regulatory Regime – Modifications of the concession*”). The Issuer is obliged to comply with the modifications imposed by the Authority.

### ***Remuneration of the Issuer and other revenues***

The Remuneration of the Issuer comprises: (i) Availability Payments; and (ii) Ton Payments; both payable on a monthly basis by the Authority. In addition, the Issuer may collect other revenues from the selling of electricity and other products.

- **Availability Payments**

The Issuer will be entitled to receive monthly payments (**Availability Payments** or **PPD**) commencing from the date of commissioning of the Project’s installations until the end of the Concession. Therefore, those payments will be payable only during the operation and maintenance phase of the Project, according to parameters of availability of the installations and compliance with the environmental framework.

The maximum amount monthly payable (**PPDM**) corresponds to one twelfth of the annual value offered by the Issuer in its bid (**PMAD**) upgraded depending on the level of effective availability of the infrastructure and the degree of compliance with environmental obligations:

$$\text{PPDM (monthly max.)} = (\text{PMAD}/12) - \text{DMI} - \text{DMA}$$

PPDM will be amended considering the following parameters: (i) monthly deduction for operative unavailability (**DMI**): unavailability of the Project to receive wastes considering the volume of tons sent per hour (subject to a maximum of tons per hour); (ii) monthly deduction of environmental breach (**DMA**): deductions for breaches of the environmental quality standards fixed by the Terms of Tender and the Environmental authorization granted. In any case, the sum of both deductions (DMI+DMA) may not exceed the maximum amount monthly payable (PPDM).

Every year the PPD will be updated with effect from January 1 as explained below:

$$\text{PPD} = 32\% * \text{Employees index} + 48\% * \text{Maintenance and replacement index} + 20\% * \text{other costs index}$$

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<sup>1</sup> To stir into action the management of the competences of the Authority was created on 14 February 2008 Gipuzkoako Hondakinen Kudeaketa (GHK), an in-house limited company. GHK is responsible for the control and management of services and infrastructures, the management of rates liquidations and other incomes, the management of payments linked to administrative concessions, among others.

Where:

Employees index: Inter-annual variation considering the variation of the Index of Labour Cost Harmonized on the national level (“*Indice de Coste Laboral Armonizado*”) (Source 2012 CNAE-09) between the last quarter of the year and the last quarter of the immediately previous year. Section: Water supply, sewerage activities, waste management and decontamination. Type of cost: Total cost of Labour for an effective hour of work.

Maintenance and replacement index: Inter-annual variation considering the Industrial Prices Index (“*Indice de Precios Industriales*”) of the Autonomous Region of Basque Country for economic destination of goods (Source 2010 CNAE-09). Economic destination of the goods: equipment goods. Index: Average annual increase.

Other costs Index: Inter-annual variation considering the Industrial Prices Index (“*Indice de Precios Industriales*”) of the Autonomous Region of Basque Country for economic destination of goods (Source 2010 CNAE-09). Economic destination of the goods: intermediate goods. Index: Average annual increase.

The PPD remunerations will be provisionally settled every month. The Issuer will submit to the authority a provisional liquidation relative to the immediately previous month. On the same way, on a quarterly basis the Authority will carry out liquidations to settle differences regarding monthly liquidations. By the end of each year the Authority will carry out a readjustment liquidation considering the difference between the sum of the values finally reviewed and the sum of the monthly payments of the year.

- Ton payments

Ton payments are variable monthly fees linked to the volume of waste tons treated in the Mechanical Biological Treatment Plant and in the Energy Recovery Plant, from the commissioning of each installation until the end of the Concession and this revenues are fully subject to the demand risk (“*Riesgo de demanda*”).

Ton payments will be calculated by reference to the rate per waste of ton and the volume of waste tons accepted in a certain month, according to the following formula:

$$Ppt_m = TPT_{TMB} * TA_{Mtm} + TPT_{PVE} * TA_{mPVE}$$

Where:

Rate per ton TMB (TPT<sub>TMB</sub>): Rate defined by the Issuer in its bid for waste tons aimed to the Mechanical Biological Treatment Plant (TMB).

Rate per ton PVE (TPT<sub>PVE</sub>): Rate defined by the Issuer in its bid for waste tons aimed to the Energy Recovery Plant (PVE).

Tons accepted (TA<sub>Mtm</sub>): Waste tons accepted by the Issuer in the Mechanical Biological Treatment Plant (TMB) during the month “m”.

Tons accepted (TA<sub>mPVE</sub>): Waste tons accepted by the Issuer in the Energy Recovery Plant (PVEB) during the month “m”.

Ppt will be paid to the Issuer by the Authority by means of GHK on a monthly basis. The last day of the month, GHK will get the information of the volume of waste tons accepted in the plants (according to the information provided by the Issuer) and will apply the above formula.

As in the case of the Available Payments, amounts in dispute corresponding to monthly liquidations of Ton Payments will be subject to quarterly liquidations.

Every year the Ppt will be updated with effect from January 1 of each year, as explained below:

**Formula PPT - PVE = 5% \* Energy Index + 95% \* Index of reagents consumption, etc.**

**Formula PPT - TMB = 33% \* Energy Index + 67% \* Index of reagents consumption, etc.**

Where:

Energy Index: Inter-annual variation, considering the variation of the Industrial Prices Index (“*Indice de Precios Industriales*”) of the Autonomous Region of Basque Country for economic destination of goods, between one year and the immediately previous one for economic destination of goods (Source 2010 CNAE-09). Energy. Average annual increase.

Index of reagents consumption, etc.: Inter-annual variation considering the Industrial Prices (“*Indice de Precios Industriales*”) of the Autonomous Region of the Basque Country for economic destination of goods (Source 2010 CNAE-09). Intermediate goods. Average annual increase.

In addition to the Availability and Ton Payments, the Issuer will also collect other revenues:

- (a) Sale of the surplus of energy generated by the Project (Clause 41.7 of the Terms of Tender): The Issuer will have the right to directly collect revenues from the sale of the surplus of energy generated by the Project and he will assume both the responsibility and the risk linked to the management and sale of the abovementioned surplus. The Issuer will be able to fix the system of energy sale and the rates, as well as the volume and quality of energy sold.

In any case, the Issuer will have to respect the regulation applicable to the electrical sector (see “*Description of Regulatory Regime – c) Renewable Energy*”).

On a yearly basis, the Issuer will submit to the Authority a report regarding the system applied for selling energy, the rates and the volume of energy sold.

- (b) Retribution of the electrical energy system (Clause 42 of the Terms of Tender): The Issuer is able to collect an additional revenue linked to the “investment remuneration” set forth by Ministerial Order 1045/2014 and Royal Decree 413/2014 (see “*Description of Regulatory Regime – c) Renewable Energy*”). The Issuer will be able to collect a 10% of the total amount, the remaining amount will be transfer to the Authority.

### ***Early termination of the Concession Agreement***

According to the TRLCSP, there are a number of early termination events which entitle the parties to terminate the Concession Agreement, including the following:

- (a) extinguishment of the legal personality of the Issuer;
- (b) court order of insolvency in a “*concurso*” proceeding or in any other proceeding;

- (c) foreclosure proceedings are taken in respect of the Concession and either the proceedings fail or there are no interested third parties;
- (d) mutual agreement between the Authority and the Issuer;
- (e) seizure of the Concession by the authority for a term exceeding that foreseen in the applicable regulations;
- (f) six months' delay in the payment of the retribution by the Authority;
- (g) recovery (*rescate*) of the Concession by the Authority (recovery includes the unilateral and discretionary provision by the Authority declaring the Concession terminated, notwithstanding the Issuer's proper fulfilment of its obligations);
- (h) suppression of the service for public interest reasons;
- (i) impossibility to exploit the Concession under its original terms as a consequence of decisions made by the Authority after the awarding of the Concession;
- (j) abandonment, withdrawal and non-compliance with essential conditions of the Concession; and
- (k) impossibility of performance of the obligation on the initially agreed terms or certain probability of causing serious damage to the public interest should the obligation continue to be performed on such terms, where it is impossible to amend the Concession Agreement.

Also, the Terms of Tender refers as an early termination event when a force majeure event takes place, widely affecting the economy of the Issuer and avoiding the continuity of the exploitation, only when the insurance does not cover such event.

The termination is not automatic and the Authority has to follow a procedure to terminate. The Concession Agreement provides that, on early termination of the Concession Agreement, compensation shall be payable, as set out below.

#### ***Compensation upon termination of the Concession Agreement***

The Concession Agreement provides that, on early termination of the Concession Agreement due to the breach by the public authority, the Issuer has a right to be compensated by the Authority for the amount (*importe*) of its investment (in relation to the expropriation of the Land, execution of the construction Works and purchase of the necessary goods for the operation of the Concession Agreement), taking into account depreciation (applying a straight line method for the calculation of the amortization), in relation to the time pending for the termination of the Concession Agreement. The resulting amount has to be determined by the Authority within a six-month period.

The concept of compensation for the amount of the investment is not defined in the regulatory framework applicable to the Project, nor does the regulatory framework establish a methodology for determining it. In an early termination scenario, the Issuer expects that the Authority would determine the early termination payment by reference to the economic and financial plan which makes reference to the financial statements of the Issuer. However, absent any guidelines, there can be no assurances as to how the calculations for determining the early termination payment shall be carried out by the Authority. One approach would be for the early termination payment to be determined by reference to the book value of the assets as they appear in the Issuer's financial statements, but a more conservative calculation would also be possible.

In addition, the Issuer shall also be compensated for any damages in the following cases: (i) Six months' delay in the delivery of the consideration, the land or the auxiliary means by the Authority, the Issuer could decide to terminate the Concession Agreement or to request the payment of the legal rate of the outstanding amounts or the economic values agreed, from the term foreseen for the payment of the retribution to the Issuer; (ii) recovery (*rescate*) of the Concession Agreement; (iii) suppression of the service due to public interest reasons; and (iv)



impossibility of performing its obligations due to agreements entered into by the Authority after the subscription of the Concession Agreement.

According to the Terms of Tender, the damage compensation would be calculated considering the following references: (i) the future cash flows from the operation of the Concession that the Issuer would fail to receive, estimated in accordance with the arithmetic average of the pre-tax profit that would be obtained until the termination of the concession. If the time remaining until termination is longer than the actual time elapsed, the latter would be considered as the reference; (ii) the applicable discount rate ensuing from the cost of the average weighted capital corresponding to the last annual accounts of the Issuer; and (iii) the loss of value of the Works and facilities that will not revert to the Authority, taking into account their level of depreciation.

On the other hand, in case the Concession Agreement terminates for reasons attributable to the Issuer, the Authority shall pay the Issuer the amount (*importe*) representing the value of the Concession (*valoración de la concesión*) including the investment made in the construction of the Project and purchase of the necessary goods for the operation of the infrastructure. Such amount would be calculated through a new tender that would be awarded to the highest auction price (See “*Description of Regulatory Regime – Liability and compensation for termination of concession contract*”).

In addition, the Concession Performance Bond (as defined in the section of this Information Memorandum headed “*Description of the Concession Agreement and the Construction Contract*”) may be enforced by the Authority and, in some cases, the Issuer shall indemnify the Authority for any damages incurred in excess of the amount obtained from the enforcement of the Concession Performance Bond.

In case of events of force majeure that result in the termination of the Concession Agreement, the Authority shall compensate the Issuer with the amount (*importe*) of its investment, calculated as an event of early termination attributable to the Authority as set forth above, and the higher cost in which the Issuer has incurred into as a result of the indebtedness with third parties.

The Authority’s estimate of amounts payable to the Issuer upon early termination may be less than the Issuer’s estimate, which could result in the Issuer receiving insufficient funds to satisfy its payment obligations under a mandatory early redemption scenario. Under applicable law, the Authority is empowered to make the final determination of the amount payable to the Issuer and, as a result, the amounts payable by the Authority upon early termination may not be sufficient or sufficiently timely to enable the Issuer to meet its payment obligations under the Bonds on a timely basis.

### ***Seizure of the Concession***

The Authority may seize the Concession when the Issuer cannot temporarily, with serious risk to safety, comply with its obligations under the Concession Agreement to operate and maintain the Concession or when there is a serious breach of the Issuer’s obligations which would endanger the operation and maintenance of the Concession. The Authority shall notify the Issuer about its intentions to seize the Concession, stating the infringements committed and giving the Issuer a specified period to rectify the infringement. If the Issuer does not correct its infringement within the specified period, the Authority shall seize the Concession. All costs of the seizure will be charged to the Issuer, including any penalties incurred and damages caused.

After seizing the Concession, the Authority would be in charge of the development of the Concession and will have the right to receive the compensation established under the Concession Agreement. The Authority may use the same personnel and equipment of the Issuer and would appoint one or more auditors to replace fully or partially the management board of the Issuer. The Issuer would still assume all risks related to the operation of the Concession. At the seizure’s end, the Authority will return to the Issuer any outstanding amount remaining after satisfying all payments due related to any and all expenses and penalties imposed and damages caused, if any.

Seizure of the Concession by the Authority shall be temporary and shall not exceed a term of three years. The Authority may then decide by itself or by request of the Issuer to return control over the Concession if the deficiencies caused by the Issuer have been corrected and the Issuer proves to be capable of continuing with the

operation of the Concession at the appropriate standard. If the Issuer fails to fully comply with its obligations after the term established by the Authority for the seizure of the Concession, the Authority shall terminate the Concession Agreement.

### ***Liability***

The Issuer shall indemnify for all damages caused to third parties as a result of the development of its obligations under the Concession Agreement. If such damages have been caused as an immediate and direct consequence of an order of the Authority, the Authority may be liable under Spanish law.

### ***Penalties Regime***

The Issuer's infringements may lead to the imposition of penalties:

- (a) Minor infringements– fines of up to €10,000 per day;
- (b) Serious infringements– fines from €20,000 to €30,000 per day; and
- (c) Very serious infringements – fines from €50,000 to €60,000 per day. In addition, the Authority is entitled to terminate the Concession Agreement.

Regardless the above, the delay in the remedy of the infringement will empower the Authority to adopt the measures required to correct the deficiencies. The cost of such measures will be paid with the Concession Performance Bond of the Issuer or the seizure of its payments.

The following circumstances shall be taken into account to determine the corresponding penalties to impose to the Issuer:

- (a) wilful misconduct ,

The nature of the danger resulting from the breach for the service and the scale of the damage or deterioration caused,

The repeated commission of more than one breach of the same type,

The existence or inexistence of prior instructions to respect.

### ***Capital Structure***

The capital structure of the Issuer is mainly regulated in clause 25.1 of the Terms of Tender. In accordance with such clause, the share capital of the Issuer shall be at least equal to the 20% of the total initial investment, of which at least 10% shall be in the form of share capital. At the time of the constitution of the Issuer, the share capital shall be (i) entirely subscribed, and (ii) at least 25% shall be paid-up. The total share capital shall be paid at the end of the construction of the Project. The share capital may not be reduced without the corresponding authorisation by the Authority, and always respecting the minimum limit of 10% of the net investments

### ***Pledge of the credits rights***

The concessionaire is entitled to pledge the economic rights arisen for the termination of the concession provided that: (i) it has obtained prior authorisation from the Authority and such authorization has been published in the Spanish Official Gazette (or in the corresponding regional or provincial Gazette) and (ii) the debt guaranteed by the pledge is related to the concession.

In case of breach by the Issuer, the creditors may ask the Authority for information regarding such breach and they will be considered as party concerned in terms of administrative regulation.

### ***Third party resources***

According to the Terms of Tender, the Issuer may obtain third party financial resources. The complete or partial repayment period of such obligations may not exceed the extinction term of the Concession.

The contracting of financial operations of bonds or other financial titles shall be notified to the Authority in a two month period.

In any case, the Issuer will not get any guarantee or endorsement from the Authority for obtaining third party resources.

## **THE CONSTRUCTION CONTRACT**

The Construction Contract was entered into on 3 May 2017 by the Issuer and the Contractor. Under Spanish law, a "*Unión Temporal de Empresas*" or joint venture vehicle (a **JVV**) is a temporary (commercial) association whose partners are jointly and severally liable for the JV's obligations.

The Construction Contract is governed by Spanish law.

The purpose of the Construction Contract is to pass from the Issuer to the Contractor those risks, liabilities and obligations of the Issuer contained in the Concession Agreement which relate to the execution of the Works and the remedying of defects therein. Accordingly, the Construction Contract is back-to-back with the provisions of the Concession Agreement for the development of the Works and contains a full pass through of the design and construction risks, liabilities and obligations assumed by the Issuer in the Concession Agreement, subject, save some exceptions, to agreed liability caps.

The Construction Contract is a lump sum, turnkey contract, which provides for:

- (a) a fixed, non-revisable price; and
- (b) a fixed delivery period.

### ***Term***

The Works have to be completed within 30 months from the execution date of the Concession Agreement on 3 October 2019, and according to the timeline provided in the Construction Contract. These terms are measured until the issuance of the Works Acceptance and Operation Commencement Date ("*Acta de Comprobación de Obras e Inicio de la Operación*").

### ***Securities requirements***

The obligations of the Contractor under the Construction Contract are secured by one or more bonds that are payable on first demand to the Issuer (the **Construction Performance Bonds**).

The Construction Performance Bonds have been issued as follows:

- (a) 2 performance bonds for a total amount equal to €14,077,087, each in favour of the Issuer, issued by Sumitomo Mitsui Banking Corporation and Banco Santander S.A., on 7 April 2017 and 26 April 2017, respectively, to guarantee the obligations of the advance payments given by the Issuer to the Contractor. This performance bonds mirror the Concession Performance Bond; and
- (b) 6 performance bonds for a total amount equal to €40,164,600 each issued by Sumitomo Mitsui Banking Corporation, Banco Santander, S.A. (it has issued two different performance bonds), Banco Bilbao Vizcaya Argentaria, S.A. and HSBC Bank, Plc. Sucursal en España (it has also issued two different performance bonds), on 7 April 2017, 26 April 2017, 15 May 2017, 25 April 2017, 25 May 2017, and 25 May 2017, respectively, to guarantee the payment obligations of the Contractor under the Construction Contract.

With regard to the performance bonds provided in (b) above, the amounts shall be reduced to 10% of the Construction Price on the Works Acceptance and Operation Commencement Date.

In addition to the above, Nippon Steel & Sumikin Engineering Co. Ltd, as parent company of Steinmüller Babcock Environment GmbH (principal member of the Contractor) has delivered a parent company guarantee on 1 April

2017 to guarantee the obligations of Steinmüller Babcock Environment GmbH, as member of the Contractor, under the Construction Contract.

### ***Contractor's Obligations***

The Contractor is required to design, execute and complete the Works, to remedy defects therein in accordance with the Construction Contract and with the Concession Agreement, and to comply with the testing and commissioning requirements of the Plant set out in the Concession Agreement.

The Contractor is also required to obtain and maintain all insurance policies requested by the Issuer and the Authority in relation to the Works, as well as to comply with all labour, social security, environmental, and health and safety at works requirements under the applicable Law pursuant to the Concession Agreement. Therefore, this Contractor's obligation shall be understood as a mitigating of the Issuer's risk described above regarding its obligation of obtaining approvals, licenses, certificates and other permits pursuant the Concession Agreement. With regard to the environmental risks, the Issuer has also passed down to the Contractor the liability related to this type of risks.

The Construction Contract contemplates the execution of Works, and payment for such Works, in accordance with "milestones" or "phases".

### ***Construction Price***

In consideration of the performance by the Contractor of its obligations under the Construction Contract, the Issuer agrees to pay the Contractor a fixed design and build price. The aggregate consideration for the Works is €200,823,000, plus VAT (the **Construction Price**).

The Construction Price is payable in monthly instalments in accordance with the terms set out in the Construction Contract. The milestones are divided into 4 sections:

- (a) General payment: a fixed payment of €523,000 to be paid in 30 monthly equal instalments of €17,433 from month 1 to month 30.
- (b) Waste-to-energy facility: variable payments to be made against the achievement of pre-agreed milestones from month 0 to month 34.
- (c) Mechanical biological plant: variable payments to be made against the achievement of pre-agreed milestones from month 0 to month 32.
- (d) Civil works: variable payments to be made against the achievement of pre-agreed milestones from month 0 to month 30.

In general, the monthly invoice for payment is based on the value of the Works carried out by the Contractor during the preceding month and shall show the basis upon which the monthly invoice is calculated.

### ***Back-to-Back Principle***

The underlying principle of the Construction Contract is that the Contractor assumes under the Construction Contract all the risks, liabilities and obligations of the Issuer under the Concession Agreement which relate to the design, execution and completion of the Works, the commissioning of the tests, and the remedying of defects therein as well as all other obligations explicitly expressed to be assumed by the Contractor under the Construction Contract, subject, save some exceptions, to agreed liability caps.

The Contractor will only be entitled under the Construction Contract to obtain the same additional payment, indemnification, extension of time or other relief or benefit as the Issuer receives under the Concession Agreement, to the extent it relates to the Works or affects the rights and obligations of the Contractor under the Construction Contract.

### ***Defects liability***

The Contractor shall hold the Issuer harmless against any penalties or damages the Issuer may incur for breach by the Contractor of the obligations stipulated and defined under the Concession Agreement, insofar as they are caused by a Contractor's breach of its obligations under the Construction Contract.

The Contractor shall make good all Defects (defined as any part of the Works which does not comply with the Concession Agreement) which are present or which appear in respect of the Works for the duration of the Defects Liability Period (which is a warranty period of 36 months from the Works Acceptance and Operation Commencement Date), in accordance with the standards required by the Construction Contract, at the Contractor's cost.

The Contractor is responsible for remedying any defects in the Works.

### ***Contractor's Default***

In the event of a breach by the Contractor of its obligations under the Construction Contract, the Issuer's rights include, among others:

- (a) claiming compensation; or
- (b) enforcing the Construction Performance Bonds, provided always that the Contractor's breach leads to a liquidated damage or to an early termination of the Construction Contract.

### ***Liquidated damages***

The Contractor must pay liquidated damages to the Issuer, in the event of:

- (a) Delays (i) on the achievement of the Mechanical Completion Certificate ("*Acta de Comprobación Mecánica*") and/or (ii) on the achievement of the Works Acceptance and Operation Commencement Date, and/or (iii) on obtaining any license or permit after the Works Acceptance and Operation Commencement Date. The obligation to pay liquidated damages for delays is capped at 15% of the Construction Price.
- (b) Lack of Performance: covers the event the Plant does not meet in the Commissioning Tests 100% of the guaranteed electricity output. The obligation to pay liquidated damages for lack of performance is capped at 10% of the Construction Price.
- (c) Sanctions: any Contractor's default under the Construction Contract (other than for events covered by (a) above) which inevitably lead the Issuer to incur in minor, serious and very serious infringements pursuant to the Concession Agreement, and/or in any other sanction, penalty, Contractor's default under the Construction Contract or reduction on the availability payments by the Authority for underperforming in any other parameters agreed on the Concession Agreement different from the guaranteed electricity output.

The overall cap for liquidated damages for any of the circumstances under paragraphs (a) and (b) and (c) above shall be 25% of the Construction Price.

### ***Penalties and Limitation of liability***

The Contractor's aggregate liability under the Construction Contract to the Issuer is subject to a maximum cap of 115% of the Construction Price.

The maximum cap of 115% does not apply when the Contractor's liability:

- (a) arises from fraud, gross negligence or intentional misconduct of the Contractor or any of its subcontractors and/or their respective agents or employees;

- (b) arises from civil liability towards third parties not covered by the insurance policies in force;
- (c) is due to hidden Defects as per article 1,591 of the Spanish Civil Code;
- (d) is due to the cessation of the performance of the Works by the Contractor without justified reasons for more than 30 successive days;
- (e) arises from all (i) the Contractor's taxes, (ii) the Contractor's employee contributions as required by law, award or industrial agreement; and (iii) the cost of all import or export licenses if required and all import or export taxes or duties or tariffs relating to the Works.

## **THE OPERATION AND MAINTENANCE CONTRACT**

The Operation and Maintenance Contract (**O&M Agreement**) was entered into on 31 May 2017 by the Issuer and the Operator. The O&M Agreement is governed by Spanish law.

The purpose of the O&M Agreement is to pass from the Issuer to the Operator those risks, liabilities and obligations of the Issuer contained in the Concession Agreement which relate to the execution of the Services. Accordingly, the O&M Agreement is back-to-back with the provisions of the Concession Agreement for the execution of the Services and contains a full pass through of the risks, liabilities and obligations related to the operation, maintenance and lifecycle of the Plant assumed by the Issuer in the Concession Agreement, subject, save some exceptions, to agreed liability caps.

### ***Term***

The O&M Agreement is divided into 2 periods:

- (a) Pre-operating period that starts from the date of the issuance of the Mechanical Completion Certificate until the Works Acceptance and Operation Commencement Date.
- (b) Operating period, which starts on the Works Acceptance and Operation Commencement Date until the termination of the Concession Agreement.

### ***Securities requirements***

In accordance with the O&M Agreement, on the Provisional Acceptance Date ("*Fecha de Aceptación Provisional*") the Operator shall issue a definitive guarantee that will replace the definitive guarantee issued by the Issuer in accordance with the tender documents (the **Definitive Guarantee**). This means that the Definitive Guarantee shall comply, at least, with the requirements set forth in the Concession Agreement for the Issuer's definitive guarantee, which are as follow:

Construction phase and first year of operation and maintenance of the Project: five per cent (5%) of the estimated value of the Concession Agreement;

From the end of the first year of operation and maintenance of the Project and during the following four years: four per cent (4%) of the estimated value of the Concession Agreement;

From the fifth year of operation and maintenance of the Project and during the following ten years: three per cent (3%) of the estimated value of the Concession Agreement;

From the end of the fifteenth year of operation and maintenance of the Project, until the End Date of the Concession: two per cent (2%) of the Concession Agreement.

In addition to the above, Urbaser, S.A., as principal member of the Operator, shall deliver an abstract corporate guarantee payable on first demand to secure the obligations assumed by the Operator under the O&M Agreement.

### ***Operator's Obligations***

The Operator is required to carry out the operation, maintenance and lifecycle of the Plant, including the equipment, systems and elements that form part of the power generation facility and the interconnection

infrastructures from the Plant to the grid connection point to the electricity distribution network, as well as all associated buildings, and structures and other appurtenances.

The Operator is also required to obtain and maintain, on behalf of the Issuer, all licenses and permits which are necessary for the execution of the Services. This Operator's obligation shall be understood as a mitigating of the Issuer's risk described above regarding its obligation of obtaining approvals, licenses, certificates and other permits pursuant the Concession Agreement.

Regarding the insurances policies, the Issuer is responsible to pay them except for those that are particularly under the Operator's responsibility, in accordance with the terms set forth in the O&M Agreement. In accordance with this agreement, the Issuer shall take out an environmental liability policy in order to cover any gradual pollution or damages to biodiversity during the Operator's services, according to the Directive 2004/35/EC of the European Parliament and the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (ELD).

With regard to the handback of the Facility, the Operator shall assume all costs arising from the handback, so the Issuer results free of the related risk.

### ***Operation Price***

In consideration of the performance by the Operator of its obligations under the O&M Agreement, the Issuer agrees to pay the Operator a price (the **Operation Price**).

The Operation Price is divided different concepts:

- (a) Annual Fee: a fixed payment of €4,991,409 per year that shall be indexed.
- (b) Fixed Salaries Fee: a fee to be paid regularly indexed in accordance with the Concession Agreement that shall be indexed.
- (c) Fees per ton of waste delivered by each of the plants that form the Plant that shall be indexed.
- (d) Lifecycle Payments that shall be indexed.
- (e) Replacement Payments that shall be indexed.
- (f) Commissioning Payments.
- (g) WTE Energy Additional Fee: a fee to be paid by the Issuer in the event the WTE energy produced exceeds the energy expected under the Base Case closed on the Closing Date.

In connection with the Operation Price's concepts, there are some considerations to bear in mind:

- i. The indexation applied to the Operation Price almost mirrors the remuneration update applied to the Issuer's payments pursuant to the Concession Agreement, so Issuer's costs match Issuer's revenues at all times, mitigating the risks related to this issue.
- ii. Regarding the Issuer's Availability Payments, it has passed down to the Operator, up to its liability cap, the risk of deductions and/or penalties that may reduce the Availability Payments.
- iii. With regard to the fees per ton of waste, the Issuer applies a variable remuneration connected with its Ton Payments so the demand risks are watered down.
- iv. The sale of electricity is excluded from the Operator's services. However, the fee per ton of waste delivered and accepted at the WTE Plant is due and payable if the cumulative electricity revenues obtained by the Issuer on a specific calendar month reach the equivalent and cumulative amount of €6.55 per ton for the same period of calculation (duly indexed in accordance with the Tender Documents). Therefore, the Operator might be interested in maximizing the production of electricity to be sale by the Issuer.

- v. The Issuer has waived the sale of recyclables (e.g. the sale of ferrous metals, carton packages or aluminium) in favour of the Operator in exchange of a lower Operation Price. In this sense, the Operator is the only responsible for the sale of recyclables produced, assuming the related demand risks.

### ***Back-to-Back Principle***

The underlying principle of the O&M Agreement is that the Operator assumes under the O&M Agreement all the risks, liabilities and obligations of the Issuer under the Concession Agreement which relate to the operation, maintenance and lifecycle of the Plant, and the remedying of defects therein as well as all other obligations explicitly expressed to be assumed by the Operator under the O&M Agreement, subject, save some exceptions, to agreed liability caps.

The Operator will only be entitled under the O&M Agreement to obtain the same additional payment, indemnification, extension of time or other relief or benefit as the Issuer receives under the Concession Agreement, to the extent it relates to the Services or affects the rights and obligations of the Operator under the O&M Agreement.

### ***Defects liability***

The Operator shall use reasonable endeavours to identify any Defects in the construction of the Plant.

The Operator shall hold the Issuer harmless against any penalties or damages the Issuer may incur for breach by the Operator of the obligations stipulated and defined under the Concession Agreement, insofar as they are caused by an Operator's breach of its obligations under the O&M Agreement.

From the Defects Liability Period (which is a warranty period of 36 months from the Works Acceptance and Operation Commencement Date), the Operator shall be responsible for the rectification of any defects in the Plant identified after such Defects Liability Period, other than rectification of latent defects that are responsibility of the Contractor under the Construction Contract.

### ***Operator's Default***

In the event of a breach by the Operator of its obligations under the O&M Agreement, the Issuer's rights include, among others, claiming compensation.

### ***Performance liquidated damages***

The Operator shall comply with the guaranteed levels of availability and performance set forth in the O&M Agreement (the **Performance Liquidated Damage**).

The annual cap on liability for Performance Liquidated Damages will be 100% of the O&M Agreement price, as detailed in Schedule 12-B of the O&M Agreement.

### ***Penalties and Limitation of liability***

The aggregate liability of the Operator to the Issuer arising out of or in connection with this Agreement or the performance of the Services will not exceed the liability caps set out per year under the schedule of the O&M Agreement.

The maximum caps do not apply when the Operator's liability:

- (a) arises from fraud, gross negligence or intentional misconduct of the Operator or any of its subcontractors and/or their respective agents or employees;
- (b) arises from civil liability towards third parties not covered by the insurance policies in force or where indemnification from insurance policies are not paid because a breach of the Operator's obligations under insurance policies;



- (c) arises from an actual or alleged infringement by the Operator of intellectual property supplied;
- (d) arising under indemnities given by the Operator under this Agreement;
- (e) arises from the cessation of the performance of the Services by the Operator without justified reasons for more than ten (10) successive days, unless a shorter period is imposed in the Tender Documents or in the applicable law.
- (f) Non-compliance with the provisions on providing the operational guarantee set out in the O&M Agreement, the requirements of the Tender Documents, the insurances leading to a termination the Concession Agreement; and
- (g) In the event of the Authority exercising its rights under the Tender Documents.

## SUMMARY OF THE TERM LOAN FACILITY AGREEMENT

*The description of the Term Loan Facility Agreement set out below is a summary of certain features of the Term Loan Facility Agreement and is qualified in its entirety by reference to the detailed provisions of the Term Loan Facility Agreement jointly considered with the Common Terms Agreement and the Intercreditor Agreement.*

### **Maximum Amount**

Pursuant to the Term Loan Facility Agreement, the maximum amount of the Loan to be granted to the Issuer, as borrower, shall be up to EUR 111,537,114, divided in two tranches:

- A tranche A for a maximum amount of EUR 36,537,114.
- A tranche B for a maximum amount of EUR 75,000,000.

### **Purpose**

The Issuer, as borrower, shall use all the amounts received under the Term Loan Facility Agreement for the purposes set forth in Clause 3 of the Common Terms Agreement (*Use of Proceeds*), which are the same that are set out for the Bonds.

### **Availability Period**

The Loan shall be available from the Closing Date until the earlier of (i) fully utilisation of the Loan or (ii) 15 Business Days after the Project Completion Date or (iii) 30 June 2020.

### **Distribution of the Loan**

The maximum amount of the Loan shall be distributed among the Lenders as it has been set out in the Term Loan Facility Agreement (the **Lender's Participation**).

### **Conditions Precedent to Closing Date and to Utilisations**

The signing of the Term Loan Facility Agreement is subject to the fulfilment, prior or simultaneous to the Closing Date, of the Conditions Precedent for the effectiveness of the Transaction stated in Clause 15.1 of the Common Terms Agreement.

Utilisations of tranche A of the Loan shall be conditional upon the conditions precedent stated in Clause 15.3 of the Common Terms Agreement being met in a form and substance satisfactory to, or waived by, the Lenders.

Drawdowns of tranche B shall be made in accordance with the disbursement calendar attached to the Term Loan Facility Agreement, provided that no Default is continuing or would arise from such drawdown. Drawdowns of tranche B shall be made in a bank account that shall be pledged by the Issuer in favour of the Tranche B Lenders, in accordance with the terms and conditions of the Pledge Agreement.

### **Ordinary Repayment**

The Issuer, as borrower, must repay the principal of the Loan in accordance with the principal repayment schedule in the Term Loan Facility Agreement. Each of the dates of repayment of principal shall be individually referred to as **Principal Repayment Date**. The Issuer, as borrower, shall pay to the Lenders all amounts then owed to them for principal, fees, interest or any other item under the Term Loan Facility Agreement (the **Outstanding Amounts**) on the Final Maturity Date (30 May 2047).

### **Voluntary Prepayment**

The Issuer, as borrower, may (being an integral multiple of €1,000,000 or the outstanding amount):

- Voluntary cancel the whole or any part of the undrawn commitments, subject to the conditions set out in the Term Loan Facility Agreement.

- Voluntary prepay the Loan without penalty or charge, at any time, in the whole Outstanding Amount or in part, subject to the conditions set out in the Term Loan Facility Agreement.

All voluntary prepayments shall be made with accrued interest on the amount prepaid and without any premium or penalty, other than payment of Break Costs in case of prepayments of tranche A and payment of Tranche B Make Whole Payment in case of prepayments of tranche B (as these terms are defined under the Term Loan Facility Agreement).

Amounts voluntarily prepaid shall not be redrawn or reutilised.

### ***Mandatory Prepayment***

#### ***Mandatory Prepayment as a consequence of unlawfulness***

The Issuer, as borrower, shall prepay all the amounts due to a certain Lender in connection with such Lender's Participation, with accrued interest on the amount prepaid and without any premium or penalty (in any case subject to Break Costs), in case it has become unlawful for the Lender to perform its lending obligations under the Loan, and provided that such illegality has arisen from any national or European law or regulation applicable in any State Member of the European Union applicable to the Lender.

#### ***Other cases of Mandatory Prepayment***

The Issuer, as borrower, shall allocate to Mandatory Prepayment of the Loan the following amounts received by it

- (a) Any amounts received from the Authority as a compensation for the termination, cancellation or declaration of nullity of the Concession Agreement.
- (b) Insurance proceeds arising from any Insurance Agreements, or other agreements of the same nature entered into by the Issuer in the future, in excess of EUR 25,000,000, which are received in respect of the physical loss or damage to the Project, unless such insurance proceeds (i) are applied by the Issuer towards repair or reinstatement of the damage; or (ii) are used to reimburse the Issuer for third party liability claims already paid by the Issuer or; (iii) are applied as otherwise required under the Concession Agreement.

All Mandatory Prepayments made under the Term Loan Facility Agreement shall be applied according to the Intercreditor Agreement, and among both tranches on a pro-rata basis, in any case subject to Break Costs, proportionally among all the instalments.

### ***Interest***

For purposes of payment of interest (to be made by the Issuer, as borrower), the Loan shall be divided into interest periods (the "**Interest Periods**"): (i) from the date of the first Tranche A Utilisation and first Tranche B Drawdown respectively to the Project Completion Date, Interest Periods shall last one (1) month, provided that it may be an exception due to the first utilisation Date; and (ii) from the Project Completion Date onwards, Interest Periods shall last six (6) months, provided that it may be an exception due to the Project Completion Date.

The interest rate (the "**Interest Rate**") applicable to the Loan shall be:

- For Tranche A: the sum of the Reference Interest Rate and the Margin.
- For Tranche B: 3.662 % annual.

The Interest Rate shall never be lower than zero (0) basis points. In case the Interest Rate applicable to an Interest Period is lower, the Interest Rate applicable to such Interest Period shall be zero basis points.

- (a) The Reference Interest Rate applicable to tranche A shall be:
  - (i) Before the Project Completion Date, one (1) month EURIBOR; and

(ii) After the Project Completion Date, six (6) months EURIBOR.

(b) The Margin applicable to tranche A shall be 2.3% per annum.

The Term Loan Facility Agreement sets forth mechanisms in order to replace the Interest Rate in the events that the above calculation cannot be made.

Each of the Tranche A Utilisations and Tranche B Drawdowns made under the Loan shall accrue interest in favour of the Lenders on a daily basis, at the Interest Rate for each tranche. Interest will be liquid, due, and payable without need of demand at the end of each Interest Period (the **Interest Payment Date**).

#### ***Default Rate***

If any of the payments to be made by the Issuer, as borrower, for any item is not paid on the date established in the Term Loan Facility Agreement, the amounts pending from the day following maturity will, without need of prior demand, accrue interest on the overdue amount in favour of the Lender on a daily basis, calculated on the day of payment by the Issuer, as borrower, or, if applicable, on a monthly basis, which will be determined by adding two (2) percentage points to the Interest Rate applicable.

#### ***Payments net of taxes***

All payments to be made by the Issuer, as borrower, to the Lenders under the Term Loan Facility Agreement, or under the other Finance Documents, shall be made free and clear of any present and future taxes, unless the Issuer, as borrower, is legally required by the Spanish tax authorities to make any deduction or withholding on account of taxes (a **Withholding Tax Event**), in which case the amount to be paid by the Issuer, as borrower, in respect of which such deduction or withholding is required will be increased to the extent necessary to assure that, after making the deduction or withholding, the Lender will receive and retain (free of any liability in respect of the deduction or withholding made by the Issuer, as borrower) a net amount equal to the sum it would have received and retained had no deduction or withholding been made or required (an “**Additional Amount**”), subject to the conditions set forth in the Term Loan Facility Agreement.

#### ***Fees***

The Issuer, as borrower, shall pay to the Lenders an amount equal to 0,805% annual of the daily average of unused amounts of each tranche of the Loan, as a commitment fee, accruing from Closing Date but payable in arrear at the end of each calendar quarter ending at the end of March, June, September and December.

#### ***Allocation of Payments***

Any payment made by the Issuer, as borrower, to the Lenders under the Term Loan Facility Agreement, will be applied to the following items in the order established below:

- 1st Default interest.
- 2nd Matured ordinary interest.
- 3rd Outstanding expenses and taxes.
- 4th Procedural expenses and costs.
- 5th Outstanding fees.
- 6th Principal.

#### ***Adoption of resolutions by the Lenders***

Without prejudice to the provisions of the Intercreditor Agreement, all decisions that shall be taken by the Lenders, by virtue of any of the Finance Documents, included any waiver of rights or authorisations which shall be granted to the Issuer, as borrower, as well as any decision leading to a modification of the terms of the Term Loan Facility Agreement, shall be adopted with the consent of the Lenders whose Participation in the Loan (or the relevant

tranche, as the case may be) is equal or higher than 66.66% of the total Participation, and shall be binding to all Lenders, regardless of whether an individual Lender consented or refused the adoption of the resolution.

Notwithstanding the above, the following decisions shall be approved by all of the Lenders:

- (a) the creation of new or additional obligations to any Lender, other than in a way which affects all the Lenders, except if the affected Lender has consented to the assumption of such obligations;
- (b) any amendment to the repayment schedule, Final Maturity Date and Maximum Amount of the Loan;
- (c) any amendment to the dates or term of the Availability Period or any Interest Payment Dates or fees payment dates;
- (d) any amendment to the Interest Rate or the applicable Margin, Default Rate, the calculation and any modification to the amounts or procedure of calculation and/or payment of fees;
- (e) any amendment to the provisions regarding the majorities required to the adoption of resolutions by the Lenders;
- (f) any action or amendment which implies the cancelation, waiver or reduction of the Security (in case the Security is replaced by other equivalent security, the decision regarding the equivalence of the proposed security), except in those cases specifically set forth otherwise in the Finance Documents; and
- (g) any amendment or waiver of the conditions precedent to Utilisations set forth in Clause 15.3(a)(ii), Clause 15.3(a)(v)(C) and (D) and Clause 15.3(c) of the Common Terms Agreement.

### ***Governing Law***

The Term Loan Facility Agreement will be interpreted and performed pursuant to its own terms, and will be governed by the Spanish common law.

For resolution of such disputes as may arise regarding compliance with and performance and interpretation of the Term Loan Facility Agreement, the parties agree to submit to the nonexclusive jurisdiction of the courts and tribunals of the city of Madrid.

### ***Common terms regulation***

In addition to the Purpose, the provisions of Representation and Warranties, Covenants, Project Accounts, Events of Default, Security Interest and Expenses are cross-referenced to the regulation provided under the Common Term Agreement.

## **DESCRIPTION OF THE PROGRAMME AND TERMS AND CONDITIONS OF THE BONDS TO BE ISSUED THEREUNDER**

*The following is a summary of certain provisions of the Bond Documents. This summary does not purport to be complete and should be read in conjunction with, and is qualified in its entirety by, the full text of the relevant Finance Documents. In particular, any documents to be entered into after the date of this Programme are subject to completion and/or immaterial amendment.*

This Programme has been established by EKONDAKIN ENERGÍA Y MEDIAMBIENTE, S.A., a *sociedad anónima* incorporated under the laws of the Kingdom of Spain, having its registered office in San Sebastián, in Paseo de Errotaburu, nº1, 5ª and with tax identification number A-75172221 (the **Issuer** or **Concessionaire**) to issue 3,662 per cent. senior secured bonds (the **Bonds**) up to a maximum nominal amount of eighty million euros EUROS (80,000,000 €) in order to partially finance the costs and expenses arising from the design, supply, construction, operation and maintenance of the residual waste treatment plant named “*Complejo Medioambiental de Gipuzkoa*” (the **Project**).

The Bonds will be issued under the Programme pursuant to final conditions in the form set out as Schedule 1 (the **Final Conditions**), which shall specify the nominal and effective amount and number of the Bonds to be issued at such specific issue and the envisaged date of issue of the Bonds.

Admission (*incorporación*) to MARF will be requested for the Bonds to be issued under the Programme. The validity of this Programme is one (1) year as from its admission (*incorporación*) to MARF. The Issuer has undertaken with the Initial Bondholders to renew the Programme for two (2) additional years, in accordance with the applicable administrative procedure.

Payments in respect of the Bonds will be made pursuant to a paying agency agreement (the **Paying Agency Agreement**, which expression shall include any modification, supplement or novation thereto) dated on or about the Closing Date made between the Issuer, Banco Bilbao Vizcaya Argentaria, S.A., as paying agent (the **Paying Agent**, which expression shall include its successors as paying agent) and the Commissioner.

The Bondholders are entitled to the benefit of, are bound by, and are deemed to have notice of, all the provisions of the Bond Documents (which include this Programme, the Regulations, the Paying Agency Agreement, the Common Terms Agreement, the Intercreditor Agreement, the Security Documents, the Shareholders Support Agreement, the Direct Agreements and the Account Bank Agreement) (each as defined below) applicable to them.

Copies of the Bond Documents are available for inspection during normal business hours by the Bondholders at the registered office for the time being of the Issuer and at the specified office of the Commissioner.

The Issuer entered into on 31 May 2017 (the **Closing Date**):

- (a) this Programme and the Regulations;
- (b) one or more subscription agreements (each a **Subscription Agreement**), pursuant to which the Issuer agrees to issue and the Initial Bondholders agree to subscribe for or purchase, or procure subscribers for, the Bonds to be issued under the Programme;
- (c) a term loan facility agreement among the Issuer, the Lenders, the Common Agent and the Security Agent (the **Term Loan Facility Agreement**), pursuant to which the Lenders will advance loans to the Issuer up to € 111,537,114;
- (d) a common terms agreement among the Issuer, the Lenders, the Commissioner, the Common Agent, the Security Agent and the Paying Agent (the **Common Terms Agreement**), pursuant to which certain terms that are common to the Bonds and the Loan are agreed to by the parties thereto;
- (e) an intercreditor agreement among the Issuer, the Lenders, the Commissioner, the Hedging Bank, the Shareholders, the Common Agent and the Security Agent (the **Intercreditor Agreement**), which regulates, among other things, (i) the ranking and priority of claims of the Senior Creditors and the

- Hedging Bank, (ii) the exercise, acceleration and enforcement of rights by the Senior Creditors and the Hedging Bank, and (iii) the giving of consents and waivers and the making of modifications to the Finance Documents;
- (f) the Initial Security Documents;
  - (g) a shareholders support agreement among the Issuer, the Shareholders, the Lenders, the Common Agent and the Security Agent (the **Shareholders Support Agreement**), pursuant to which the Shareholders assume certain obligations to support the Issuer for the benefit of the Senior Creditors;
  - (h) the direct agreements among the Issuer, the Lenders, the Contractor and/or the Operator (the **Direct Agreements**), pursuant to which the Contractor and the Operator assume certain obligations and responsibilities in favour of the Senior Creditors; and
  - (i) an account bank agreement among the Issuer, the Account Bank, the Lenders, the Hedging Bank, the Common Agent, the Security Agent, the Senior Agent and the Commissioner (the **Account Bank Agreement**).

## 1. DEFINITIONS

**Acceptable Bank** means:

- (a) the Account Bank;
- (b) a bank or financial institution which has a rating for its long-term unsecured and non-credit enhanced debt obligations of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency; or
- (c) any other bank or financial institution approved by the Majority Creditors in writing.

**Account Bank** means *Banco Bilbao Vizcaya Argentaria, S.A.* or a bank or financial institution appointed as a replacement account bank in accordance with the Account Bank Agreement which has a rating for its long-term unsecured and non-credit enhanced debt obligations of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody's or a comparable rating from an internationally recognized credit rating agency.

**Account Bank Agreement** means the account bank agreement dated 31 May 2017 among the Issuer, the Account Bank, the Lenders, the Hedging Bank, the Common Agent, the Security Agent, the Senior Agent and the Commissioner.

**Accounting Standards** means any generally accepted accounting principles in Spain, including IFRS.

**Additional Amounts** has the meaning given to this term in Condition 16.1 (*Tax Gross-Up*).

**Administrative Parties** means the Common Agent, the Security Agent, the Commissioner, the Listing Agent, the Paying Agent and the Account Bank.

**Advance Payment Bond** means the bond payable on first demand to the Issuer issued by an Acceptable Bank as a condition to any advance payment requested by the Contractor under the EPC Contract.

**Affiliate** means, in relation to a person, a person controlling, controlled by or under common control with such person, in the sense the term "control" is used in Article 42 of the Spanish Commerce Code of 1885 (*Código de Comercio*).

**Annual Financial Statements** has the meaning given to this term in Condition 9.1 (*Financial Statements*).

**Anti-Corruption Laws** means the anti-bribery legislation of the European Union, as adopted and made applicable by its individual Member States; the UK Bribery Act 2010; the United States Foreign Corrupt

Practices Act of 1977, as amended; and all other similar laws, rules and regulations applicable to the Issuer from time to time concerning or relating to bribery or corruption, including legislation enacted by Member States and signatories implementing the OECD Convention Combating Bribery of Foreign Officials.

**Applicable Make-Whole Spread** means 0.90 per cent.

**Assumptions** means the assumptions used for the Base Case.

**Authorisation** means an authorisation, consent, approval, permit, resolution, license, exemption, filing, notarisation or registration required by any court, governmental department or other regulatory body.

**Authorised Officer** means an officer or other representative of the Issuer who has been duly authorised to deliver certificates and take any actions in connection with the Finance Documents and the Project Documents and whose authorisation has been notified in writing to the Information Recipients.

**Authority** means the Gipuzkoa Waste Consortium, which comprises (i) the government of the province of Gipuzkoa (i.e. “*La Diputacion Foral de Gipuzkoa*”) and (ii) the following local administrations: “*La mancomunidad de Debarrena*”; “*La mancomunidad de Debagoiena*”; “*La mancomunidad de Tolosaldea*”; “*La mancomunidad San Marcos*”; “*La mancomunidad Sasieta*”; “*La mancomunidad de Urola Erdia*”; “*La mancomunidad de Urola Kosta*”; and “*La mancomunidad de Txingudi*”.

**Base Case** means the initial base case prepared using the Financial Model delivered by the Issuer as a condition precedent on the Closing Date.

**Bond** means the 3,662 per cent. senior secured bonds issued under this Programme.

**Bond Breakage Costs Amount** means an amount equal to the higher of: (i) the Principal Amount Outstanding of the Bonds (or as the case may be, the relevant part of it) as at the relevant Redemption Date, together with accrued but unpaid interest to such date; and (ii) the sum of the present values at the relevant Redemption Date of the outstanding payments of principal and interest under the Bonds to (and including) the Final Maturity Date (excluding accrued but unpaid interest to the Redemption Date), computed by a suitably qualified financial institution appointed by the Issuer using a discount rate equal to the Reference Rate as of the Redemption Date and assuming the relevant Bonds would otherwise have been redeemed on their scheduled Payment Date.

**Bond Documents** means the Common Documents, the Paying Agency Agreement, the Programme, the Regulations, each Final Conditions and any other document that has been entered into in connection with any Issuance.

**Bondholder** has the meaning given to such term in Condition 4.2 (*Title*).

**Bond Payment Schedule** has the meaning given to such term in Condition 14.2 (*Scheduled Redemption*).

**Bond Proceeds Account** means the account opened with the Account Bank, designated as such and maintained by the Issuer, in each case, in accordance with the Account Bank Agreement.

**Bonds Proceeds Account Withdrawal Request** has the meaning set forth in Condition 22.2 (*Bond Proceeds Account*).

**Bond Utilisation** means a withdrawal from the Bond Proceeds Account.

**Bond Utilisation Request** means a notice signed by an Authorised Officer substantially in the relevant form set out in the Account Bank Agreement by which the Issuer requests a Bond Utilisation.

**Budget** has the meaning set forth in Condition 9.8 (*Budget*).



**Business Day** means a day (other than a Saturday or a Sunday) on which banks are open for general business in Paris and Madrid and which, in the case of any payment in euros, is a TARGET2 Day.

**Calculation Date** means each 30 June and 31 December in each year, starting with the First Calculation Date.

**Cash Flow Available for Debt Service** means in relation to a Relevant Period, the sum of (without double counting):

- (a) Project Income;
- (b) net interest income on cash balances on the Project Accounts and the Permitted Investments;
- (c) insurance proceeds in respect of a delay in start-up, business interruption and property damage (to the extent not used for reinstatement);
- (d) amounts received by the Issuer as liquidated damages or compensation under any Project Document in respect of loss of revenue;
- (e) refunds and compensations for Taxes;
- (f) any net changes in working capital (if applicable);

less:

- (a) paid or payable Operating Costs and Project Taxes; and
- (b) amounts used in replacement of assets sold or disposed of; and

in each case during such Relevant Period.

**Certificate** has the meaning given to this term in Condition 4.2 (*Title*).

**Clearstream Luxembourg** has the meaning given to this term in Condition 4.1 (*Register*).

**Closing Date** means 31 May 2017.

**Commissioner** means Bondholders, S.L., or any of its successors appointed as Commissioner for the Bondholders in accordance with the Regulations.

**Common Agent** means Banco Bilbao Vizcaya Argentaria, S.A. and its successors as common agent to the Senior Creditors under the Common Documents.

**Common Documents** means the Common Terms Agreement, the Intercreditor Agreement, the Security Documents, the Shareholders Support Agreement, the Direct Agreements and the Account Bank Agreement.

**Common Terms Agreement** means the common terms agreement dated on or about the Closing Date among the Issuer, the Initial Bondholders, the Lenders, the Commissioner, the Common Agent, the Security Agent and the Paying Agent, pursuant to which certain terms that are common to the Bonds and the Loan are agreed to by the parties thereto.

**Compensation** means moneys due to be paid or actually paid to the Issuer due to termination of the Concession Agreement pursuant to clause 61 of the Terms of Tender of the Concession Agreement.

**Compliance Certificate** has the meaning given to that term in Condition 11.2 (*Compliance Certificate*).

**Concession Agreement** means the concession agreement dated 3 April 2017 between the Authority and the Issuer by virtue of which the Authority grants to the Issuer the right to construct and operate the Project.

**Concession Performance Bond** means the performance bond issued by the Issuer for the benefit of the Authority for an amount equal to five per cent (5%) of the estimated value of the Concession Agreement to secure its obligations under the Concession Agreement.

**Constructions Costs** means fees, costs and expenses (together with value added and other equivalent taxes) payable by the Issuer to the Contractor in respect of constructing, completing and commissioning the Project under, and in accordance with the terms of, the EPC Contract.

**Construction Performance Bonds** means the bonds payable on first demand to the Issuer issued by an Acceptable Bank securing the obligations of the Contractor under the EPC Contract.

**Consumer Price Index** means the consumer price index as compiled and published monthly by the Spanish National Institute of Statistics (*Instituto Nacional de Estadística*).

**Contractor** means indistinctively “Steinmüller Babcock Environment GmbH, Urbaser, S.A., Construcciones Moyua, S.L., Altuna y Uría, S.A. and Construcciones Murías, S.A., Unión Temporal de Empresas, Ley 18/1982, de 26 de mayo”, or “CMG Zubieta UTE”, or any new contractor appointed in accordance with a Replacement Plan.

**Debt Life Coverage Ratio** or **DLCR** means on each Calculation Date in respect of the Relevant Period the ratio of: (i) the net present value of forecast Cash Flow Available for Debt Service discounted at the weighted average all-in interest rate of the Bonds and the Loan for each six-month period within the Relevant Period (as calculated in the Base Case) plus any credit balances on the Project Accounts (other than the Insurance Proceeds Account) to (ii) the aggregate principal amount outstanding under the Bonds and the Loan.

**Debt Service** means, in relation to any period, an amount equal to the aggregate of:

- (a) amounts accruing and payable in relation to interest on the outstanding Senior Debt in accordance with the terms of the Finance Documents in that period;
- (b) scheduled principal amounts payable on the Senior Debt in that period (other than as a result of a prepayment obligation or a voluntary prepayment); and
- (c) the set-off payments to be made or received by the Issuer under the Interest Rate Hedging Agreement, excluding (i) any close-out amounts due to partial or total termination of any Interest Rate Hedging Agreement and (ii) any Bond Breakage Costs Amount.

For the avoidance of doubt, should any payment be made on the following Business Day due to the fact that the original payment date was not a Business Day, it will be construed as having been paid on the original payment date for the purposes of the calculation of the Debt Service of the Relevant Period.

**Debt Service Reserve Account** or **DSRA** means the account opened with the Account Bank, designated as such and maintained by the Issuer, in accordance with the Account Bank Agreement.

**Default** means:

- (a) an Event of Default; or
- (b) a Potential Event of Default.

**Default Interest** has the meaning given to that term in Condition 13.5 (*Default Interest*).

**Direct Agreements** means the direct agreements dated on or about the Closing Date entered into among the Issuer, the Commissioner, the Lenders, the Security Agent, the Hedging Bank and the Contractor or the Operator (as applicable), pursuant to which the Contractor and the Operator assume certain obligations and responsibilities in favour of the Senior Creditors.

**Distributable Amount** means the amount standing to the credit of the General Account on each Calculation Date after satisfying all prior transfers or payments under Condition 23.

**Distribution Account** means the account opened with the Account Bank, designated as such and maintained by the Issuer, in accordance with the Account Bank Agreement.

**DSRA Required Balance** means:

- (a) for the period beginning on the Project Completion Date up to but excluding the First Calculation Date, 50% of the aggregate scheduled interest and principal payments payable by the Issuer in respect of the Senior Debt in the 12-month period from (but excluding) the Project Completion Date to (and including) the date falling 12 months later; and
- (b) for the period beginning on each Calculation Date, the Debt Service for the 6-month period from (but excluding) the corresponding Calculation Date to (and including) the Calculation Date 6 months later.

**Enforcement Action** means

- (a) in relation to any Liabilities:
  - (i) the early termination of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Secured Party to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Finance Documents);
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of a demand in relation to a Liability that is payable on demand;
  - (iv) the exercise of any right of set-off, account combination or payment netting against any Obligor in respect of any Liabilities other than the exercise of any such right which is otherwise expressly permitted under the Finance Documents; and
  - (v) the suing for, commencing or joining of any legal or arbitration proceedings against any Obligor to recover any Liabilities;
- (b) the taking of any steps to enforce or require the enforcement of any Security;
- (c) the entering into of any composition, compromise, assignment or similar arrangement with any Obligor; or
- (d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any Obligor or any of such Obligor's assets or any suspension of payments or moratorium of any indebtedness of any such Obligor, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods;
- (ii) the bringing of legal proceedings against any person solely for the purpose of:

- (A) obtaining any precautionary measure (*medida cautelar*) to restrain any actual or putative breach of any Finance Document to which it is party;
  - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages;
  - (C) requesting judicial interpretation of any provision of any Finance Document to which it is party with no claim for damages; and
- (iii) the notification sent by the Security Agent to the Account Bank to block amounts deposited in any of the Project Accounts and/or the Bond Proceeds Account to be used in accordance with its instructions.

**Enforcement Instruction** means a resolution by the Secured Parties adopted in accordance with Condition 27 (*Meetings of Secured Parties, Modification, Waiver, Authorization and Determination*) to instruct the Security Agent to send to the Concessionaire a notice declaring the early termination of any Secured Agreement or the enforcement of any Security in accordance with Clause **Error! Reference source not found.** (*Acceleration and Enforcement*) of the Intercreditor Agreement.

**Enforcement Notice** has the meaning given to that term in Condition 20 (*Acceleration and Enforcement*).

**Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

**Environmental Claim** means any written claim, proceeding or formal investigation by any third party under or in respect of any Environmental Law.

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

- (a) the management, operation and other waste management site;
- (b) the pollution or protection of the Environment;
- (c) the conditions of the workplace including labour and employment conditions; and
- (d) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

**Environmental Permits** means any permit and other Authorisation required under any Environmental Law for the operation of the business of the Issuer conducted on or from the properties owned or used by the Issuer.

**EPC Contract** means the agreement entered into on 3 May 2017 between the Issuer and the Contractor in relation to the construction of the Project (as amended and/or restated from time to time).

**EPC Guarantor** means Nippon Steel & Sumikin Engineering (or any new guarantor appointed in accordance with a Replacement Plan).

**EPC Parent Company Guarantee** means the first demand corporate guarantee granted by the EPC Guarantor with respect to the obligations and liabilities of the Contractor under the EPC Contract.

**Equator Principles (June 2013)** means the environmental and social assessment framework adopted by certain financial institutions, as the same may be revised, amended or supplemented from time to time.

**Equity Contribution Guarantees** means the bank guarantees payable on first demand to the Issuer issued by an Acceptable Bank securing the obligations of the Shareholders to make contributions to the Issuer under the Clause 6.2 of the Shareholders Support Agreement.

**Equity Contribution Obligations** means the obligations of the Shareholders to make Shareholder Contributions to the Issuer under the Shareholders Support Agreement.

**Equity Documents** means the following documents:

- (a) the Equity Subscription Agreement;
- (b) the Shareholder Loan Agreements;
- (c) the Shareholders Support Agreement; and
- (d) any other document designated as such by the Common Agent (acting on the written instructions of the Majority Creditors) and the Shareholders.

**Equity Subscription Agreement** means the Issuer's deed of incorporation and any subsequent capital increase deed.

**EURIBOR** means the rate which appears on the Reuters Screen EURIBOR01 page at or about 11:00 a.m. (Brussels time) two TARGET 2 Days prior to the first day of the relevant Interest Period for deposits in Euros for the relevant Interest Period. If such rate does not appear on the Reuters Screen EURIBOR01 page, the rate for that reset date will be determined as if the parties had specified "EURIBOR- Reference Banks" as the applicable floating rate option. Alternatively, an appropriate screen rate may be referenced.

**Euroclear** has the meaning given to this term in Condition 4.1 (*Register*) of these Conditions.

**Events of Default** means the circumstances established in Condition 18 (*Events of Default*).

**Facility** means the facility granted by the Lenders under the Term Loan Facility Agreement.

**Fee Letter** means the letter signed on the Closing Date by the Issuer, the Common Agent, the Security Agent, the Paying Agent, the Senior Agent and the Account Bank by virtue of which the Concessionaire shall pay fees in the amounts and dates there specified to Banco Bilbao Vizcaya Argentaria, S.A. as Common Agent, Security Agent, Paying Agent, the Senior Agent and Account Bank.

**Final Conditions** means the document by means of which each Issuance is made where it is specified the nominal and effective amount and number of the Bonds to be issued at such specific issue and the envisaged date of issue of the Bonds.

**Final Discharge Date** means the date on which all the Secured Liabilities have been fully and finally discharged to the satisfaction of the Secured Parties, whether or not as a result of enforcement, and the Secured Parties are under no further obligation to provide financial accommodation to the Issuer under any of the Finance Documents.

**Final Maturity Date** means, to the extent any Bonds are outstanding at that time, 30 May 2047.

**Finance Documents** means the following documents:

- (a) the Term Loan Facility Agreement;
- (b) the Programme, the Regulations and each of the Final Conditions;
- (c) the Common Documents;
- (d) the Interest Rate Hedging Agreement;

- (e) the Paying Agency Agreement;
- (f) the Fee Letter and any other fee letters entered into in connection with the Term Loan Facility Agreement or the Subscription Agreement, or the transactions contemplated in such documents;
- (g) the Subscription Agreement; and
- (h) any other document or agreement designated as such by the Common Agent (acting on the written instructions of the Majority Creditors) and the Issuer.

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

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any documentary or standby letter of credit;
- (c) any acceptance under any acceptance credit or bill discounting facility with recourse (or dematerialised equivalent);
- (d) any bond or note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (e) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Standards, be treated as a finance or capital lease;
- (f) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis to the Issuer);
- (g) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, standby or documentary letter of credit or other instrument issued by a bank or financial institution;
- (i) any amount raised by the issue of shares which are redeemable (other than at the option of the Issuer) or are otherwise classified as borrowings under Accounting Standards;
- (j) any Shareholder Loan;
- (k) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question; or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 120 days after the date of supply;
- (l) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Standards; or
- (m) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (l) above.

**Financial Model** means the financial model prepared by the Issuer on or before the Closing Date in connection with the Senior Debt, as audited by the Financial Model Auditor, and delivered by the Issuer as a condition precedent on the Closing Date.

**Financial Model Auditor** means PricewaterhouseCoopers, S.L. or any other entity appointed as financial model auditor from time to time and approved by the Majority Creditors.

**Financial Statements** means the Annual Financial Statements and the Semi-Annual Financial Statements.

**Financial Year** means the annual accounting period of the Issuer ending on 31 December in each year.

**Financing Costs** means

- (a) interest, fees and other costs and expenses payable by the Issuer under the Finance Documents (including hedging costs); and
- (b) any value added or other taxes or amounts payable by the Issuer (including under tax gross-up obligations or by way of increased costs) in respect of the above.

**First Calculation Date** means the latest of (i) the first 30 June or 31 December taking place after 3 months after the Project Completion Date and (ii) 30 June 2020 provided that the Project Completion Date has occurred.

**Fitch** means Fitch Ratings Ltd. and any successor to the rating agency business of Fitch Ratings Ltd.

**Funding Shortfall** occurs if, at any time prior to the Project Completion Date, the aggregate (without double counting) of:

- (a) the amount which is then projected and estimated to be the maximum liability of the Issuer to make payments (whether past due and unpaid, current and due or future) in respect of Construction Costs to be incurred under, and in accordance with, the terms of the EPC Contract prior to or on the projected Project Completion Date in order to ensure that the Works are completed and the Project Completion Date occurs; and
- (b) the amount which is then projected and estimated to be the maximum liability of the Issuer to make all other payments (whether past due and unpaid, current and due or future), including in respect of other Project Costs falling due prior to the projected Project Completion Date, exceeds the aggregate at such time of the following amounts:
  - (i) all amounts then standing to the credit of the General Account;
  - (ii) any amount then standing to the credit of a Project Account (except the Debt Service Reserve Account) which: (A) can be applied to fund amounts projected to be incurred under paragraphs (a) and (b) above; and (B) are in respect of costs for which such amounts are permitted to be withdrawn from the relevant account in accordance with the Account Bank Agreement (including for the avoidance of doubt, any interest accrued on any such accounts);
  - (iii) the projected and estimated: (A) Project Income; and (B) liquidated damages or compensation under any Project Document in respect of loss of revenue receivable by the Issuer during the period from the date of such calculation up to the projected Project Completion Date; and
  - (iv) the following amounts: (i) the amounts pending to be contributed by the Shareholders under the Equity Documents; (ii) the amounts available to be drawn under the Loan; (iii) the amounts then standing to the credit of the Bond Proceeds Account; and (iv) the nominal amount of Bonds available to be issued under the Programme; in all such cases, to the extent such amounts can be applied to fund amounts projected to be incurred under paragraphs (a) and (b) above in accordance with the Finance Documents.

**Gearing Ratio** shall be the ratio between (a) the Shareholder Contributions and (b) the sum of (i) the principal amount outstanding under the Loans minus the amounts outstanding in the Tranche B Proceeds

Account, (ii) the Principal Amount Outstanding under the Bonds minus the amounts outstanding in the Bond Proceeds Account, and (iii) the Shareholder Contributions.

**General Account** means the account opened with the Account Bank, designated as such and maintained by the Issuer, in accordance with the Account Bank Agreement.

**Hedging Bank** means Natixis, S.A., or any other entity which entered into with the Concessionaire, at any time, an interest rate hedging agreement with the purpose of totally or partially hedging the variation of the interest rate of the Tranche A.

**Historic Debt Service Coverage Ratio** or **Historic DSCR** means on each Calculation Date in respect of the Relevant Period, the ratio of (i) the actual Cash Flow Available for Debt Service to (ii) the actual Debt Service in each case during such Relevant Period.

**Iberclear** has the meaning given to that term in Condition 4.1 (*Register*).

**Iberclear Members** has the meaning given to that term in Condition 4.1 (*Register*).

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

**Indexed** means, in respect of any reference to an amount, that amount (as previously indexed) as may be adjusted up or down at the beginning of each calendar year by a percentage equal to the amount of percentage increase or, as the case may be, decrease in the Consumer Price Index for the previous year or as is otherwise specified in the relevant Finance Document.

**Information Recipients** means the Bondholders, the Lenders, the Common Agent, the Security Agent and the Commissioner.

**Initial Bondholders** means the Bondholders that are a party to a Subscription Agreement.

**Initial Security Documents** has the meaning given to that term in Condition 7 (*Security*).

**Insolvency Event** means, in respect of any entity and in any jurisdiction:

- (a) the initiation, institution, petition, application or filing of, or consent to, any Insolvency Proceedings by such entity or any other person;
- (b) a general assignment, arrangement or composition with or for the benefit of its creditors.
- (c) the passing by such entity of an effective resolution or the making of an order by a court of competent jurisdiction for the winding up, liquidation or dissolution of such entity;
- (d) the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official in relation to such entity or in relation to the whole or substantially the whole of the undertakings or assets of such entity;
- (e) the taking possession by a secured party of all or substantially all its assets or a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
- (f) the cessation or suspension of payment of its debts generally or a public announcement or admittance in writing by such entity of an intention to do so or of its inability to generally pay its debts as they become due;
- (g) the declaration of a moratorium in respect of all or substantially all of the indebtedness of such company;
- (h) the declaration of insolvency (*declaración de concurso*), including the filing of any request for the declaration of voluntary or mandatory insolvency (*concurso voluntario o necesario*) or the



taking or passing of any resolution approving such filing) and/or the filing of an application under Article 5 bis of Spanish Insolvency Law and/or the filing of a request for judicial homologation (*homologación judicial*) under Additional Disposition Fourth of the Spanish Insolvency Law;

- (i) falling into any of the categories set out in article 363 of the Spanish Capital Companies Law which would require it to be dissolved; or
- (j) any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (i) above.

**Insolvency Proceedings** means, in respect of any company, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or the winding up, liquidation, dissolution or administration of such company.

**Insurance** means, as the context may require, any contract or policy of insurance taken out by the Issuer from time to time, including in each case any future renewal or replacement of any such insurance whether with the same or different insurers and whether on the same or different terms.

**Insurance Adviser** means Willis Consulting, S.L.

**Insurance Proceeds Account** means the account opened with the Account Bank, designated as such and maintained by the Issuer, in accordance with the Account Bank Agreement.

**Insurance Provider** means Generali España, S.A. de Seguros y Reaseguros and XL Insurance Company SE, Sucursal en España or any provider of insurance which has a rating for its long-term unsecured and non-credit enhanced debt obligations of BBB or higher by S&P or Fitch or Baa2 or higher by Moody's or a comparable rating from an internationally recognised credit rating agency.

**Intercreditor Agreement** means the intercreditor agreement dated on or about the Closing Date entered into among the Concessionaire, the Lenders, the Commissioner, the Hedging Bank, the Shareholders, the Common Agent and the Security Agent, which regulates, among other things, (i) the ranking and priority of claims of the Secured Parties, (ii) the exercise, acceleration and enforcement of rights by the Secured Parties, and (iii) the giving of consents and waivers and the making of modifications to the Finance Documents.

**Interest Period** means the period from (and including) a Payment Date (or the Closing Date) to (but excluding) the next (or first) Payment Date.

**Interest Rate Hedging Agreement** means the interest hedging agreement entered into, on 31 May 2017, by the Concessionaire and the Hedging Bank to hedge the variation of the interest rate of Tranche A of the Term Loan Facility Agreement.

**Interface Agreement** means the agreement entered into on or about the Closing Date among the Issuer, the Contractor and the Operator to regulate the transition process or interface between the construction period and the operation period in relation to the Project.

**Investor Website** has the meaning given to that term in Condition 9.9 (*Provision of information to the Information Recipients*).

**Issuance** means any issuance of Bonds under this Programme (as it may be extended or renewed).

**Issuer** means Ekondakin Energía y Medioambiente, S.A.

**Issuer Related Party** means any Shareholder and any Affiliate of a Shareholder.

**Joint Venture** means any joint venture entity, partnership or similar person, the ownership of or other interest in which does not require the Issuer to consolidate the results of that person with its own as a Subsidiary.

**Legal Reservations** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; and
- (b) similar principles, rights and defenses under the laws of any Relevant Jurisdiction.

**Lenders** means Natixis, S.A., Sucursal España; KDB Bank Europe LTD; Siemens Bank GMBH; AG Insurance SA/NV, and Credit Industriel et Commercial, S.A. or any other entity to which a Participation or Commitment (as these terms are defined in the Term Loan Facility Agreement) have been transferred or assigned, in accordance with the terms of the Finance Documents.

**Liabilities** means all present and future liabilities and obligations at any time owed by the Issuer and/or the Shareholders (in case of the Shareholders, under the Shareholders Support Agreement), both actual and contingent (provided they are materialised) and whether incurred solely or jointly or as principal or surety or in any other capacity, together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default; and
- (c) any claim for damages or restitution,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**Lifecycle Maintenance Costs** means in any period, amounts in respect of lifecycle maintenance incurred or projected to be incurred by the Issuer as Lifecycle Payments under the O&M Contract.

**Loan** means each of the loans granted by the Lenders to the Issuer under the Term Loan Facility Agreement.

**Loan Utilisation** means the Tranche A Loan Utilisations and the Tranche B Loan Utilisations.

**Maintenance Reserve Account** or **MRA** means the account opened with the Account Bank, designated as such and maintained by the Issuer, in accordance with the Account Bank Agreement.

**Majority Creditors** means, at any time, Senior Creditors representing not less than two thirds (dos tercios) of the nominal amount of the Senior Debt for the time being outstanding.

**MARF** means on the Closing Date, the Spanish Alternative Fixed-Income Market (*Mercado Alternativo de Renta Fija*) and shall mean, thereafter, the relevant Stock Exchange.

**Material Adverse Effect** means a material adverse effect on:

- (a) the business, assets or financial condition of the Issuer;
- (b) the ability of the Issuer to meet its payment obligations under the Finance Documents and/or the Concession Agreement (where such inability to comply would be materially adverse to the material interests of the Senior Creditors);
- (c) the validity, legality, or enforceability of any Finance Document; or

- (d) the ranking of any right *in rem* established or to be established by any of the Security Documents.

**Member State** means any state that is member of the European Union.

**Moody's** means Moody's Investors Services Limited or any successor to its rating business.

**MRA Required Balance** means for each Relevant Period beginning on a Calculation Date, an amount equal to the sum of:

- (a) 100 per cent. of the forecasted Lifecycle Maintenance Costs and Replacement Costs for the 12-month period beginning on that Calculation Date;
- (b) 50 per cent. of the forecasted Lifecycle Maintenance Costs and Replacement Costs for the 12-month period beginning on the first anniversary of that Calculation Date; and
- (c) 25 per cent. of the forecasted Lifecycle Maintenance Costs and Replacement Costs for the 12-month period beginning on the second anniversary of that Calculation Date.

**Negative Approval** means, in relation to a particular matter that expressly under these Conditions may be rejected on a Negative Approval basis, that it will be deemed approved unless, within 10 Business Days from the date the Senior Creditors are notified by the Common Agent, Senior Creditors holding or representing not less than 25% in nominal amount of the Senior Debt for the time being outstanding have informed the Common Agent in writing that they do not approve the relevant matter. Any such matter can be expressly approved, at any time, by the Common Agent acting on the instructions of the Senior Creditors pursuant to an Ordinary Resolution (as such term is defined in the Intercreditor Agreement).

**Obligors** means the Issuer and the Shareholders.

**O&M Contract** means any operation and maintenance agreement entered into between the Issuer and the Operator in relation to the operation and maintenance of the Project or part of it (as amended and/or restated from time to time).

**O&M Guarantor** means Urbaser S.A. (or any new guarantor appointed in accordance with a Replacement Plan).

**O&M Parent Company Guarantee** means the first demand corporate guarantee granted by the O&M Guarantor with respect to the obligations and liabilities of the Operator under the O&M Contract.

**Officer's Certificate** means a certificate signed by an Authorised Officer.

**Operator** means Ekobal Operación y Mantenimiento, S.L., or any new operator appointed in accordance with a Replacement Plan.

**Operating Costs** means all costs and expenses incurred by the Issuer in the ordinary course of its business, including but not limited to:

- (a) payments made or scheduled to be made by the Issuer under the Project Documents;
- (b) insurance premium in respect of operating Insurances and Insurance excess;
- (c) administrative, legal, management, accounting and employee costs;
- (d) other fees and expenses payable to the Senior Creditors not being Financing Costs; and
- (e) any VAT in respect of any items in this definition,

but excluding:

- (a) amounts recovered by Insurance or expected to be recovered by insurance;

- (b) Lifecycle Maintenance Costs;
- (c) Replacement Costs;
- (d) Project Taxes (except for VAT);
- (e) Debt Service;
- (f) any Restricted Payments; and
- (g) depreciation, other non-cash charges, reserves, amortisation of intangibles and similar bookkeeping entries.

**Original Jurisdiction** means, in relation to any entity, the jurisdiction under whose laws that entity is incorporated as at the Closing Date.

**Paying Agency Agreement** means the paying agency agreement dated on the Closing Date among the Issuer and the Paying Agent, which regulates the procedure that shall be followed by the Issuer to make payments to the Bondholders.

**Paying Agent** means Banco Bilbao Vizcaya Argentaria, S.A. and its successors as paying agent under the Paying Agency Agreement.

**Payment Date** has the meaning given to that term in Condition 13.2 (*Payment Dates*).

**Permitted Acquisition** means:

- (a) an acquisition of securities which are Permitted Investments so long as those Permitted Investments become subject to the Security Documents as soon as is reasonably practicable thereafter; and
- (b) the acquisition of any Bonds pursuant to any permitted buyback subject to the terms of the Finance Documents.

**Permitted Business** means:

- (a) the business of operating the Project in accordance with the Concession Agreement, including for the avoidance of doubt the sale or trading of the surplus energy generated by the Project; and
- (b) any other business ancillary to the activities set out in paragraph (a) above or which is approved by the Common Agent (acting on the written instructions of the Majority Creditors).

**Permitted Disposal** means any sale, lease, license, transfer or other disposal which is on arm's length terms:

- (a) of trading stock or cash made by the Issuer in the ordinary course of business of the disposing entity;
- (b) of assets in exchange for other assets comparable or superior as to type, value and quality;
- (c) of the surplus energy generated by the Project made by the Issuer in the ordinary course of its business;
- (d) of obsolete or redundant vehicles, plant, equipment, parts or similar items for cash;
- (e) of Permitted Investments for cash or in exchange for other Permitted Investments;
- (f) arising as a result of any Permitted Security; and
- (g) arising from the application or disposal of cash not otherwise prohibited under the Finance Documents.

**Permitted Distribution Test** has the meaning given to that term in Condition 22.8 (*Distribution Account*).

**Permitted Financial Indebtedness** means any Financial Indebtedness:

- (a) arising under the Transaction Documents, including any debt for the purposes of financing variations in the Project required by the Authority in accordance with Clause 56 of the Terms of the Tender of the Concession Agreement;
- (b) arising under any subordinated Shareholder Loan;
- (c) arising under or in respect of a Permitted Guarantee;
- (d) arising from any Issuance;
- (e) in respect of:
  - (i) a finance lease or hire purchase arrangement entered into primarily as a method of raising financing for or financing the acquisition of leased assets; or
  - (ii) any deferred purchase arrangement for assets or services acquired in the ordinary course of its business which is on terms that require the indebtedness to be repaid with 120 days of delivery of the goods or performance of the services, as the case may beprovided that the capital value of the goods financed shall not (together with any other Financial Indebtedness permitted under this paragraph exceed € 5,000,000 (Indexed) (or its equivalent) in aggregate at any one time;
- (f) that is a credit line up to a maximum aggregate amount of € 5,000,000;
- (g) that is an unsecured and not collateralized derivative transaction entered into for protection against fluctuation of the price of the electricity produced and to be sold by the Project, not exceeding the amounts foreseen in the Base Case;
- (h) is a Qualifying Term Loan Liabilities Refinancing, as such term is defined in the Intercreditor Agreement; or
- (i) approved or consented in writing by the Majority Creditors.

**Permitted Guarantees** means:

- (a) the endorsement of negotiable instruments in the ordinary course of trade;
- (b) any performance or similar bond, guarantee or indemnity or undertaking guaranteeing performance by the Issuer under any contract entered into in the ordinary course of business up to a maximum amount of EUR 3,000,000;
- (c) any guarantee permitted as Permitted Financial Indebtedness;
- (d) any guarantee granted under the Finance Documents;
- (e) the Concession Performance Bond;
- (f) any guarantee required by the tax administration up to a maximum amount of €3,000,000;
- (g) any guarantee not otherwise permitted under the preceding paragraphs provided that the aggregate maximum potential liability of the Issuer thereunder does not exceed €1,000,000 (Indexed) (or its equivalent) in aggregate at any time; and
- (h) any other guarantee approved or consented in writing by the Majority Creditors.

**Permitted Investment** means at any time:

- (a) bank accounts and certificates of deposit which pay interest either periodically or at maturity (*imposiciones a plazos*) maturing within 6 months after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt instruments (including commercial paper) that have a credit rating of at least BBB from S&P or Fitch or at least Baa3 from Moody's and maturing within 6 months after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) any investment in money market funds which have a credit rating of at least BBB from S&P or Fitch or at least Baa2 from Moody's; or
- (d) any other debt security accepted or approved in writing by the Majority Creditors,

in each case, denominated in euro and to which the Issuer is beneficially entitled at that time and which is not issued or guaranteed by any Issuer Related Party or subject to any Security Interest (other than Security Interest arising under the Security Documents).

**Permitted Loan** means:

- (a) any trade credit extended by the Issuer to its customers, tenants or licensees, on normal commercial terms and in the ordinary course of trade;
- (b) any Permitted Payment made in the form of a loan; and
- (c) any other loans or grant of credit approved or consented to in writing by the Majority Creditors.

**Permitted Payment** means:

- (a) a payment on or about the Closing Date in respect of fees, costs and expenses incurred by a Shareholder on behalf of the Issuer or by the Issuer in connection with the Senior Debt as reflected in the Base Case;
- (b) the reimbursement of fees, costs and expenses incurred by a Shareholder in connection with any Equity Contribution Guarantee or Concession Performance Bond;
- (c) a payment by the Issuer under, and in accordance with the terms of, a Project Document; and
- (d) payments by the Issuer to an Issuer Related Party in the ordinary course of business and at arm's length up to an aggregate annual amount of €250,000;
- (e) any Restricted Payment made in accordance with Condition 10.16 (*Restricted Payments*); and
- (f) any other payment approved or consented in writing by a the Majority Creditors.

**Permitted Security** means:

- (a) any Security Interest or Quasi-Security arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by the Issuer;
- (b) any netting or set-off arrangement entered into by the Issuer with an Acceptable Bank in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of the Issuer but only so long as: (i) such arrangement does not permit credit balances of the Issuer to be netted or set off against debit balance of any other party; and (ii) such arrangement does not give rise to other Security Interests over the assets of the Issuer in support of liabilities of any other party;
- (c) any Security Interest or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied

to the Issuer in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by the Issuer;

- (d) the Security Interests created pursuant to the Security Documents; and
- (e) any other Security Interest or Quasi-Security approved or consented in writing by the Majority Creditors.

**Potential Event of Default** means any event or circumstance specified in Condition 18 (*Events of Default*) which would, with the expiry of a grace or cure period, with the giving of notice, become an Event of Default.

**Principal Amount Outstanding** means, in relation to a Bond, the original face value thereof less any repayment of principal made to the holder(s) thereof in respect of such Bond.

**Programme** means this programme (as it may be extended or renewed) and the terms and conditions set forth herein in connection with the Bonds to be issued hereunder.

**Project** means the design, supply, construction, operation and maintenance of the residual waste treatment plant named “*Complejo Medioambiental de Gipuzkoa*”.

**Project Account** means each of the General Account, the Insurance Proceeds Account, the MRA and the DSRA.

**Project Completion Date** means the date upon which all of the following conditions have been satisfied: (i) the Works Acceptance and Operation Commencement Certificate (*Acta de Comprobación de Obras e Inicio de Operaciones*) has been granted by the Authority in accordance with Clause 36.4 of the Terms of Tender of the Concession Agreement; and (ii) the Technical Adviser has certified that the Facility satisfied the minimum guaranteed values set forth in clauses 36.2.13 and 36.2.14 of the Terms of the Tender of the Concession Agreement and in the bid submitted by the Concessionaire, or that they will be corrected within two (2) months, in accordance with the provision of the EPC Contract; and copies of such certificates referred to in (i) and (ii) above have been delivered to the Information Recipients. For the purposes of calculating interest on the Bonds under this Programme it is estimated that the Project Completion date will occur on 30 October 2019. The Issuer may however extend the Project Completion Date, without any further consent or approval from the Bondholders, until 30 April 2020. In that case, the Issuer shall inform MARF and the Bondholders by publishing on the web page of the Issuer and the Relevant Fact (*Hecho Relevante*) in MARF.

To avoid any misunderstanding, regarding the Technical Adviser certification stipulated above, this certification shall include the following:

- (a) details of compliance (or any non-compliance) of the Project, with the Equator Principles and other aspects of the regulatory environmental framework evaluated in the final technical due diligence report;
- (b) details of the actions, including timeframe for completion, which the Concessionaire has taken or intends to take in order to rectify non-compliance, if any, during the operation period to achieve compliance with the requirements mentioned above; and
- (c) assessment of the compliance of the Project with the Environmental Laws, identifying the arrangements and the recommendation to achieve compliance with the requirements of the Equator Principles, if any.

**Project Completion Longstop Date** means 3 February 2020.

**Project Costs** means amounts payable by the Issuer in connection with the Project (including contingencies and working capital requirements) including but not limited to:

- (a) Construction Costs;
- (b) Financing Costs;
- (c) Operating Costs;
- (d) Lifecycle Maintenance Costs;
- (e) Replacement Costs;
- (f) SPV Costs;
- (g) Project Taxes; and
- (h) to the extent not included in any of the above, any costs associated with any investments in spare parts and the turbines required for the Project up to, in the aggregate, 1,500,000 €, as such costs are reflected in the Base Case).

**Project Documents** means each of the following:

- (a) the Concession Agreement;
- (b) the EPC Contract;
- (c) the O&M Contract;
- (d) the Interface Agreement; and
- (e) any parent company guarantees, bonds or letters of credit issued in favour of the Issuer pursuant to the EPC Contract or the O&M Contract.

**Project Income** means all moneys received (or forecast to be received) by the Issuer from the Authority under or in connection with the Concession Agreement and/or the Project, as well as any other business income.

**Project Taxes** means all Taxes (other than VAT) payable by the Issuer.

**Quasi-Security** has the meaning given to that term in Condition 10.9 (*Negative Pledge*).

**Ratios** means the Historic DSCR and the DLCR.

**RD 878/2015** has the meaning given to that term in Condition 3.1 (*Form*).

**Redemption Date** means each date indicated in the relevant notice delivered by the Issuer pursuant to Conditions 14.3 (*Mandatory Early Redemption-Termination of Concession Agreement*), 14.4 (*Mandatory Early Redemption – Insurance Proceeds*), 14.5 (*Early Redemption for Taxation*) or 14.6 (*Optional Redemption*) on which the Issuer will redeem the Bonds (in whole or in part, as the case may be).

**Reference Rate** means the bid-side rate for the fixed leg of a hypothetical interest rate swap with a notional profile equal to the semi-annual interest that would be payable on the Bonds (had the redemption not taken place), with the same payment dates as the Bonds and a floating leg of six-month EURIBOR with no spread and where such hypothetical interest rate swap is between fully collateralised market counterparties plus the Applicable Make-Whole Spread. The Reference Rate shall be determined by a suitably qualified financial institution appointed by the Issuer with the prior written approval of the Commissioner using its standard valuation methodology as at the date of calculation.

**Registered Adviser** means Intermoney Valores, S.V. S.A.

**Reinforced Majority of Secured Parties** has the meaning given to that term in Condition 27.4.2 .

**Relevant Jurisdiction** means, in relation to the Issuer and any other entity:



- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of any Security or any of the Security Documents entered into by it.

**Relevant Period** means, for the purpose of:

- (a) any Calculation Date in respect of the Historic DSCR, the period of 12 months from (but excluding) the date falling one year prior to that Calculation Date to (and including) that Calculation Date save for the First Calculation Date, for which it is the period from (and including) the Project Completion Date to (and including) the First Calculation Date;
- (b) any Calculation Date in respect of the DLCR, the period from (but excluding) the Calculation Date to (and including) the Final Maturity Date;
- (c) any Calculation Date in respect of the DSRA Required Balance, the period of six months from (but excluding) that Calculation Date to (and including) the following Calculation Date; and
- (d) any Calculation Date in respect of the MRA Required Balance, the period of 36 months from (but excluding) that Calculation Date to (and including) the third anniversary of that Calculation Date.

**Relevant Prepayment Amount** has the meaning given to that term in Condition 14.4 (*Mandatory Early Redemption – Insurance Proceeds*).

**Remedial Plan** has the meaning given to that term in Condition 19.2 (*Remedial Plan*).

**Repeating Representations** means each of the representations set out in Condition 8.2 (*Status, Power and Authority*) to Condition 8.6 (*Pari passu*) and Condition 8.12 (*Good title to assets*) to Condition 8.15 (*No default*) and Condition 8.19 (*Anti-corruption and anti-money laundering laws: Sanctions*).

**Replacement Costs** means in any period, amounts in respect of replacements incurred or projected to be incurred by the Issuer as Replacement Payments under the O&M Contract.

**Replacement Plan** has the meaning given to that term in Condition 19.1 (*Replacement Plan*).

**Restricted Payment** means

- (a) any payment by way of loan or repayment of any loan or otherwise, or distribution or dividend on share capital, by the Issuer to an Issuer Related Party;
- (b) any payment or repayment of interest, the principal of or other charges under any Shareholder Loan; or
- (c) any other payment by the Issuer to an Issuer Related Party.

**Sanctions** has the meaning given to that term in Clause 8.19(e).

**Semi-Annual Financial Statements** has the meaning given to this term in Condition 9.1 (*Financial Statements*).

**Secured Assets** means all of the assets and credit rights which from time to time are, or are expressed to be, the subject of the Security.

**Secured Documents** means, collectively, the Senior Debt Secured Documents and the Interest Rate Hedging Agreement.

**Secured Liabilities** means the Senior Debt Secured Liabilities and the Hedging Secured Liabilities.

**Secured Parties** has the meaning given to that term in Condition 7 (*Security*).

**Security** means the Security Interests expressed to be created in favour of the Secured Parties pursuant to the Security Documents, including any enforcement enhancing instrument, guarantee or obligation to provide cash collateral or further assurance thereunder.

**Security Agent** means Banco Bilbao Vizcaya Argentaria, S.A., and its successors as security agent under the Finance Documents.

**Security Documents** means:

- (a) each Initial Security Document; and
- (b) any other document under which additional Security Interest has been granted to secure the Secured Liabilities.

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

**Senior Agent** means Banco Bilbao Vizcaya Argentaria, S.A., and its successors as senior agent under the Term Loan Facility Agreement.

**Senior Creditors** means the Lenders and the Bondholders.

**Senior Debt** means the Bonds and the Loans.

**Senior Debt Secured Documents** means, collectively, the Term Loan Facility Agreement, the Bonds issued under the Programme and the Common Terms Agreement.

**Senior Debt Secured Liabilities** means the Liabilities payable or owing by the Issuer under the Senior Debt Secured Documents.

**Shareholder** means each of the shareholders of the Issuer, being at the Closing Date the following parties in the following share percentages:

- (a) Urbaser, S.A.: 46%;
- (b) Construcciones Moyua, S.L. : 1%;
- (c) Altuna y Uria, S.A.: 1%;
- (d) Construcciones Murias, S.A.: 1%;
- (e) LKS Ingenieria, S.Coop.: 1%; and
- (f) Meridiam Investments SAS: 50%.

**Shareholder Contributions** means the contributions that are to be made by the Shareholders to the Issuer pursuant to the Shareholders Support Agreement.

**Shareholders Loan** means any loan made available to, credit granted to or any other Financial Indebtedness or financial arrangement having similar effect made to, in each case, the Issuer by a Shareholder provided that:

- (a) repayment of such loans or credit and payments of interest or other amounts in respect of such loans or credit is subject to the terms of the Intercreditor Agreement; and
- (b) security over such loans or credits is granted in favour of the Secured Parties in accordance with the Intercreditor Agreement.

**Shareholder Loan Agreement** means any agreement or other document setting out the terms (or any of them) or evidencing, or constituting, a Shareholder Loan.

**Shareholders Support Agreement** means the shareholders support agreement dated on the Closing Date among the Issuer, the Commissioner, the Common Agent, the Security Agent, the Lenders and the Shareholders, pursuant to which, among other things, the Shareholders assume, for the benefit of the Senior Creditors, certain obligations to contribute equity and grant the Shareholder Loans to the Issuer.

**Spain** means the Kingdom of Spain.

**Spanish Central Registry** has the meaning given to that term in Condition 4.1 (*Register*).

**Spanish Corporations Act** means the *Ley de Sociedades de Capital*, as approved by Legislative Royal Decree 1/2010, of 2 July.

**Spanish Insolvency Law** means Law 22/2003 (*Ley Concursal*) of 9 July 2003.

**SPV Costs** means any costs associated with initial investments and operating (together with value added and other equivalent taxes), in accordance with the Financial Model.

**Stock Exchange** means MARF or any other or further stock exchange(s) on which any Bonds may from time to time be listed, and references to the relevant Stock Exchange shall, in relation to any Bonds, be references to the Stock Exchange on which such Bonds are, from time to time, or are intended to be, listed.

**Subscription Agreement** means any subscription agreement dated on the Closing Date entered into between the Issuer and any of the Initial Bondholders, pursuant to which the Issuer agrees to issue and the relevant Initial Bondholders agree to subscribe for or purchase, or procure subscribers for, the Bonds to be issued under the Programme.

**Subsidiary** means a subsidiary (*sociedad dependiente*) within the meaning of Article 42 of the Spanish Commerce Code of 1885 (*Código de Comercio*).

**Syndicate of Bondholders** has the meaning given to that term in Condition 25.1 (*Syndicate of Bondholders*).

**S&P** means Standard & Poor's Rating Services, a division of the McGraw-Hill Companies, Inc.

**TARGET2 Day** means any day in which the TARGET2 System is open for the settlement of payment in euro.

**TARGET2 System** means the Trans-European Automated Real-Time Gross Settlement Express Transfer Payment System (Target 2) which utilises a single shared platform and which was launched on 19 November 2007.

**Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and Taxes, taxation, taxable and comparable expressions shall be construed accordingly.

**Tax Redemption Bonds** has the meaning given to that term in Condition 14.5 (*Early Redemption for Taxation*).

**Technical Adviser** means G-Advisory Consultoría Técnica, Económica y Estratégica, S.L.P., or any other technical adviser appointed in substitution of it in accordance with Condition 10.22 (*Replacement of the Technical Adviser*).

**Term Loan Facility Agreement** means the term loan facility agreement dated on the Closing Date among the Issuer, the Lenders, the Common Agent and the Security Agent, pursuant to which the Lenders advance Loans to the Issuer up to €111,537,114.

**Term Loan Liabilities** means the Liabilities payable or owing to the Lenders under the Finance Documents.

**Tranche A** means the floating rate tranche of the Facility in accordance with the provisions of the Term Loan Facility Agreement.

**Tranche A Lenders** means all the lenders participating in Tranche A of the Facility in accordance with the Term Loan Facility Agreement.

**Tranche A Utilisation** means a drawdown of the Tranche A under the Term Loan Facility Agreement

**Tranche B** means the fixed rate tranche of the Facility in accordance with the provisions of the Term Loan Facility Agreement.

**Tranche B Lenders** means all the lenders participating in Tranche B of the Facility in accordance with the Term Loan Facility Agreement.

**Tranche B Liabilities** means the Liabilities payable or owing to the Tranche B Lenders under the Term Loan Facility Agreement.

**Tranche B Proceeds Account** means the account opened with the Account Bank, designated as such and maintained by the Issuer, in each case, in accordance with the Account Bank Agreement.

**Tranche B Utilisation** means a withdrawal from the Tranche B Proceeds Account.

**Transaction Documents** means the Finance Documents and the Project Documents.

**Treasury Transaction** means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

**Unanimity Decisions** means an amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

- (a) the creation of new or additional obligations to any, but not all, Lender and/or Bondholder and/or Hedging Bank, except if the affected Lender and/or Bondholder and/or Hedging Bank has consented the assumption of such obligation;
- (b) provisions regarding mandatory or optional early redemption or prepayment of the Bonds and/or the Loans or the definitions of Relevant Prepayment Amount, Reference Rate, Applicable Make-Whole Spread and Break Costs;
- (c) the repayment schedule and the Final Maturity Date of the Loans and/or the Bonds;
- (d) the Maximum Amount of the Facility;
- (e) the dates or term of the Availability Period or any Interest Payment Dates or fees payment dates in respect of the Loans and/or the Bonds;
- (f) the Interest Rate or the applicable Margin, the Default Rate, the calculation and the amounts or procedure of calculation and/or payment of fees under the Loans and/or the Bonds, except for those fees arising as a consequence of a Qualifying Term Loan Liabilities Refinancing (as this term is defined in the Intercreditor Agreement);
- (g) the currency of payment or denomination of the Bonds and/or the Loans;
- (h) the majorities required for the adoption of resolutions by the Lenders and/or the Bondholders and/or (if applicable) the Hedging Bank;
- (i) cancellation, waiver or reduction of the Security or any other change or modification of the Security that could prejudice any of the Secured Parties (or, in case the Security is replaced by

other equivalent security, the decision regarding the equivalence of the proposed Security, except if such replacement is made in connection with a Qualifying Term Loan Liabilities Refinancing (as this term is defined in the Intercreditor Agreement));

- (j) the levels of, or process to determine, the Ratios;
- (k) the covenants dealing with Restricted Payments;
- (l) the provisions regarding Enforcement Instruction and/or Unanimity Decisions;
- (m) the ranking and priority provisions contained in Clause 3 of the Intercreditor Agreement; and
- (n) the conditions precedent to Utilisations set forth in Clause 15.3(a)(ii), Clause 15(a)(v)(C) and (D) and Clause 15.3(c) of the Common Terms Agreement.

**Utilisation** means a Bond Utilisation or a Loan Utilisation.

**Utilisation Date** means the date of an Utilisation, being (as applicable) the date on which the relevant drawdown of the Tranche A is to be made or the withdrawal from the Bond Proceeds Account or the Tranche B Proceeds Account is to be effected.

**Utilisation Request** means a Bond Utilisation Request or a Loan Utilisation Request.

**Works** means the works that the Issuer must undertake pursuant to the Concession Agreement.

## **2. PURPOSE OF THE PROGRAMME**

The Issuer shall apply all the proceeds received by each Issuance of Bonds under this Programme towards:

- (a) paying Project Costs;
- (b) covering required levels of minimum operating cash up to the Project Completion Date;
- (c) the initial funding of the DSRA and the MRA;
- (d) the initial working capital requirements (financed minimum treasury) after the Project Completion Date in accordance with the Base Case; and
- (e) funding, at the moment of the last Utilisation being made, a buffer for contingency amounts up to 3% of the maximum amount of the Facility and the maximum amount of the Programme (as it may be extended and/or renewed), which shall correspond to savings or efficiencies with respect to the Base Case.

## **3. FORM, DENOMINATION AND PRICE**

### **3.1 Form**

Bonds will be in uncertificated, dematerialized book-entry form (*anotaciones en cuenta*) subject to Royal Decree 878/2015 of October 2, on compensation, liquidation and recording of marketable securities represented by book-entries, on the legal regime of central securities depositories and central counterparties and on the transparency requirements of the issuers of securities admitted to trading on an official secondary market (*Real Decreto 878/2015, de 2 de octubre, sobre compensación, liquidación y registro de valores negociables representados mediante anotaciones en cuenta, sobre el regimen jurídico de los depositarios centrales de valores y de las entidades de contrapartida central y sobre los requisitos de transparencia de los emisores de valores admitidos a negociación en un Mercado secundario oficial*) (**RD 878/2015**).

### 3.2 Denomination

Bonds will be in initial denominations of EUR 100,000 that will be reduced according to the Scheduled Redemption.

### 3.3 Price

All Bonds issued under this Programme will be priced at par value, i.e., in individual denominations of EUR 100,000 plus any accrued interest, if any, in case the disbursement of any issue does not coincide with the last date of the previous Interest Period except when such disbursement cannot take place on that date because it is not a Business Day. In that case, as stated in Condition 13.4 the disbursement of the issue shall be made on the next Business Day following the last Interest Payment Date, and the Bondholders will not be required to pay the accrued interests for that date.

### 3.4 ISIN Code

The Spanish National Numbering Agency (*Agencia Nacional de Codificación de Valores Mobiliarios*) shall assign an ISIN Code to the Bonds upon the first Issuance. All the Bonds issued under the Programme will have the same ISIN Code.

## 4. REGISTER, TITLE AND TRANSFERS

### 4.1 Register

The Bonds issued under this Programme will be registered with the Spanish *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. Unipersonal*, with its registered address at Plaza de la Lealtad, 1, Madrid (**Iberclear**) as managing entity of the central registry of the Spanish clearing and settlement system (the **Spanish Central Registry**) that records all aggregate securities balances for each of its participating entities (*entidades participantes*) (the **Iberclear Members**). Each Bondholder's (as defined below) title to the corresponding principal amount of the Bonds is set out in the registries maintained by the respective Iberclear Member or the Spanish Central Registry itself if the holder is an Iberclear Member. Bondholders who do not have, directly or indirectly through their custodians, a participating account with Iberclear may participate in the Bonds through bridge accounts maintained by each of Euroclear Bank S.A./N.V. (**Euroclear**) and Clearstream Banking, société anonyme, Luxembourg (**Clearstream Luxembourg**) with Iberclear.

### 4.2 Title

In accordance with Article 16 of RD 878/2015, each person shown in the registries maintained by the respective Iberclear Members, or the Spanish Central Registry itself if the holder is an Iberclear Member, as being Bondholder shall be considered the holder of the principal amount of the Bonds recorded therein.

For these purposes, **Bondholder** means the person in whose name such Bond is for the time being registered in the Spanish Central Registry managed by Iberclear or, as the case may be, the relevant Iberclear Member accounting book. One or more certificates (each, a **Certificate**) attesting to the relevant Bondholder's holding of the Bonds in the relevant registry will be delivered by the relevant Iberclear Member or, where the Bondholder is itself an Iberclear Member, by Iberclear (in each case, in accordance with the requirements of Spanish law and the relevant Iberclear Member's or, as the case may be, Iberclear's procedures) to such Bondholder upon such Bondholder's request.

Each Bondholder shall (except as otherwise required by law) be treated as the absolute owner of such Bond for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any other interest therein, any writing on the Certificate relating thereto, or any notice of any previous loss or theft of such Certificate) and no person shall be liable for so treating such Bondholder.

### 4.3 Transfers

Issued and fully paid up Bonds will be freely transferable.

In accordance with Article 13 of RD 878/2015, title to securities represented through book entries (as will be the case with regard to the Bonds) may pass through book transfer. Consequently, Bonds may be transferred upon registration in the relevant registry of each Iberclear Member and/or the Spanish Central Registry itself, as applicable.

## 5. STATUS

The Bonds constitute direct, general, unconditional, unsubordinated and secured obligations of the Issuer which will at all times rank *pari passu* among themselves and at least *pari passu* with all other present and future secured obligations of the Issuer (in particular, with the Lenders), save for such obligations as may be preferred by provisions of law that are both mandatory and of general application.

## 6. LIMITED RECOURSE

- (a) Payment or performance of the Secured Liabilities is the obligation of the Issuer only. The Secured Liabilities will be payable out of the available cash of the Issuer and will be secured by the Security Interest contemplated in Condition 7 (*Security*) below.
- (b) Creditor's rights will be limited to their right to proceed and enforce the Secured Liabilities against the Issuer and to realize the Security Interest. In particular, none of the Shareholders will provide any personal guarantee or have any obligations in respect of the Secured Liabilities, except for those set forth in, or granted in accordance with, the Finance Documents.

## 7. SECURITY

- (a) Under the Security Documents, the Security will be granted by the Issuer and the Shareholders, as applicable, to secure the Secured Liabilities for the benefit of the Bondholders and, as applicable, the Lenders and the Hedging Bank (the **Secured Parties**) on a *pari passu* basis (except as otherwise indicated).
- (b) Each Bondholder, by subscribing to, purchasing or otherwise acquiring a Bond, shall be deemed:
  - (i) to have authorised the Commissioner and the Security Agent to enter into the Security Documents and accept the relevant Security Interest in their name and for their benefit; and (ii) to be bound thereby.
- (c) The initial Security will, once executed in the manner set out in the Security Documents, consist of the following pledges:
  - (i) a Spanish law first ranking pledge granted by the Issuer in favour of the Secured Parties over the credit rights, present and future, and receivables of the Issuer under (i) the Project Documents, (ii) certain Insurances with regard to the Project, (iii) any letter of credit, guarantees and performance bonds (*avales*) granted in favour of the Issuer with regards to the Project, including without limitation the Equity Contribution Guarantees, the Construction Performance Bonds, the Advance Payment Bond, the EPC Parent Company Guarantee and the O&M Parent Company Guarantee (iv) receivables in favour of the Issuer arising from the sale of energy; and (v) the Shareholders Support Agreement and the Shareholder Loan Agreements;
  - (ii) a Spanish law first ranking pledge granted by the Issuer in favour of the Senior Creditors over the credit rights, present and future, and receivables of the Issuer under the Hedging Agreements;
  - (iii) a Spanish law first ranking pledge granted by the Issuer, in favour of the Secured Parties over the credit rights, present and future, under the Project Accounts;

- (iv) a Spanish law first ranking pledge granted by the Issuer in favour of the Bondholders over the credit rights, present and future, under the Bond Proceeds Account;
- (v) a Spanish law first ranking pledge granted by the Issuer in favour of the Tranche B Lenders over the credit rights, present and future, under the Tranche B Proceeds Account;
- (vi) a Spanish law first ranking pledge granted by the Shareholders, in favour of the Secured Parties over 100 per cent. of the Issuer's share capital; and
- (vii) a Spanish law first ranking pledge granted by the Shareholders in favour of the Secured Parties over the Shareholders' credit rights, present and future, and receivables under the Shareholders Loans and any and all other credit rights, present and future, of the Shareholders vis-à-vis the Issuer.

The documents under which the Security described above has been granted are collectively referred to as the **Initial Security Documents**.

The Initial Security Documents shall be granted prior to the first issue of the Bonds.

- (d) Under the Finance Documents, the Issuer and the Shareholders shall grant and/or extend additional Security, and take all necessary action to ensure such Security is granted, to secure the Secured Liabilities over:
  - (i) future shares comprised in the Issuer's share capital;
  - (ii) any and all shares held by the Issuer in any other companies (if any); and
  - (iii) any and all credit rights arising from future documents, agreements and insurance policies entered into by the Issuer, additionally to, or in substitution of, those pledged pursuant to the Initial Security Documents and not otherwise pledged pursuant to the Initial Security Documents.
- (e) For the avoidance of doubt, the Security Interest created by any of the Security Documents secures any and all Liabilities payable or owing by the Issuer under any and all Bonds issued or to be issued under the Programme (as it may be extended or renewed).
- (f) All Security Interest granted to the Secured Parties under the Security Documents shall be automatically and unconditionally released to the Issuer and the Shareholders on the Final Discharge Date (without recourse, representation or warranty).

## **8. REPRESENTATIONS AND WARRANTIES**

### **8.1 General**

The Issuer makes the representations and warranties set out in this Condition 8 to each Senior Creditor at the times set out in Condition 8.21 (*Times when representations made*).

### **8.2 Status, Power and Authority**

- (a) The Issuer is a company duly incorporated and validly existing under the laws of Spain and has the power and authority to own its assets and carry on its business as it is being conducted from time to time.
- (b) The Issuer has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (c) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.



### **8.3 Validity and admissibility in evidence**

- (a) All Authorisations required or desirable:
  - (i) to enable the Issuer lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
  - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Issuer and those required in connection with the Project have been (or will be when required) obtained or effected and are (or will be when required) in full force and effect if failure to obtain or effect those Authorisations has or is reasonably likely to have a Material Adverse Effect.

### **8.4 Binding obligations**

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by the Issuer in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) without limiting the generality of paragraph (a) above, each Security Document to which it is a party creates the Security Interests over the Secured Assets which that Security Document purports to create and those Security Interests are legal, valid, effective, binding and enforceable, have or will have the ranking in priority which it is expressed to have in the Security Documents and are not subject to any prior ranking or *pari passu* ranking Security Interests, other than any Permitted Security.

### **8.5 Non-conflict with other material obligations**

The entry into and performance by the Issuer of, and the transactions contemplated by, the Transaction Documents and the granting of the Security do not conflict with:

- (a) any law or regulation applicable to it or which is material in relation to the Project and the context of the transactions contemplated in the Transaction Documents;
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument, to the extent that such conflict would have or be reasonably likely to have a Material Adverse Effect;

and will not conflict with:

- (d) its constitutional documents; or
- (e) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument, to the extent that such conflict would have or be reasonably likely to have a Material Adverse Effect.

### **8.6 Pari Passu**

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.

### **8.7 No Deduction of Tax, Filing or Stamp Taxes**

- (a) The Issuer is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.
- (b) Under the laws of its Relevant Jurisdiction it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents, except for the *de minimis* documentary duties and the obligation to provide to the Authority with those Finance Documents required to evidence that the Issuer has obtained the financing to execute the Project.

## **8.8 No proceedings**

- (a) To the best of its knowledge and belief, and subject to paragraph (c) below, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have been started or threatened against the Issuer or its assets (or against the directors of the Issuer) or the Project.
- (b) Subject to paragraph(c) below, no judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief) been made against the Issuer or its assets (or against the directors of the Issuer) or the Project.
- (c) Paragraphs (a)(a) and (b) above do not apply to the potential appeal that one of the bidders (Fomento de Construcciones y Contratas, S.A. y Sartech Engineering, S.L.) may file against the awarding of the Concession Agreement carried out by the Contracting Authority. To this regard, although the Administrative Court (*Tribunal Administrativo Foral de Recurso Contractuales de Guipuzkoa*) rejected on March 28 the administrative appeal (*recurso especial en material de contratación*) brought by such bidders against the awarding of the Concession Agreement, such decision may also be challenged before the High Court of the Basque Country within a 2 month period (until May 28).

## **8.9 No breach of laws**

The Issuer has not breached any law or regulation which breach has or could reasonably be expected to have a Material Adverse Effect.

## **8.10 Environmental laws**

- (a) The Issuer is in compliance with Condition 10.4 (*Environmental obligations*) and to the best of its knowledge and belief no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- (b) No Environmental Claim has been commenced or (to the best of its knowledge and belief) is threatened against the Issuer where that claim has or is reasonably likely, if determined against the Issuer, to have a Material Adverse Effect, other than the ones described in the Finance Documents.

## **8.11 Insolvency**

No Insolvency Event or creditors' process described in Condition 18.7 (*Creditors' process; attachment*), has been taken or, to the knowledge of the Issuer, threatened in relation to the Issuer and none of the circumstances described in Condition 18.5 (*Insolvency*) applies to the Issuer.

## **8.12 Good title to assets**

- (a) It has (or will have when required) a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted, if failure to obtain or effect those Authorisations has or is reasonable likely to have a Material Adverse Effect.
- (b) It has not sold or granted (or agreed to sell or grant) any right of pre-emption over, or any lease or tenancy of, or otherwise disposed of, any of its interests in any of the Secured Assets (other than pursuant to the Security).

#### **8.13 Legal and beneficial ownership**

- (a) Other than as a result of the Security, it is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.
- (b) All the Secured Assets which are or are intended to be the subject of the Security are or will be on the Closing Date legally and beneficially owned by the Issuer or the Shareholders, as applicable, as owner of those shares, assets and credit rights free from any claims, third party rights or competing interests other than Permitted Security.

#### **8.14 Intellectual Property**

The Issuer:

- (a) is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted;
- (b) does not, in carrying on its businesses, infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect; and
- (c) has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.

#### **8.15 No Default**

No Event of Default and, on the date of this Agreement and the Closing Date, no Default is continuing or is reasonably likely to result from the making or issuing of any Utilisation.

#### **8.16 Taxation**

- (a) The Issuer is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against the Issuer with respect to Taxes unless and only to the extent that:
- (c) No claims or investigations are being, or are reasonably likely to be, made or conducted against the Issuer with respect to Taxes unless and only to the extent that:
  - (i) such payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Information Recipients under Condition 9.1(Financial statements); and
  - (iii) such payment can be lawfully withheld and failure to pay those Taxes or a determination that those Taxes are due, does not have or is not reasonably likely to have a Material Adverse Effect.
- (d) It is resident for Tax purposes only in its Original Jurisdiction.

### **8.17 Security and Financial Indebtedness**

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of the Issuer other than Permitted Security.
- (b) The Issuer does not have any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

### **8.18 Insurances**

All Insurances in relation to the Project required by Condition 10.19 (*Insurances*) have been obtained and are in full force and effect and all due insurance premium thereunder have been paid.

### **8.19 Anti-corruption and anti-money laundering laws; Sanctions**

- (a) The Issuer has conducted its businesses in compliance with applicable Anti-Corruption Laws.
- (b) The Issuer has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by it, its shareholders, and its directors, officers, employees and agents with applicable Anti-Corruption Laws in all material respects.
- (c) Neither the Issuer, nor any director, officer, employee, nor to the best of its knowledge having made due enquiry, agent or third-party representative of the Issuer or any Shareholder holding more than 5% stake in the Issuer has, during the past five years, offered, promised, or caused to be made, directly or indirectly:
  - (i) any payment or unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity,
  - (ii) any payment or contribution of anything of value in an effort to influence any government official or employee, or any other person, to improperly obtain or retain business or to gain an improper business advantage, including, but not limited to, with respect to identifying, negotiating, and entering into PPAs or obtaining or maintaining Authorisations; or
  - (iii) any unlawful bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment to any person for the purpose of either gaining an improper business advantage or encouraging the recipient to violate the policies of their employer or to breach an obligation of good faith or loyalty, in each case in violation of the applicable Anti-Corruption Laws.
- (d) The Issuer has conducted its operations at all times in compliance with applicable financial record keeping and reporting requirements and, to the extent applicable, all money laundering statutes, the rules and regulations in any Relevant Jurisdiction and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over it.
- (e) Neither the Issuer, nor any director, officer, employee, nor to the best of its knowledge having made due inquiry, agent or third party representative of the Issuer or any Shareholder holding more than 5% stake in the Concessionaire, has violated (and will not violate), and has caused (and will not cause) the Concessionaire and/or any of the Senior Creditors to be in violation of, any applicable economic or financial sanctions or trade embargoes imposed, administered or enforced by the French, UK or US governments, the United Nations or the European Union or other relevant authority (collectively, **Sanctions**).

### **8.20 No misleading information**

- (a) All material factual information supplied by or on behalf of the Issuer to an Information Recipient or its advisers in respect of the Finance Documents, to the best of the Issuer's knowledge and belief, is true, complete and accurate in all material respects as at the date it was given.
- (b) The assumptions used in the preparation of the projections supplied by or on behalf of the Issuer to an Information Recipient or its advisers have been provided in good faith.
- (c) To the best of the Issuer's knowledge and belief there are no facts or omissions that make the information provided to an Information Recipient or its advisers prior to the Closing Date misleading or facts or circumstances regarding the Issuer or the Project which have not been disclosed to the Senior Creditors or their advisers prior to the Closing Date.

#### **8.21 Times when representations are made**

- (a) All the representations and warranties in this Condition 8 are made by the Issuer on the date of this Agreement and on the Closing Date.
- (b) The Repeating Representations are deemed to be made by the Issuer on:
  - the Closing Date;
  - the date of each Utilisation Request;
  - each Utilisation Date; and
  - the first day of each Interest Period.
- (c) Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

### **9. INFORMATION COVENANTS**

Pursuant to the Common Terms Agreement, so long as any of the Bonds remains outstanding, the Issuer shall comply with the information covenants set out below.

#### **9.1 Financial Statements**

- (a) The Issuer shall provide the Information Recipients with:
  - (i) as soon as the same become available, but in any event within 180 days after the end of each Financial Year, a copy of the audited financial statements of the Issuer, and related auditor's report (the **Annual Financial Statements**); and
  - (ii) as soon as the same become available, but in any event within 90 days after 30 June of each Financial Year, a copy of the un-audited financial statements of the Issuer (the **Semi-Annual Financial Statements**).
- (b) Each set of Financial Statements to be provided by the Issuer under this Condition 9.1 (*Financial Statements*) shall:
  - (i) be prepared in accordance with the Accounting Standards and include a cashflow statement, a profit and loss statement and a balance sheet; and
  - (ii) give a true and fair view of or, in the case of any Annual Financial Statements, fairly represent, the financial condition of the Issuer as at the date to which those Financial Statements were drawn up and the results of its operations during such period.

## **9.2 Events of Default**

The Issuer shall notify the Information Recipients in writing of the occurrence of any Event of Default as soon as reasonably practicable upon becoming aware of its occurrence, unless cured within any applicable cure period or waived.

## **9.3 Litigation**

The Issuer shall notify the Information Recipients in writing, as soon as reasonably practicable after becoming aware of the same, of the details and evolution of any litigation, arbitration or administrative proceedings, which, if adversely determined, would have or would be reasonably likely to have a Material Adverse Effect.

## **9.4 Disputes**

The Issuer shall notify the Information Recipients in writing, as soon as reasonably practicable after becoming aware of the same, of the details and evolution of any dispute under the Project Documents, which has or is reasonably likely to have a Material Adverse Effect.

## **9.5 Construction reports**

- (a) The Issuer shall, until the Project Completion Date, promptly provide the Technical Adviser with any information it reasonably requires to produce a quarterly construction progress report for the Senior Creditors in relation to the construction of the Project, which report shall be produced within thirty (30) Business Days after the end of each quarter.
- (b) The Issuer shall, as soon as it becomes available, provide the Information Recipients with such quarterly construction progress report produced by the Technical Adviser. Such report shall mention the actions, if any, that the Concessionaire should take to comply with the plan developed by the Concessionaire to deal with the environmental and social management implications of the Project, as required by the Equator Principles, in which case the Concessionaire shall take the corresponding remedial/corrective actions.

## **9.6 Operation reports**

The Issuer shall, from the Project Completion Date onwards, as soon as it becomes available and in any event within sixty (60) Business Days after December 31<sup>st</sup>, provide the Information Recipients with the annual operation progress report prepared by the Operator in relation to the operation and maintenance of the Project, and filed or to be filed with the Authority pursuant to Clause 33.4.3 of the Concession Agreement.

## **9.7 Issuer's Material Information**

The Issuer shall provide to the Common Agent with such material information about the business and financial situation of the Issuer that may be reasonably requested by the Senior Creditors.

## **9.8 Budget**

- (a) After the Project Completion Date, the Issuer shall, at least 30 days before start of each Financial Year, provide the Information Recipients with an electronic copy of a budget in the form set out in Schedule 9.8 (**Budget**).
- (b) The Issuer shall ensure that the Budget:
  - (i) is based on assumptions which, to the best of its knowledge and belief, are reasonable;
  - (ii) is consistent with the provisions of the Transaction Documents in all material respects;
  - (iii) is prepared in good faith and with due care; and

- (iv) fairly represents its expectation as to the matters covered in it and accurately specifies its best estimate of all costs and expenses anticipated by it to be incurred to exploit and maintain the Project in the manner contemplated by the Transaction Documents.
- (c) The Issuer shall provide to the Information Recipients any information and additional explanations regarding the Budget as they may reasonably require, in particular, without limitation, with respect to any deviation of the Budget from the Base Case. Additionally, if the Budget provided by the Issuer shows any circumstance that has or could have a Material Adverse Effect, the Issuer shall initiate a consultation process with the Information Recipients who want to participate to discuss how such circumstance will be addressed.

## 9.9 Provision of Information to the Information Recipients

- (a) The Issuer may maintain a website which shall be accessible to the Information Recipients (the **Investor Website**). If the Investor Website is created, the Information Recipients shall be given access to this website through a password provided to them by or on behalf of the Issuer (in case of the Bondholders upon proof, in the form of a Certificate, from such Bondholder of its condition of Bondholder). The Issuer may designate a third party to operate and manage the Investor Website on its behalf.
- (b) The Issuer shall ensure that all information that is required to be supplied by the Issuer to the Senior Creditors and/or the Information Recipients under and pursuant to these Conditions, the Transaction Documents and/or the Equity Documents is published either (i) on the official bulletin of the Spanish Alternative Fixed Income Market (*Boletín Diario MARF*) or (ii) on the Investor Website. If the latter, the Issuer shall also ensure that a notice is published on the official bulletin of the Spanish Alternative Fixed Income Market (*Boletín Diario MARF*) stating that such information as is required to be provided under and pursuant to this Programme, the Transaction Documents and/or the Equity Documents is available for viewing by the Information Recipients on the Investor Website.
- (c) The Issuer shall be deemed to have complied with its obligations under paragraph (b) above upon the day of publication of the information on the official bulletin of the Spanish Alternative Fixed Income Market (*Boletín Diario MARF*) or, if the information is published on the Investor Website, upon the date which is the later of the:
  - (i) day of publication of the information on the Investor Website; and
  - (ii) day on which notice is published on the official bulletin of the Spanish Alternative Fixed Income Market (*Boletín Diario MARF*) stating that such information that is required to be provided has been published on the Investor Website.

If any such publication in this paragraph is made later than 5.00 pm (Madrid time), the day of publication shall be deemed to be the next Business Day.

- (d) The Issuer shall ensure that the Information Recipients are notified (which may be by email alert from the Investor Website or otherwise) of any information that is published on such Investor Website.
- (e) Any requirement in these Conditions, the Transaction Documents or the Equity Documents to notify or supply information to the Information Recipients and/or the Senior Creditors will be satisfied upon publication of any such information on the official bulletin of the Spanish Alternative Fixed Income Market (*Boletín Diario MARF*) or, if the information is published on the Investor Website, upon the sending of the notice referred to in paragraph (d) above to the Information Recipients notifying them of the publication of any such information on the Investor Website.

- (f) The Issuer shall, as soon as reasonably practicable upon becoming aware of its occurrence, notify the Information Recipients if:
  - (i) the Investor Website cannot be accessed for a period of five (5) or more Business Days; or
  - (ii) the Investor Website or any information on the website is infected by any electronic virus or similar software for a period of five (5) or more Business Days.
- (g) If the circumstances in paragraphs (f)(i) or (ii) above occur, the Issuer may supply all information required to be delivered to the Information Recipients and shall notify them that such information is available to them at the registered office of the Concessionaire.

#### **9.10 Environmental, social and governance matters**

With regards to environmental, social and governance matters, the Issuer shall:

- (a) provide the Information Recipients promptly with any reports that the Issuer has produced in relation to environmental, social and/or governance matters, as required by any applicable Spanish or European regulations; and
- (b) respond in a diligent manner, and within a reasonable timeframe, to any Information Recipients' reasonable requests for information in relation to environmental, social and/or governance matters.

For the purposes of paragraph (b) above, a request for information shall be deemed reasonable if based on or similar to any of the questions listed in Schedule 9.10 attached hereto.

### **10. GENERAL COVENANTS**

Pursuant to the Common Terms Agreement, so long as any of the Bonds remain outstanding, the Issuer shall comply with the covenants set out below.

#### **10.1 Authorisations**

The Issuer shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect, any authorisation required under any law or regulation of any of its Relevant Jurisdictions to:
  - (i) enable it to perform its material obligations under the Transaction Documents;
  - (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; and
  - (iii) carry on its business where failure to do so would have a Material Adverse Effect; and
- (b) supply copies of any such Authorisation to the Commissioner and the Common Agent as soon as reasonably practicable upon written request.

#### **10.2 Constitutional Documents**

The Issuer may not, without the prior written consent of the Common Agent (acting on the written instructions of the Senior Creditors), change its constitutional documents, save for any amendment which could not be expected to be materially prejudicial to the interests of the Senior Creditors or otherwise have a Material Adverse Effect.

#### **10.3 Compliance**

- (a) The Issuer shall comply in all respects with all authorisations, laws and regulations to which it, the Project, each Issuance or the Bonds may be subject to save where failure to do so would not have a Material Adverse Effect.



- (b) The Issuer shall not, and shall use its best endeavours to ensure that none of its directors, officers, agents, employees or other person acting on behalf of the Issuer shall:
  - (i) use any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;
  - (ii) make any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds;
  - (iii) violate any provision of any Anti-Corruption Laws; or
  - (iv) make, offer or promise to make, or authorise the payment or giving of any bribe, rebate, payoff, influence payment, facilitation payment, kickback or other unlawful payment or gift of money or anything of value prohibited under any law or regulation to which it is subject.
- (c) The Issuer shall use its best endeavours to ensure that its operations are conducted at all times in compliance with applicable financial record keeping and reporting requirements and, to the extent applicable, all money laundering statutes, the rules and regulations in any Relevant Jurisdiction and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over it.
- (d) The Issuer shall maintain procedures designed to promote and achieve compliance with its obligations under paragraphs (b) and (c) above.
- (e) The Issuer shall use its best endeavours to ensure that its operations are conducted at all times in compliance with laws and regulations regarding applicable sanctions, specially ensuring that there are no transactions with restricted persons.
- (f) The Issuer will not involve or include, any person that is a subject of Sanctions in any of its dealings in connection with the Project or the Senior Debt.
- (g) The Issuer will use all of the proceeds of the Loans and the Bonds in accordance with the purposes set forth in Condition 2 (*Purpose of the Programme*).

#### **10.4 Environmental obligations**

The Issuer shall:

- (a) comply with all material Environmental Laws;
- (b) obtain and ensure compliance with all requisites under material Environmental Permits; and
- (c) implement procedures to monitor compliance with and prevent liability under any Environmental Law,

in each case, where failure to do so would have or would be reasonably likely to have a Material Adverse Effect.

#### **10.5 Taxes**

The Issuer shall pay and discharge all taxes imposed upon it or its assets within the time period allowed, without incurring penalties, unless and only to the extent that:

- (a) such payment is being contested in good faith;
- (b) adequate provisions or reserves are being maintained in its accounts (or, as applicable, adequate guarantees or bond have been granted) for those taxes and the costs required to contest them (if so required by law or regulation);

- (c) such payment can be lawfully withheld; and
- (d) failure to pay those taxes does not have a Material Adverse Effect.

#### **10.6 Project Documents**

- (a) The Issuer shall at all times comply with and perform all of its obligations under and in connection with the Project Documents to which it is a party, to the extent that a failure to comply or perform would have a Material Adverse Effect.
- (b) The Issuer shall not make any material amendments to any term or waive, assign, transfer or suspend all or any part of a Project Document or enter into any other material contract or other material commercial arrangement unless:
  - (i) it is minor and administrative in nature;
  - (ii) it is required to do so by law or regulation;
  - (iii) it is permitted to do so under the terms of this Programme or the other Finance Documents, including for the avoidance of doubt, as Permitted Financial Indebtedness; or
  - (iv) it is required for the purposes of carrying out the Permitted Business and the Issuer has delivered an Officer's Certificate confirming the same to the Common Agent.

#### **10.7 Bank Accounts**

- (a) The Issuer shall ensure that:
  - (i) each Project Account, the Bond Proceeds Account and the Distribution Account is opened, maintained and operated in accordance with the Account Bank Agreement, according to Condition 22 (*Bank Accounts*) below; and
  - (ii) each Project Account and the Bond Proceeds Account is subject to valid security under the Security Documents.
- (b) The Issuer shall not open or maintain any bank accounts other than the Project Accounts, the Bond Proceeds Account and the Distribution Account.
- (c) The Issuer shall deposit proceeds from Insurance claims to the Insurance Proceeds Account where required to do so in accordance with the Account Bank Agreement and shall apply such amounts in the reinstatement and restoration of the lost or damaged property that gave rise to such insurance proceeds in accordance with the Account Bank Agreement.

#### **10.8 *Pari Passu* ranking**

The Issuer shall do nothing to cause:

- (a) the ranking of the Bonds to be otherwise than as described in these Conditions;
- (b) the ranking of the Loan to be otherwise than as described in the Term Loan Facility Agreement; and
- (c) the ranking of the Secured Liabilities to be otherwise than as described in clause 3 (*Raking and Priority*) of the Intercreditor Agreement.

#### **10.9 Negative pledge**

- (a) Except as permitted in paragraph (b) below:
  - (i) the Issuer shall not create any Security Interest over any of its assets; and
  - (ii) the Issuer shall not:

- (A) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Issuer;
  - (B) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (C) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts; or
  - (D) enter into any other preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset (any such arrangement or transaction, **Quasi-Security**).

- (b) Paragraph (a) above does not apply to any Security Interest or Quasi-Security which is a Permitted Security.

#### **10.10 Financial Indebtedness**

The Issuer shall not incur or allow to remain outstanding any Financial Indebtedness other than Permitted Financial Indebtedness.

#### **10.11 Loans or Credit**

The Issuer shall not be a creditor in respect of any Financial Indebtedness, other than in respect of a loan or credit which is a Permitted Loan.

#### **10.12 Guarantees or Indemnities**

The Issuer shall not incur or allow to remain outstanding any guarantees or indemnities other than Permitted Guarantees.

#### **10.13 Structural Modifications**

The Issuer shall not enter into any amalgamation, merger, demerger, segregation, consolidation or any other corporate structural modification, save as expressly provided for in the Project Documents.

#### **10.14 Change of business**

The Issuer undertakes to carry on only the Permitted Business.

#### **10.15 Acquisitions and Joint Ventures**

- (a) Except as permitted under paragraph (b) below, the Issuer shall not:
  - (i) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them);
  - (ii) incorporate a company,
  - (iii) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
  - (iv) transfer any assets or lend to or guarantee or give an indemnity for or give any security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- (b) Paragraph (a) above does not apply if the relevant acquisition, incorporation or Joint Venture is a Permitted Acquisition.

#### **10.16 Restricted Payments**

- (a) The Issuer shall not make a Restricted Payment unless (i) the payment is made from amounts standing to the credit of the Distribution Account, or (ii) it is a payment included in paragraph (a), (b), (c) or (d) of the definition of Permitted Payment.
- (b) The Issuer shall not make any transfer to the Distribution Account unless:
  - (i) each of the conditions of the Permitted Distribution Test is satisfied and a Compliance Certificate has been delivered in accordance with the Finance Documents confirming the same; and
  - (ii) the transfer is in an amount which is not more than the Distributable Amount.

#### **10.17 Restricted Investments**

- (a) Except as permitted under paragraph (b) below, the Issuer shall not invest in, own or otherwise participate in any investments other than those which are necessary for the performance of the Project.
- (b) Paragraph (a) above does not apply to any Permitted Investment.

#### **10.18 Disposals**

- (a) Except as permitted under paragraph (b) below, the Issuer shall not enter into a single transaction or a series of transactions, whether related or not and whether voluntary or involuntary, to sell, lease, transfer or otherwise dispose of any asset.
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is a Permitted Disposal.

#### **10.19 Insurances**

- (a) The Issuer shall maintain Insurances with an Insurance Provider on and in relation to its business and assets (a) as required under the Concession Agreement and (b) for the conduct of the Permitted Business which, in the reasonable opinion of the directors of the Issuer, are sufficient and customary for companies carrying on similar businesses in accordance with good industry practice and for compliance with all requirements of law in Spain.
- (b) The Issuer shall ensure that the Secured Parties have been named as co-insureds in relation to all Insurances required to be effected or maintained by the Project Documents and/or the Finance Documents.

#### **10.20 Arm's length transactions**

- (a) Except as permitted under paragraph (b) below, the Issuer shall not enter into any transaction with any person, except on arm's length terms and for fair market value.
- (b) Paragraph (a) above does not apply to any transaction which is or which arises as part of:
  - (i) the payment of fees, costs and expenses payable under the Finance Documents in the amounts set out in, or determined in accordance with, the Finance Documents; or
  - (ii) any other transaction expressly permitted by the Finance Documents.

#### **10.21 Amendments to Finance Documents**

The Issuer shall not amend, vary, novate, supplement, supersede, waive or terminate any term of a Finance Document, except in accordance with the Intercreditor Agreement.

#### **10.22 Replacement of the Technical Adviser**

The Common Agent shall, acting on the written instruction of the Majority Creditors, send a written notice to the Issuer requiring it to replace the Technical Adviser, if it is reasonably justified in such written notice that the Technical Adviser is not performing its role to the standard it is required to observe under the Finance Documents. Following such notice the Issuer shall respond as soon as reasonably practicable confirming either:

- (a) the steps that it is taking to ensure that the Technical Adviser meets the standard of performance reasonably expected of it to the satisfaction of the Senior Creditors (on a Negative Approval basis); or
- (b) the steps that it shall take to replace the Technical Adviser with a person, demonstrably capable of performing such role and which is of international repute and with similar experience in transactions and projects of a similar nature to the Project; provided that the Senior Creditors, acting reasonably, may reject the new technical adviser proposed by the Issuer, on a Negative Approval basis, on reputational, lack of experience or cost grounds, in which case the Issuer shall propose a new person to be appointed technical adviser in accordance with this paragraph (b).

#### **10.23 Further Assurance**

- (a) The Issuer shall promptly do all such acts and execute all such documents (including pledges, assignments, transfers, mortgages, charges, notices and instructions) as the Secured Parties (directly or through the Security Agent) may specify and in such form as the Secured Parties (directly or through the Security Agent) may reasonably require):
  - (i) to perfect the Security Interest created or expressly intended to be created under or evidenced by the Finance Documents (which may include the execution of a mortgage, charge, assignment, pledge or other Security Interest over all or any of the assets which are, or are intended to be, the subject of any Security Document) or for the exercise of any rights, powers and remedies of the Secured Parties provided by or pursuant to the Finance Documents or by law; and/or
  - (ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of any Security Document.
- (b) The Issuer shall take all such actions as are available to it (including making all filings and registrations, when applicable and executing any and all documents) as may be necessary for the purpose of the creation, protection or maintenance of any Security Interest conferred or intended to be conferred on the Secured Parties by or pursuant to the Security Documents or to facilitate the realisation of the assets which are, or are intended to be, the subject of any Security Documents.

#### **10.24 Hedging Policy**

If, in accordance with the terms and conditions established in the Term Loan Facility Agreement, there is an early repayment and/or partial cancellation of the Facility and, as a consequence, the Notional Amount of the Transactions (as these terms are defined in the Interest Rate Hedging Agreement) granted under the Interest Rate Hedging Agreement together with the nominal amount of all the interest rate swap transactions signed between the Issuer and the Hedging Bank exceed, at some time, 125% of the amount of Tranche A pending amortisation before the Project Completion Date, or 110% on or after the Project Completion Date, the Concessionaire is obliged to reduce the Notional Amount of these Transactions (as these terms are defined in the Interest Rate Hedging Agreements) so that, at any time during the life of the Term Loan Facility Agreement, the percentage of hedging of the interest rate risk is never more than 125%, before the Project Completion Date, and 110%, on or after the Project Completion Date, of the amount of Tranche A pending amortisation, during each period.

## 11. RATIOS

Pursuant to the Common Terms Agreement, so long as any of the Bonds remains outstanding, the Issuer shall comply with the financial covenants set out below.

### 11.1 Determination of Ratios

- (a) The Issuer shall, in respect of each Calculation Date after the Project Completion Date, calculate each Ratio on the basis of:
  - (i) in the case of the Historic DSCR unaudited actual cash flow of the Issuer in respect of the Relevant Period ending on such Calculation Date; and
  - (ii) in the case of the DLCR, the Assumptions, updated, if necessary, in accordance with the paragraph below in respect of the Relevant Period commencing on such Calculation Date.
- (b) The Issuer shall calculate the DLCR on the basis of the Assumptions except that:
  - (i) Indexation may be updated by the Issuer in a reasonable manner to reflect the price indexed on that Calculation Date; and
  - (ii) tax rates shall be updated to reflect tax rates then in effect (or, if different in respect of future periods, tax rates that will then be in effect) and updating of other economic Assumptions.
- (c) The Issuer must ensure that each Ratio calculated under this paragraph is calculated:
  - (i) based on such historic information and forecasts which it believes to be reasonable and, in respect of such historic information, to reflect accurately actual results;
  - (ii) in a manner consistent with the provisions of the Concession Agreement, the Transaction Documents and the current Budget in all material respects;
  - (iii) to the best of its knowledge and belief, in good faith and with due care; and
  - (iv) otherwise in accordance with this Condition 11.1

### 11.2 Compliance Certificate

- (a) The Issuer shall, within 45 days following a Calculation Date after the Project Completion Date, supply to the Common Agent, the Security Agent and the Commissioner a compliance certificate in respect of that Calculation Date signed by an Authorised Officer in the form set out in Schedule 11.2 hereto (the **Compliance Certificate**). Such Compliance Certificate shall confirm:
  - (i) the level of each of the Ratios for such Calculation Date;
  - (ii) that each of the Ratios has been calculated in accordance with the requirements of the covenants concerning the Ratios in the Common Terms Agreement, specifying the results of such calculations and attaching a copy of the computations (in reasonable detail) made in respect of the calculation of such Ratios;
  - (iii) the MRA balance and the level of the MRA Required Balance for such Calculation Date;
  - (iv) the DSRA balance and the level of the DSRA Required Balance for such Calculation Date;
  - (v) whether the Permitted Distribution Test has been met, and, if not, which requirements have failed to be met and to what extent; and
  - (vi) the Distributable Amount as at the Calculation Date.

- (b) Each Compliance Certificate shall confirm that, to the best of the knowledge of the Authorised Officer signing such certificate:
  - (i) the contents of the Compliance Certificate are accurate in all material respects as at the date of that Compliance Certificate; and
  - (ii) no Default has occurred or is continuing, or if a Default has occurred and is continuing, or if a Default has occurred and is continuing, the steps (if any) that are being taken to remedy (or prevent) such Default.

## **12. SHAREHOLDERS SUPPORT OBLIGATIONS**

### **12.1 Pledge over the Issuer's share capital**

The Shareholders have granted a Spanish law first ranking pledge in favour of the Secured Parties over the shares of the Issuer as security for the full and punctual performance and discharge by the Issuer of all Secured Obligations (as this term is defined under the Shareholders Support Agreement).

If while the pledge over shares is in effect there is an increase of the share capital of the Issuer (including without limitation as a consequence of any Equity Contribution (as such term is defined under the Shareholders Support Agreement)) using any of the procedures established for that purpose in the rules applicable to public limited companies, the Parties agree that, by virtue of the provisions of Clause 2.4 of the Shareholders Support Agreement, the pledge over shares shall automatically be extended to the new shares subscribed for by each of the Shareholders, and to the new credit rights resulting therefrom.

### **12.2 Pledge over credit rights**

The Shareholders have granted a Spanish law first ranking pledge in favour of the Secured Parties over any and all credit rights (present or future, actual or contingent, of determined or determinable amount) belonging to, or arising in favour of the Shareholders as shareholders of the Issuer, or arising from or under the Subordinated Shareholder Loans, as well as any and all other credits rights of the Shareholders vis-à-vis the Issuer (the **Credit Rights**) as security for the full and punctual performance and discharge by the Issuer of all Secured Obligations (as this term is defined under the Shareholders Support Agreement).

### **12.3 Undertaking of the Shareholders as pledgors**

The Shareholders undertake:

- (i) not to wholly or partially transfer (a) their shares in the Issuer otherwise than in accordance with the Concession Agreement and the Finance Documents; nor (b) their contractual position under the Subordinated Shareholder Loans otherwise than in accordance with the provisions of such Subordinated Shareholder Loans; provided that, in both cases (a) and (b), the acquirer of the relevant Shares or the position under the Subordinated Shareholder Loans subrogates in the Shareholders Support Agreement;
- (ii) if there are capital increases of the Issuer, not to waive their preferential subscription rights in favour of third parties unless the pledges over shares are extended to the new shares in accordance with the Shareholders Support Agreement;
- (iii) unless otherwise provided for in the Finance Documents, not to modify or terminate any of the Credit Rights, nor any of the documents or agreements under which the Credit Rights arise, nor accept any transaction that may affect the Credit Rights to the detriment of the pledges;

- (iv) nor to engage in any transaction regarding the Pledged Assets (as this term is defined under the Shareholders Support Agreement) other than in strict compliance with the provisions of the Shareholders Support Agreement or the Secured Documents;
- (v) not to exercise voting rights inherent to the Shares in favour of resolutions resulting in a change in the characteristics of the Shares or the credit rights arising from them, in prejudice of the pledges over shares, without prior written consent of the Security Agent or the Secured Parties;
- (vi) to exercise their voting rights in a manner consistent with compliance of the obligations under the Finance Documents or the Project Documents, when such decision correspond to the Shareholders; in particular, though not limited to the following, the Shareholders commit not to approve or support any resolution or agreement in the corporate bodies of the Issuer aimed at: (a) a merger, split, winding up, liquidation, transformation or an amendment of the articles of association of the Issuer (except for those amendments resulting from capital increases or which are imperative through the operation of law, changes of domicile or changes of the company's name), (b) reducing its capital stock or reserves (unless said reduction is made with no return of contributions and to offset losses with an immediate capital increase for an amount equal to or greater than the reduction or is a Permitted Payment under the Common Terms Agreement, which shall be approved by the shareholders' meeting), or (c) making any Restricted Payment, save as permitted under Clause 9.19 of the Common Terms Agreement;
- (vii) except as permitted in the Secured Documents, not to assign, transfer, exchange, sale or otherwise dispose of, or grant any encumbrance, levy or charge (other than those granted in this Agreement) over, any of the Pledged Assets (as this term is defined under the Shareholders Support Agreement) without the prior consent of the Secured Parties. In no event shall the Pledges be deemed to have been waived because de Secured Parties or the Security Agent consent to the Shareholders' actions;
- (viii) not to amend or modify the Subordinated Shareholder Loans or in any other agreement entered into between the Issuer and any of the Shareholders in any way that could harm the pledges or the rights of the Secured Parties.
- (ix) to carry out the necessary actions and make the necessary representations for the perfection, protection or enforcement of the pledges; and
- (x) to carry out the necessary acts and execute the necessary documents, either private or public to preserve the validity and effectiveness of the pledges and their adjustment to the legal requirements that may be established from time to time. For the avoidance of doubt, the Shareholders shall not bear with any costs, taxes and/or expenses arising from the execution of the documents referred to in this paragraph. Such costs shall be borne by the Issuer.

Likewise, the Shareholders and the Issuer under the Shareholders Support Agreement:

- (i) waive any subrogation or restitution right they may be entitled to in the event of enforcement of the relevant pledges and represent that these rights, if they arise (a) shall be deemed pledged by the pledges; and (b) at the Secured Parties and Security Agent's request, shall be automatically transferred to the acquirer of the shares or the Credit Rights in the enforcement of the relevant Pledges. In any case such rights may never be demanded by the Shareholders and shall be automatically cancelled at the written request of the Secured Parties acting through the Security Agent; and



- (ii) expressly waive any pre-emptive rights conferred in their favour by the Spanish Companies Act and by the Issuer's Articles of Association or by-laws in the event of transfer of the Shares pursuant to an enforcement procedure;
- (iii) renounce any reimbursement action to which the Shareholders would be entitled against the acquirers of the Shares as a consequence of the enforcement of the pledge over shares.

## 12.4 Obligations to contribute funds

Pursuant to the Shareholders Support Agreement, the Shareholders irrevocably undertake to contribute funds to the Issuer up to an aggregate amount of forty seven million, nine hundred eight thousand and six hundred forty six euros (EUR 47.908.646) in the form of (i) equity contributions of share capital or issuance premium made in the subscription of one or more capital increases of the Concessionaire (the **Equity Contributions**), or (ii) disbursements or advances made under the subordinated shareholder loans granted by the Shareholders to the Issuer pursuant to the agreements attached as Schedule 6.2 to the Shareholders Support Agreement (the **Subordinated Shareholder Loans** and, together with the Equity Contributions, the **Shareholder Contributions**).

The Shareholders' obligations to contribute funds shall be unconditionally supported by bank guarantees from an Acceptable Bank on a several basis among them for the ownership percentage of each Shareholder (the **Equity Contribution Guarantee**) and for an amount equal to the remaining part of the Equity Contributions to be injected.

In case (i) the Equity Contribution Guarantee is entered into by the Shareholders and the relevant Acceptable Bank prior to the Closing Date and (ii) the amount covered by the Equity Contribution Guarantee is higher than the amount to which the Shareholders are obliged to contribute funds in accordance with paragraph (1) above, the Parties of the Shareholders Support Agreement agree that the Shareholders may reduce the amounts guaranteed by the Equity Contribution Guarantee in order to adjust it to the amount provided for in paragraph (1) above, provided that they have given notice of such reduction to the Common Agent.

The Shareholders shall be obliged to make the contributions of funds foreseen in this section at the request of the Issuer.

All the Equity Contributions shall be made without any deduction or withholding in respect of any tax and if not, the Shareholders shall increase the amount to be contributed to the Issuer, so that the final amount received by the Issuer is the same amount that it would have received in case no deduction or withholding would have been applied.

For avoidance of doubt, the obligations of the Shareholders under this section shall in no way be affected by any transfer of shares of the Issuer or any change in the corporate structure of the Issuer, unless the new shareholder subrogates in the contractual position of the Shareholders under this Agreement and the Equity Contribution Guarantees are maintained or replaced by an Acceptable Bank.

## 13. INTEREST

### 13.1 Interest Rate

The Bonds shall bear interest on the Principal Amount Outstanding from and including their respective Issue Date at the rate of 3.662 per cent. per annum (the **Interest Rate**).

### 13.2 Payment Dates

Interest on the Bonds shall be payable:

- (a) on or prior the Project Completion Date, monthly in arrear on the last day of each calendar month; and
- (b) after the Project Completion Date, semi-annually in arrear on 30 June and 31 December of each year

(each a **Payment Date**); provided that, if such date is not a Business Day, payment shall be made on the next Business Day, but Bondholders will not be entitled to any additional interests on that date.

### **13.3 Interest Accrual**

Interest on the Bonds shall accrue daily on an Actual/Actual ICMA unadjusted basis.

### **13.4 Calculation of broken interests**

The interest to be paid on the first Interest Payment Date in respect of the first Issue of Bonds and on the last Interest Payment Date of any Bond, provided that the period with respect to which such interest is paid is less than a full period (i.e., monthly or semi-annually, as applicable) shall be calculated on the basis of:

- (a) the actual number of days in the period from (and including) the date from which interest begins to accrue to (but excluding) the date on which it falls due, divided by
- (b) the actual number of days from (and including) the previous scheduled Payment Date to (but excluding) the next scheduled Payment Date multiplied either by twelve (12) before the Project Completion Date, or by two (2) after the Project Completion Date.

Notwithstanding the above if the disbursement of any Issue is made on the next Business Day following an Interest Payment Date, the Bondholders will not be required to pay the accrued interests for that date.

### **13.5 Default Interest**

- (a) Should the Issuer fail to pay any amount payable by it under the Bonds on the relevant Payment Date, interest shall accrue on the overdue amount from the due date up to the date of actual payment date (both before and after judgement) at a rate of two (2) per cent, per annum higher than the Interest Rate (**Default Interest**). Any interest accruing under this Condition 13.6 to a Bondholder shall be immediately payable by the Issuer on demand by the relevant Bondholder.

For these purposes and in accordance with Article 316 of the Commercial Code, should the Issuer fail to pay any interest due under any Bond on its due date, such interest shall be capitalised and the amount so capitalised shall accrue Default Interest in accordance with this Condition.

- (b) Default Interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

## **14. REDEMPTION AND PURCHASE**

### **14.1 Final Redemption**

Unless previously redeemed, or purchased and cancelled, the Bonds will be redeemed in full at their Principal Amount Outstanding on the Final Maturity Date.

### **14.2 Scheduled Redemption**

- (a) Each Bond shall, subject to the exercise of one or more of the other redemption and purchase provisions of this Condition 14 (in whole or in part as the case may be in accordance with this Condition 14), be repaid in semi-annual instalments such that on each Payment Date, the aggregate Principal Amount Outstanding of the Bonds then outstanding will be as set out next to

that Payment Date in the table below (as the same may be amended following any partial redemption of the Bonds in accordance with this Condition 14, the **Bond Payment Schedule**):

Bond Repayment Schedule		80 000 000,00 €	
Payment Date	Principal Payment (€)	Principal Amount Outstanding (€)	Repayment of Principal %
31-12-19	- €	80 000 000,00 €	0,000%
30-06-20	358 400,00 €	79 641 600,00 €	0,448%
31-12-20	112 800,00 €	79 528 800,00 €	0,141%
30-06-21	224 800,00 €	79 304 000,00 €	0,281%
31-12-21	136 000,00 €	79 168 000,00 €	0,170%
30-06-22	172 800,00 €	78 995 200,00 €	0,216%
31-12-22	94 400,00 €	78 900 800,00 €	0,118%
30-06-23	304 000,00 €	78 596 800,00 €	0,380%
31-12-23	348 800,00 €	78 248 000,00 €	0,436%
30-06-24	491 200,00 €	77 756 800,00 €	0,614%
31-12-24	620 000,00 €	77 136 800,00 €	0,775%
30-06-25	830 400,00 €	76 306 400,00 €	1,038%
31-12-25	768 000,00 €	75 538 400,00 €	0,960%
30-06-26	946 400,00 €	74 592 000,00 €	1,183%
31-12-26	874 400,00 €	73 717 600,00 €	1,093%
30-06-27	1 047 200,00 €	72 670 400,00 €	1,309%
31-12-27	960 800,00 €	71 709 600,00 €	1,201%
30-06-28	1 148 000,00 €	70 561 600,00 €	1,435%
31-12-28	923 200,00 €	69 638 400,00 €	1,154%
30-06-29	1 200 000,00 €	68 438 400,00 €	1,500%
31-12-29	1 132 000,00 €	67 306 400,00 €	1,415%
30-06-30	1 287 200,00 €	66 019 200,00 €	1,609%
31-12-30	1 236 800,00 €	64 782 400,00 €	1,546%
30-06-31	1 356 800,00 €	63 425 600,00 €	1,696%
31-12-31	1 192 800,00 €	62 232 800,00 €	1,491%
30-06-32	1 443 200,00 €	60 789 600,00 €	1,804%
31-12-32	1 311 200,00 €	59 478 400,00 €	1,639%
30-06-33	1 506 400,00 €	57 972 000,00 €	1,883%
31-12-33	1 473 600,00 €	56 498 400,00 €	1,842%
30-06-34	1 597 600,00 €	54 900 800,00 €	1,997%
31-12-34	1 459 200,00 €	53 441 600,00 €	1,824%
30-06-35	1 655 200,00 €	51 786 400,00 €	2,069%
31-12-35	1 541 600,00 €	50 244 800,00 €	1,927%
30-06-36	1 666 400,00 €	48 578 400,00 €	2,083%
31-12-36	1 689 600,00 €	46 888 800,00 €	2,112%
30-06-37	1 737 600,00 €	45 151 200,00 €	2,172%
31-12-37	1 664 800,00 €	43 486 400,00 €	2,081%
30-06-38	1 921 600,00 €	41 564 800,00 €	2,402%
31-12-38	1 818 400,00 €	39 746 400,00 €	2,273%
30-06-39	2 021 600,00 €	37 724 800,00 €	2,527%
31-12-39	1 994 400,00 €	35 730 400,00 €	2,493%
30-06-40	2 108 800,00 €	33 621 600,00 €	2,636%
31-12-40	1 937 600,00 €	31 684 000,00 €	2,422%
30-06-41	2 183 200,00 €	29 500 800,00 €	2,729%

31-12-41	2 089 600,00 €	27 411 200,00 €	2,612%
30-06-42	2 300 000,00 €	25 111 200,00 €	2,875%
31-12-42	2 279 200,00 €	22 832 000,00 €	2,849%
30-06-43	2 416 000,00 €	20 416 000,00 €	3,020%
31-12-43	2 257 600,00 €	18 158 400,00 €	2,822%
30-06-44	2 452 000,00 €	15 706 400,00 €	3,065%
31-12-44	2 429 600,00 €	13 276 800,00 €	3,037%
30-06-45	2 508 800,00 €	10 768 000,00 €	3,136%
31-12-45	2 600 800,00 €	8 167 200,00 €	3,251%
30-06-46	2 734 400,00 €	5 432 800,00 €	3,418%
31-12-46	2 606 400,00 €	2 826 400,00 €	3,258%
30-05-47	2 826 400,00 €	- €	3,533%

- (b) Each Bond then outstanding will receive its pro rata share of the relevant principal payment under the Bonds as set out in the Bond Payment Schedule and its Principal Amount Outstanding will be its pro rata share of the Principal Amount Outstanding set out in the Bond Payment Schedule, in each case, in respect of the relevant Payment Date.

#### 14.3 Mandatory Early Redemption – Termination of Concession Agreement

- (a) If the Concession Agreement is terminated (other than for a reason attributable to the Issuer), then the Issuer shall, as soon as reasonably practicable give notice thereof to the Bondholders, the Commissioner and the Common Agent in accordance with Condition 29 (*Notices*) (which notice shall be irrevocable), and upon receipt of Compensation following termination:
- (i) immediately pay such Compensation into the General Account; and
  - (ii) redeem the Bonds in full and prepay the Loan in full on the Redemption Date, which Redemption Date shall be no less than six (6) Business Days and no more than ten (10) Business Days after receipt of such Compensation, at their Principal Amount Outstanding, together with accrued but unpaid interest to (but excluding) such date (rounding the resulting figure to the nearest cent, a half cent being rounded upwards).

#### 14.4 Mandatory Early Redemption – Insurance Proceeds

- (a) Upon receipt into the General Account of insurance proceeds in excess of EUR 25,000,000 in respect of physical loss or damage to the Project, the Issuer shall, as soon as is reasonably practicable, unless such insurance proceeds are applied by the Issuer towards repair or reinstatement of the damage or are used to reimburse the Issuer for third party liability claims already paid by the Issuer or as otherwise required to be applied under the Concession Agreement, give notice to the Commissioner, the Common Agent and the Bondholders in accordance with Condition 29 (*Notices*) (which notice shall be irrevocable) of a mandatory redemption of the Bonds and the Redemption Date, which Redemption Date shall be the first Payment Date falling after receipt of the insurance proceeds as aforesaid and, on the Redemption Date, redeem (subject to clause 9.7 of the Common Terms Agreement and paragraph (b) below) the Bonds (and, if applicable pursuant to the Intercreditor Agreement, the Loan) in an amount equal to the insurance proceeds received (the **Relevant Prepayment Amount**) together with, in all cases, accrued but unpaid interest on the Relevant Prepayment Amount to (but excluding) such date (rounding the resulting figure to the nearest cent, a half cent being rounded upwards).
- (b) Any redemption amount made under paragraph (a) above shall be made pro rata across the Bonds (and, if applicable pursuant to the Intercreditor Agreement, the Loan) and, upon any such

redemption as aforesaid, the Issuer shall deliver to the Common Agent, the Commissioner and the Bondholders a revised Bond Payment Schedule, on the basis that the insurance proceeds had reduced subsequent payments of principal under the Bonds on a pro rata basis and payments of interest under the Bonds had been reduced accordingly.

#### **14.5 Early Redemption for Taxation**

- (a) The Issuer may at any time redeem either: (i) all (but not some only) of the Bonds; or (ii) only those Bonds in respect of which Additional Amounts are required to be paid (in both cases, the **Tax Redemption Bonds**), in each case, in whole (but not in part) at their Principal Amount Outstanding as at the relevant Redemption Date, which shall fall on a Payment Date, together with interest accrued to (but excluding) the Redemption Date on giving not less than 10 days' notice to the Paying Agent and to the Commissioner in accordance with Condition 29 (*Notices*) (which notice shall be irrevocable), if the Issuer certifies to the Commissioner immediately prior to giving such notice that it has, or will on the occasion of the next payment due in respect of such Bonds, become obliged to pay Additional Amounts as provided for or referred to in Condition 16 (*Taxation*) as a result of any change in, or amendment to, the laws or regulations of the Relevant Taxing Jurisdiction, or any change in the published application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the Closing Date; provided that no such notice of redemption shall be given earlier than 90 days prior to the earliest date on which the Issuer would be obliged to pay such Additional Amounts.
- (b) Prior to the publication of any notice of redemption pursuant to paragraph (a) above the Issuer shall deliver to the Commissioner an Officer's Certificate confirming that: (i) the obligation referred to in paragraph (a)(i) above cannot be avoided by the Issuer taking reasonable measures available to it; and (ii) the Issuer has sufficient funds to redeem the Tax Redemption Bonds at their Principal Amount Outstanding (as at the relevant Redemption Date), together with interest accrued to (but excluding) the Redemption Date, and the Commissioner shall be entitled (without further enquiry or liability) to accept such Officer's Certificate as sufficient evidence of the satisfaction of the condition precedent set out in paragraph (a) above, and such opinion and Officer's Certificate (if accepted) shall be conclusive and binding on the Bondholders.
- (c) If the Tax Redemption Bonds do not constitute all of the Bonds then outstanding, upon redemption, the Issuer shall deliver a revised Bond Payment Schedule, on the basis that the Principal Amount Outstanding of the Tax Redemption Bonds reduced subsequent payments of principal under the Bonds on a pro rata basis and payments of interest under the Bonds were reduced accordingly.

#### **14.6 Optional Redemption**

- (a) On giving not less than 10 days' prior notice to the Bondholders (in accordance with Condition 29 (*Notices*)), the Commissioner, the Common Agent and the Paying Agent (which notice shall be irrevocable), the Issuer may redeem, on the Redemption Date, which shall fall on a Payment Date, all or some of the Bonds (and, in the case of any such partial redemption, such partial redemption shall be of at least EUR 1,000,000 in aggregate Principal Amount Outstanding of the Bonds and shall be such that the Principal Amount Outstanding of the Bonds to be redeemed is not a fraction of cent) provided that: (i) on or prior to the Redemption Date, no Enforcement Instruction has been served; and (ii) the Issuer has, immediately prior to giving such notice, certified to the Common Agent and the Commissioner that it will have the necessary funds to pay the Bond Breakage Costs Amount in respect of the relevant Bonds on the Redemption Date and to discharge all other amounts required to be paid by it on the Redemption Date.

- (b) Any Bond redeemed pursuant to paragraph (a) above shall be redeemed at an amount equal to the Bond Breakage Costs Amount, together with accrued but unpaid interest to (but excluding) such date (rounding the resulting figure to the nearest cent, a half cent being rounded upwards).

#### **14.7 Open Market Purchases**

The Issuer or the Shareholders may at any time purchase Bonds in the open market or otherwise at any price. The Regulations shall contain limitations on, *inter alia*, the right to attend Bondholder meetings and vote on Bondholder resolutions in relation to any Bonds which are being held by or on behalf of the Issuer or any Issuer Related Party.

#### **14.8 Cancellation of Bonds**

All Bonds which are redeemed by the Issuer shall be cancelled. All Bonds which are purchased by or on behalf of the Issuer under Condition 14.7 (*Open Market Purchase*) above may, but need not, be cancelled at the election of the Issuer. Any Bonds so cancelled may not be subsequently reissued or resold.

### **15. PAYMENTS**

- (a) Payments of principal, premium (if any) and interest in respect of the Bonds will be made by transfer from the General Account of the Issuer to the registered account of the relevant Bondholder maintained by or on behalf of it with a bank that processes payments in a city in which banks have access to the TARGET2 System, details of which appear in the records of Iberclear or, as the case may be, the relevant Iberclear Member at close of business on the day immediately preceding the date on which the payment of principal, premium (if any) or interest, as the case may be, falls due. Bondholders must rely on the procedures of Iberclear or, as the case may be, the relevant Iberclear Member to receive payments under the relevant Bonds. None of the Issuer, the Commissioner or the Paying Agent will have any responsibility or liability for the records relating to payments made in respect of the Bonds.
- (b) All payments: (i) are subject in all cases to any applicable fiscal or other laws and regulations; and (ii) must be made without set-off, deduction or counterclaim, without prejudice, in the case of paragraphs (i) or (ii), to Condition 16 (*Taxation*). No commissions or expenses may be charged to the Bondholders in respect of such payments.
- (c) Bondholders will not be entitled to any interest or other payment for any delay in payment as a result of the due date not being a business day. In this paragraph, “business day” means a day (other than a Saturday or Sunday) which is a TARGET Day and on which commercial banks and foreign exchange markets are open for business in the place of the specified office of the Paying Agent.
- (d) The Paying Agent and its initial specified office are listed below. The Issuer reserves the right, subject to the prior written approval of the Commissioner, at any time to vary or terminate the appointment of the Paying Agent and to appoint additional or other Paying Agents, provided that it shall at all times maintain:
  - (i) a Paying Agent with a specified office in a Member State (if any) that will not be obliged to withhold or deduct tax pursuant to any law implementing European Council Directive 2003/48/EC or any law implementing or complying with, or introduced in order to conform to, such directive; and
  - (ii) so long as the Bonds are listed on any Stock Exchange or admitted to listing by any other relevant authority as MARF, a Paying Agent with a specified office in such place as may be required by the rules and regulations of the relevant Stock Exchange or such other relevant authority.

- (e) The initial specified office of the Paying Agent is C/Sauceda 28, Ed. Oceanía, 1ª Planta, 28050 – Madrid.
- (f) Notice of any change in the Paying Agent or its specified office shall, as soon as reasonably practicable, be given or procured to be given to the Bondholders and MARF by the Issuer in accordance with Condition 29 (*Notices*).
- (g) In acting under the Paying Agency Agreement, the Paying Agent acts solely as agent of the Issuer and, in certain limited circumstances specified therein, of the Commissioner, and does not assume any obligation to, or relationship of agency or trust with, the Bondholders. The Paying Agency Agreement contains provisions permitting any entity into which the Paying Agent is merged or converted or with which it is consolidated or to which it transfers all or substantially all of its assets to become the successor Paying Agent.

## 16. TAXATION

### 16.1 Tax Gross-Up

All payments of principal, premium and interest in respect of the Bonds by or on behalf of the Issuer shall be made without withholding or deduction for, or on account of, any present or future Tax imposed or levied by or on behalf of any of the Relevant Taxing Jurisdictions, unless the withholding or deduction of the Taxes is required by law, statute, treaty, regulation or administrative practice of any of the Relevant Taxing Jurisdictions. In that event, the Issuer shall pay such additional amounts (**Additional Amounts**) as may be necessary in order that the net amounts received by the Bondholders after the withholding or deduction (including any withholding or deduction in respect of any Additional Amounts) shall not be less than the respective amounts which would have been receivable in respect of the Bonds in the absence of the withholding or deduction; except that no Additional Amounts shall be payable in relation to any payment in respect of any Bond:

- (a) held by or on behalf of a holder who is liable for such taxes, duties, assessments or governmental charges in respect of the Bonds by reason of it having some connection with Spain (other than: (A) the mere receipt, ownership, holding or disposition of Bonds; (B) by reason of the receipt of any payments in respect of any Bond; or (C) the exercise or enforcement of rights under any Bonds); or
- (b) held by or on behalf of a holder who does not provide to the Issuer or an agent acting on behalf of the Issuer the information concerning such holder as may be required in order to comply with the procedures that may be implemented to comply with any interpretation of Royal Decree 1065/2007 eventually made by the Spanish tax authorities.

In these Conditions:

**Relevant Taxing Jurisdiction** means in the case of payments by, or on behalf of, the Issuer, the Kingdom of Spain or any political subdivision or any authority thereof or therein having power to tax or any other jurisdiction or any political subdivision or any authority thereof or therein having power to tax to which the Issuer becomes subject in respect of payments made by it of principal and interest on the Bonds.

### 16.2 Tax Credits

- (a) If any Additional Amounts are paid by the Issuer for the benefit of any Bondholder, and such Bondholder in its sole discretion, determines in good faith that it has obtained (and has derived full use and benefit from) a credit against, a relief or remission for, or repayment of, any tax, then, if and to the extent that such Bondholder in its sole opinion, determines in good faith that (i) such credit, relief, remission or repayment is in respect of or calculated with reference to the Additional Amounts paid by the Issuer; and (ii) its tax affairs for its tax year in respect of which such credit, relief, remission or repayment was obtained have been finally settled, such Bondholder shall, to



the extent that it can do so without prejudice to the retention of the amount of such credit, relief, remission or repayment, pay to the Issuer such amount as such Bondholder shall in its sole opinion, determine in good faith to be the amount which will leave such Bondholder (after such payment) in no worse after tax position than it would have been in had the additional payment in question not been required to be made by the Issuer.

- (b) If any Bondholder makes any payment to the Issuer pursuant to this Condition and such Bondholder in its sole opinion, subsequently determines in good faith that the credit, relief, remission or repayment in respect of which such payment was made was not available or has been withdrawn or that it was unable to use such credit, relief, remission or repayment in full, the Issuer shall reimburse such Bondholder such amount as such Bondholder in its sole opinion, determines in good faith is necessary to place it in the same after tax position as it would have been in if such credit, relief, remission or repayment had been obtained and fully used and retained by such Bondholder, such amount not exceeding in any case the amount paid by the Bondholder to the Issuer.
- (c) Nothing in this Condition shall interfere with the right of any Bondholder to arrange its tax or any other affairs in whatever manner it thinks fit, oblige any Bondholder to claim any credit, relief, remission or repayment in respect of any payment made under this Condition in priority to any credit, relief, remission or repayment available to it nor oblige any Bondholder to disclose any information relating to its tax or other affairs or any computations in respect thereof.

## **17. PRESCRIPTION**

Claims in respect of principal, premium and interest in respect of the Bonds shall become void unless made within a period of 5 years from the appropriate Payment Date, subject to the provisions of Condition 15 (*Payments*).

## **18. EVENTS OF DEFAULT**

Pursuant to the Common Terms Agreement, the occurrence of each of the following events or circumstances will constitute an **Event of Default** under the Bonds.

### **18.1 Non Payment**

The Issuer does not pay any principal, premium, interest or other amount due and payable by it in respect of the Bonds and/or the Loans and such default is not remedied within five (5) Business Days from the notification of the Common Agent or the Security Agent of such failure.

### **18.2 Breach of Financial Covenant**

- (a) The Historic DSCR as at the relevant Calculation Date as stated in a Compliance Certificate supplied under Condition 11.2 (*Compliance Certificate*) is less than 1.05:1.
- (b) The DLCR as at the relevant Calculation Date as stated in a Compliance Certificate supplied under Condition 11.2 (*Compliance Certificate*) is less than 1.10:1.

### **18.3 Breach of Other Obligations**

- (a) The Issuer does not comply with any provision of Condition 9 (*General Covenants*) or any of its other material obligations under the Finance Documents (other than those referred to in Conditions 18.1 (*Non Payment*) and 18.2 (*Breach of Financial Covenant*)).
- (b) No Event of Default under paragraph (a) above shall occur if the failure to comply is capable of remedy and is remedied within 30 Business Days of the earlier of: (i) the Commissioner, the Security Agent, the Common Agent or the Senior Agent giving notice to the Issuer (in case more

than one notice is sent, the earliest notice will be taken into account for these purposes); and (ii) the Issuer becoming aware of the failure to comply.

#### **18.4 Misrepresentation**

- (a) The Issuer has provided a representation or warranty under a Transaction Document to which it is a party that is false in any material respect.
- (b) No Event of Default shall occur under paragraph (a) above if the circumstances giving rise to the misrepresentation are capable of remedy and are remedied within 30 Business Days of the earlier of: (i) the Commissioner, the Security Agent, the Common Agent or the Senior Agent giving notice to the Issuer (in case more than one notice is sent, the earliest notice will be taken into account for these purposes); and (ii) the Issuer becoming aware of the misrepresentation.

#### **18.5 Insolvency**

- (a) The Issuer:
  - (i) is unable or admits inability to pay its debts as they fall due;
  - (ii) is deemed, or declared by a court of competent jurisdiction, to be insolvent or unable to pay its debts as they fall due under Spanish law; or
  - (iii) suspends or threatens (by way of written notice) to suspend making payments on its debts as a whole generally as they fall due.
- (b) A moratorium is declared in respect of all or substantially all indebtedness of the Issuer. If a moratorium occurs, the ending of the moratorium shall not remedy any Event of Default caused by that moratorium.

#### **18.6 Insolvency Event**

- (a) Any Insolvency Event occurs in respect of the Issuer.
- (b) Paragraph (a) shall not apply to any Insolvency Event if the same is:
  - (i) any winding-up petition which is:
    - (A) being contested in good faith by the Issuer; or
    - (B) frivolous or vexatious and is discharged, stayed or dismissed within 20 Business Days of commencement or, if earlier, the date on which it is advertised;
  - (ii) any petition for bankruptcy or winding-up petition where the Issuer demonstrates to the reasonable satisfaction of the Senior Creditors, that either:
    - (A) no reason for declaration of bankruptcy of the Issuer exists and that the Issuer does not qualify as being insolvent or unable to pay its debts as they fall due under Spanish law and it has sufficient funds available to it to meet any liability related to the petition; or
    - (B) the Issuer provides the Information Recipients with an opinion of a reputable counsel addressed to the Information Recipients and in form and substance satisfactory to the Senior Creditors proving to the satisfaction of the Senior Creditors that the petition or filing is groundless;

and, in either case, the same is discharged, stayed or dismissed within 20 Business Days of commencement or, if earlier, the date on which it is advertised.

#### **18.7 Creditors' processes; attachment**

A distress, attachment, sequestration, execution or other similar legal process is levied or enforced on or against any substantial part of the assets of the Issuer, to the extent only that it has a Material Adverse Effect and is not frivolous or vexatious.

#### **18.8 Security Interest**

- (a) Any Security Interest created or expressed to be created under or evidence by any Security Document is not or ceases to be legal, valid, binding and enforceable subject to Legal Reservations.
- (b) No Event of Default shall occur under paragraph (a) above if a Security Interest is granted which is, in the opinion of the Senior Creditors, similar in all respects within 30 Business Days from the Commissioner, the Security Agent, the Common Agent or the Senior Agent giving notice to the Issuer (in case more than one notice is sent, the earliest notice will be taken into account for these purposes).

#### **18.9 Unlawfulness and Invalidity**

- (a) Any Finance Document is not or ceases to be legal, valid, binding and enforceable in accordance with its terms and/or it is or becomes unlawful for the Issuer to perform any of its material obligations under any Finance Document.
- (b) The Concession Agreement is not or ceases to be legal, valid, binding and enforceable in accordance with its terms and/or it is or becomes unlawful for the Issuer to perform any of its obligations under the Concession Agreement.
- (c) Any Project Document (other than the Concession Agreement) is not or ceases to be legal, valid, binding and enforceable in accordance with its terms and/or it is or becomes unlawful for the Issuer to perform any of its material obligations under any such Project Document and, in each case, such events continue for 30 Business Days without being remedied in accordance with Condition 19.1 (*Remedial Plan*).

#### **18.10 Breach by Shareholders**

- (a) Any Shareholder fails to comply with any of the Equity Contribution Obligations or the obligations regarding subordination of the Shareholders under the Intercreditor Agreement, provided that, in relation to its obligation to make contributions to the Issuer in the form of equity or subordinated loan, such breach has not been cured by means of the enforcement of an Equity Contribution Guarantee; or
- (b) No Event of Default shall occur under paragraph (a) above if the non-compliance is capable of remedy and is remedied within 30 Business Days of the earlier of: (A) the Commissioner, the Security Agent, the Common Agent or the Senior Agent giving notice to the Issuer and/or that party (in case more than one notice is sent, the earliest notice will be taken into account for these purposes); and (B) the Issuer and/or that party becoming aware of the non-compliance or misrepresentation.

#### **18.11 Material Proceedings**

- (a) Any litigation, arbitration, administrative, governmental or regulatory proceedings or disputes are commenced, pending or threatened in writing against the Issuer or in respect of its assets or revenues, which, in any such case, has a Material Adverse Effect; provided that, no Event of Default shall be deemed to have occurred under this paragraph (a) in connection with any appeal filed by third parties with respect to the award of the Project in favour of the Issuer (including, without limitation, the administrative appeal filed by FCC on 21 February 2017 and any further

appeals on any resolution thereof), until a resolution, judgement or award is obtained that has a Material Adverse Effect.

- (b) The Issuer fails to comply with the requirements of any final non-appealable judgment or award which equals or exceeds €5,000,000 (Indexed) or its equivalent.

#### **18.12 Termination, Repudiation and Rescission of Agreements**

Any of the Issuer, the Contractor or the Operator:

- a) rescinds or repudiates a Project Document; or
- b) otherwise terminates a Project Document;

unless it is possible to be replaced within 30 Business Days from that event in accordance with a Replacement Plan.

#### **18.13 Concession**

- (a) The Concession Agreement ceases to be lawful and valid or becomes void or unenforceable.
- (b) The Concession Agreement is repudiated.
- (c) The Concession Agreement is terminated or becomes capable of termination for a reason attributable to the Issuer.
- (d) No Event of Default shall occur under paragraphs (a) – (c) above if, as a result of such event, the Concession Agreement is terminated other than for a reason attributable to the Issuer causing a requirement for mandatory early redemption under Condition 14.3 (*Mandatory Early Redemption – Termination of Concession Agreement*).

#### **18.14 Abandonment of the Project**

The Issuer voluntarily abandons all or a significant part of the Project for more than 30 successive calendar days.

#### **18.15 Cessation of business**

The Issuer suspends or ceases to carry on (or publicly announces an intention to suspend or cease to carry on) all or substantially all of its business.

#### **18.16 Expropriation or nationalization**

- (a) The authority or ability of the Issuer to conduct its business is wholly curtailed by any expropriation, nationalisation, restriction or other action by or on behalf of any governmental, regulatory or other authority, which has a Material Adverse Effect.
- (b) The authority or ability of the Issuer to conduct its business is wholly curtailed by any seizure or intervention by or on behalf of any governmental, regulatory or other authority which has a Material Adverse Effect.

#### **18.17 Project Completion Date**

- (a) The Project Completion Date not having occurred by the Project Completion Longstop Date.
- (b) The Technical Adviser proves the existence of a Funding Shortfall not allowing the Issuer to finalize the works.

### 18.18 Insurance Agreements

Any Insurance required under the Concession Agreement is not or ceases to be in full force, legal, valid, binding and enforceable in accordance with its terms and it is not replaced within 30 Business Days from the occurrence of such event.

### 18.19 Cross-Acceleration

- (a) Prior to the Project Completion Date, any of the following occurs:
  - (i) an Insolvency Event occurs with respect to the Contractor and/or the EPC Guarantor; or
  - (ii) amounts payable in respect of any present or future Financial Indebtedness of the Contractor and/or the EPC Guarantor in excess of EUR 50,000,000 (Indexed) are not paid when due or, as the case may be, within any applicable grace period (including, for the avoidance of doubt, when they become due and payable prior to the stated maturity after the occurrence of an event of default and acceleration thereof).
- (b) After the Project Completion Date, any of the following occurs:
  - (i) an Insolvency Event occurs with respect to the Operator and/or the O&M Guarantor; or
  - (ii) amounts payable in respect of any present or future Financial Indebtedness of the Operator and/or the O&M Guarantor in excess of EUR 50,000,000 (Indexed) are not paid when due or, as the case may be, within any applicable grace period (including, for the avoidance of doubt, when they become due and payable prior to their stated maturity after the occurrence and enforcement of an event of default and acceleration thereof).

### 18.20 Change of Control

A Shareholder transfers its interests in the Issuer otherwise than in accordance with the Concession Agreement or with the approval of the Authority.

## 19. REMEDY RIGHTS

Pursuant to the Common Terms Agreement, the Issuer has the remedy rights set forth below in connection with Events of Default under the Bonds.

### 19.1 Replacement Plan

- (a) No Event of Default shall occur under:
  - (i) Condition 18.12 (*Termination, Repudiation and Rescission of Agreements*); or
  - (ii) Condition 18.19 (*Cross- Acceleration*),if, within 30 Business Days of the same occurring, the Issuer provides to the Information Recipients a timetable and steps to replace the Contractor, the Operator and/or affected Project Document (as applicable), as well as the relevant guarantees and bonds that shall be replaced (as applicable) by parties of equivalent solvency (the **Replacement Plan**), the Replacement Plan is subsequently approved by the Technical Adviser as being suitable for replacing the Contractor, the Operator, the relevant guarantees and bonds and/or affected Project Document (as applicable) and, following approval of the Replacement Plan, the Issuer complies in all material respects with the Replacement Plan.
- (b) Any Replacement Plan shall be subject to prior approval of the Senior Creditors through an Ordinary Resolution (as this term is defined in the Intercreditor Agreement).

## 19.2 Remedial Plan

- (a) Save for the Events of Default provided for in Conditions 18.1 (*Non Payment*), 18.2 (*Breach of Financial Covenant*), 18.14 (*Abandonment of the Project*), and 18.15 (*Cessation of business*), as well as those Events of Default which already include a grace period and those referred to in Condition 19.1 above, the Issuer must, within 30 Business Days after an Event of Default occurring, provide to the Information Recipients a timetable and steps plan to remedy such Event of Default (the **Remedial Plan**).
- (b) If the Remedial Plan so provided is subsequently approved by the majority of the Senior Creditors through an Ordinary Resolution under the Intercreditor Agreement and, following approval of the Remedial Plan, the Issuer complies in all material respects with the Remedial Plan, no other consent of the Bondholders, the Commissioner or any other person will be required by the Issuer to effect the relevant Remedial Plan (whether or not consent is otherwise required by any other provision of these Conditions).

## 20. ACCELERATION AND ENFORCEMENT

- (a) Subject to paragraphs (b) to (f) below, on and at any time after the occurrence of an Event of Default, the Common Agent or the Security Agent may:
  - (i) give notice to the Issuer that the Bonds are, and they shall accordingly forthwith become, immediately due and repayable in part, or in whole at their Principal Amount Outstanding, together with interest accrued to, but excluding, the date of repayment;
  - (ii) institute such proceedings against the Issuer as it may think fit to enforce the terms of the Bonds under this Programme and/or the relevant Final Conditions;
  - (iii) exercise its rights to enforce all or any part of the Security or take any kind of Enforcement Action;
  - (iv) give instructions to the Commissioner to take any action under or in connection with any of the Bond Documents; and/or
  - (v) give instructions to the Account Bank in relation to the Project Accounts in accordance with and as required by the Account Bank Agreement.
- (b) The Common Agent or the Security Agent will not take any such proceedings or give such instructions under paragraph (a) above unless they have been so directed by an Enforcement Instruction which, in accordance with the Intercreditor Agreement, shall be duly given if approved by a Reinforced Majority of Secured Parties.
- (c) The Commissioner will not take any action under or in connection with any of the Bond Documents unless it has been so directed by the Security Agent.
- (d) The enforcement of the Security is provided for under the Security Documents and the Security shall be enforced by the Security Agent for its benefit and for the benefit of the other Senior Creditors in accordance with the terms of the Security Documents and pursuant to an Enforcement Instruction.
- (e) No Bondholder shall be entitled to individually claim against the Issuer, judicially or extrajudicially, to require payment of any unpaid amounts that are due and payable in accordance with the Secured Documents or to declare the early termination of its individual position under the Secured Documents when it is contrary to a decision or resolution of the Secured Parties adopted or passed in accordance with the provisions hereunder.

- (f) Any proceeds received by a Bondholder pursuant to any such proceedings shall be paid to the Security Agent promptly following receipt thereof for application pursuant to Condition 23 (*Priorities of Payments*).
- (g) Any enforcement proceeds shall be applied in accordance with the Intercreditor Agreement and Condition 23.2 (*Post-Enforcement Cashflow Waterfall*) below.

## **21. FURTHER ISSUES**

- (a) Subject always to these Conditions and the Bond Documents (and, in particular, without limitation, paragraph (b) below), until the earlier of the full utilisation of the Loan and the Project Completion Date, the Issuer is at liberty, from time to time and without the consent of the Bondholders, create and issue Bonds under the Programme having the same terms and conditions in all respects (save for the first payment of interest) and also the same Syndicate of Bondholders and Commissioner so as to be consolidated and form a single series.
- (b) The Issuer has undertaken with the Initial Bondholders not to proceed to issue bonds under the Programme unless the following conditions are met:
  - (i) no Default is continuing or would result from the issue of such Bonds;
  - (ii) all the Repeating Representations and all of the representations and warranties to be made by the Shareholders under the Shareholders Support Agreement are, in each case, true and accurate in all material respects (unless any such representation is qualified by materiality, in which case such representation shall be true in all respects);
  - (iii) the Programme (and any extensions thereof) has been approved by the MARF and any Bonds issued or to be issued under the Programme will be listed at the MARF;
  - (iv) the Bond Proceeds Account has been opened and remains opened at the Accounts Bank in accordance with the Bank Account Agreement;
  - (v) the Bonds to be purchased or subscribed by the Initial Bondholders have been issued not earlier (on a cumulated basis) than as set forth in the Base Case; and
- (c) Each new Bondholder, by the time of subscription or purchase of the Bonds, will be deemed to have accepted and adhered to the terms and conditions of the Bond Documents and agreed to become a member of the Syndicate of Bondholders as provided for in Condition 25 (*Syndicate of Bondholders and Commissioner*).

## **22. BANK ACCOUNTS**

### **22.1 General**

- (a) The Issuer is required to maintain the following bank accounts with the Account Bank in accordance with the Account Bank Agreement:
  - (i) the Bond Proceeds Account;
  - (ii) the Tranche B Proceeds Account;
  - (iii) the General Account;
  - (iv) the Maintenance Reserve Account;
  - (v) the Debt Services Reserve Account; and
  - (vi) the Insurance Proceeds Account; and
  - (vii) the Distribution Account.

- (b) Credit and debits to the Project Accounts, the Bond Proceeds Account and the Distribution Account will be made in accordance with the procedures and priorities described in the following Conditions, unless an Event of Default has occurred and is outstanding, and the Secured Parties have instructed the Security Agent in writing to enforce the Security over the Project Accounts, and/or the Bond Proceeds Account.
- (c) The Senior Creditors or the Administrative Parties shall not be entitled to apply any monies standing to the credit of the Project Accounts or the Bond Proceeds Account unless they have instructed the Security Agent in writing to enforce the Security over the Project Accounts or the Bond Proceeds Account, as applicable.

## **22.2 Bond Proceeds Account**

- (a) All proceeds collected by the Issuer through each issue of Bonds under the Programme shall be deposited into the Bond Proceeds Account
- (b) Withdrawals from the Bonds Proceeds Account may only be made by the Issuer on a prorate and *pari passu* basis with each Loan Utilisations and subject to satisfaction of the conditions precedent set forth in Clause 22.8 (*Conditions Precedent to Bond Utilisations*), except for the last Bond Utilisation, which shall be made in accordance with paragraph (c) of Condition 0 (*Conditions Precedent to Bond Utilisations*) hereof.
- (c) The Bond Proceeds Account shall not be considered a Project Account and the balance of such account will only be subject to a Security Interest in favour of the Bondholders, but not in favour of the Lenders, or the Hedging Bank.

## **22.3 Tranche B Proceeds Account**

- (a) All drawdowns made by the Issuer of the Tranche B of the Facility in accordance with the Disbursement Calendar (as this term is defined in the Term Loan Facility Agreement) shall be deposited into the Tranche B Proceeds Account, provided that no Default is continuing or would result from such drawdown.
- (b) Tranche B Utilisations may only be made by the Issuer on a prorate and *pari passu* basis with each Tranche A Utilisation and subject to satisfaction of the Conditions Precedent set forth in Clause 15.3 of the Common Terms Agreement.
- (c) The Tranche B Proceeds Account shall not be considered a Project Account and the balance of such account will only be subject to a Security Interest in favour of the Tranche B Lenders, but not in favour of the Tranche A Lenders, the Hedging Bank or the Bondholders.

## **22.4 General Account**

- (a) The Issuer shall credit to the General Account all payments received under the Concession Agreement, as well as all other payments, proceeds or revenues received by the Issuer (including but not limited to income from the Project and advances made to the Issuer under the Loan and withdrawals from the Bond Proceeds Account) and not required to be credited to another Project Account.
- (b) Withdrawals and payments from the General Account shall be made in accordance with Condition 23.1 (*Pre-Enforcement Cashflow Waterfall*) and Condition 23.2 (*Post-Enforcement Cashflow Waterfall*), as applicable.
- (c) The Issuer will be entitled to invest without the prior written consent of the Senior Creditors (until the Finance Parties have instructed the Security Agent in writing to enforce the Security over the Project Accounts following an Event of Default) any unused balances in the General Account in Permitted Investments.



## 22.5 Maintenance Reserve Account

- (a) The MRA shall be funded from the General Account in accordance with Condition 23.1 (*Pre-enforcement Cashflow Waterfall*) up to the MRA Required Balance.
- (b) The Issuer may request a Loan Utilisation and a Bond Utilisation to make the initial transfer to the Maintenance Reserve Account subject to the satisfaction of the Conditions Precedent set out in Condition 22.8 below.
- (c) All amounts in the MRA exceeding the MRA Required Balance (the **Exceeding MRA Amount**) shall be transferred from the MRA to the General Account. The Issuer shall inform the Common Agent, the Security Agent and the Account Bank of such Exceeding MRA Amount and will instruct the Account Bank in writing to transfer an amount equal to the Exceeding MRA Amount to the General Account.

## 22.6 Debt Service Reserve Account

- (a) The DSRA shall be funded from the General Account in accordance with Condition 23.1 (*Pre-enforcement Cashflow Waterfall*) up to the DSRA Required Balance.
- (b) The Issuer may request a Loan Utilisation and a Bond Utilisation to make the initial transfer to the Debt Service Reserve Account subject to the satisfaction of the conditions precedent set out in Condition 22.8 below.
- (c) Withdrawals from the DSRA may only be made if the withdrawal is necessary to pay Financing Costs or principal in respect of the Senior Debt, commitment fees in respect of any Loan or hedging payments in respect of any Interest Rate Hedging Agreement.
- (d) All amounts in the DSRA exceeding the DSRA Required Balance (the **Exceeding DSRA Amount**) shall be transferred from the DSRA to the General Account. The Issuer shall inform the Common Agent, the Security Agent and the Account Bank of such Exceeding DSRA Amount and will instruct the Account Bank in writing to transfer an amount equal to the Exceeding DSRA Amount to the General Account.

## 22.7 Insurance Proceeds Account

- (a) All proceeds from insurance policies (other than proceeds in respect of (i) loss of revenues, which will be credited to the General Account, or (ii) third party liability claims, which will be used to settle such claims) or compensation payments related to insurances to the Issuer under the Project Documents (other than compensation for loss of revenue or in respect of third party claims directly payable to the relevant third party) will be credited to the Insurance Proceeds Account.
- (b) Withdrawals from the Insurance Proceeds Account shall be applied to the repair or reinstatement of the lost or damaged property or, if applicable, to mandatory redemption in accordance with Condition 14.4 (*Mandatory Early Redemption – Insurance Proceeds*) hereof.
- (c) The Issuer shall instruct the Account Bank to transfer to the General Account any amounts outstanding in the Insurance Proceeds Account once the lost or damaged property has been repaired or reinstated, unless mandatory redemption is required under Condition 14.4 (*Mandatory Early Redemption – Insurance Proceeds*) hereof.

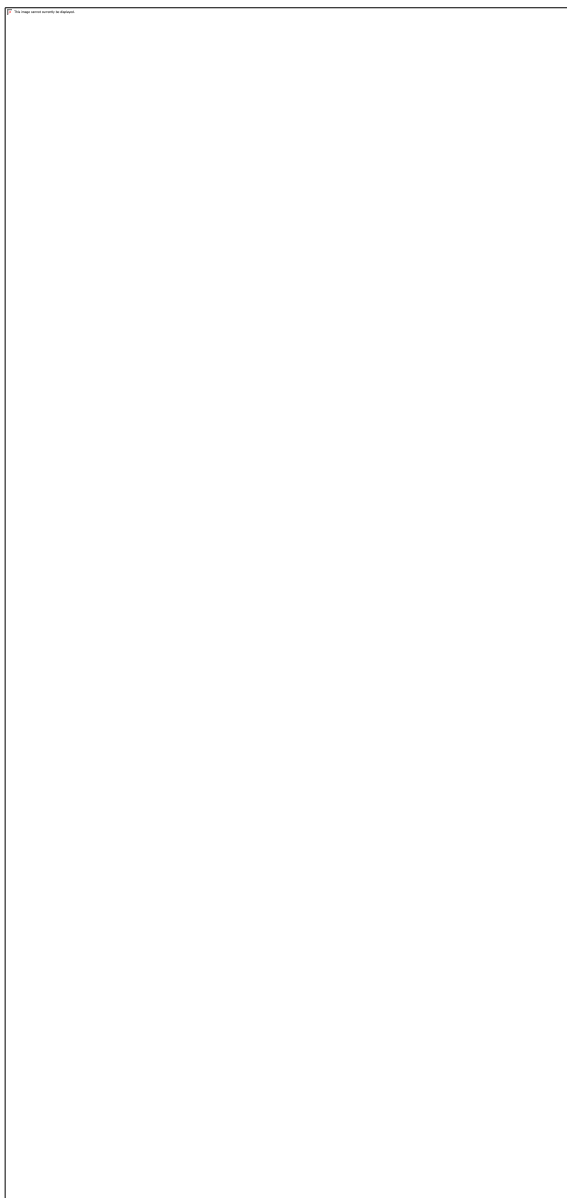
## 22.8 Distribution Account

- (a) The Issuer shall be free to operate the Distributions Account and to make payments in whatever form to the Shareholders from such account. There will be no restriction on withdrawals from the Distribution Account.

- (b) The Distribution Account shall be funded in accordance with Condition 23.1 (*Pre-Enforcement Cashflow Waterfall*), and only if the following requirements are met (the **Permitted Distribution Test**):
- (i) no Default has occurred and is continuing (which has not been cured or waived);
  - (ii) the Maintenance Reserve Account is funded to the MRA Required Balance and the DSRA is funded to the DSRA Required Balance;
  - (iii) the Historic DSCR on the most recent relevant Calculation Date is not less than 1.10;
  - (iv) the DLCR on the most recent Calculation Date is not less than 1.15;
  - (v) the Project Completion Date has occurred; and
  - (vi) the first repayment of the Loans and the Bonds has occurred.
- (c) The Distribution Account shall not be considered a Project Account and the balance of such account will not be subject to any Security Interest in favor of the Bondholders nor the Lenders nor the Hedging Bank.

## 22.9 Conditions Precedent to Bond Utilisations

- (a) All Bond Utilisations shall be conditional upon the following conditions precedent being met or waived by the Senior Creditors:
  - (i) each pair of Utilisations (i.e. a Loan Utilisation and its related Bond Utilisation) shall be for a minimum amount of EUR 100,000;
  - (ii) Bond Utilisations shall not be made earlier (on a cumulated basis) than as set forth in the following table extracted from the Base Case;



- (iii) receipt by the Commissioner and the Common Agent of a duly completed and signed Bond Utilisation Request by 11 a.m. on the second Business Day prior to the proposed Utilisation Date (or by such other time as the Commissioner and the Issuer may from time to time agree, giving notice to the Common Agent);

- (iv) the following being true on the date of any Bond Utilisation Request and on the proposed Utilisation Date (as confirmed in writing by the Issuer on the relevant Utilisation Request):
  - (A) no Default is continuing or would result from the proposed Utilisation;
  - (B) all the Repeating Representations and all of the representations and warranties to be made by the Shareholders under the Shareholders Support Agreement are, in each case, true and accurate in all material respects (unless any such representation is qualified by materiality, in which case such representation shall be true in all respects);
  - (C) the Shareholders have made the relevant Shareholder Contributions in accordance with the Shareholders Support Agreement proportionately to any proposed Utilisation so that, at all times, the Issuer is (and will be after any proposed Utilisation) in compliance with the Gearing Ratio;
  - (D) the drawdowns under the Term Loan Facility Agreement and the withdrawals from the Bond Proceeds Account are made prorate and *pari passu*, if applicable; and
  - (E) all fees that have become due and payable under the Finance Documents have been paid (or will be paid with the proceeds of the Utilisation) by the Issuer.
- (b) All Bond Utilisations, other than the last Bond Utilisation referred to in paragraph (c) below, shall also be conditional upon the following conditions precedent being met or waived by the Senior Creditors on the date of the relevant Utilisation Request and on the proposed Utilisation Date:
  - (i) the Technical Adviser has validated that the relevant milestones until the Project Completion Date have been met in accordance with the Project Documents; through the delivery of a certificate in the form of Schedule 22.9;
  - (ii) the aggregate of proceeds received from the Bond Utilisation are required by the Issuer to meet the relevant permitted Project Costs, make the initial funding of the DSRA, and the MRA and /or cover initial working capital requirements (financed minimum treasury) in accordance with the Base Case and/or cover required levels of minimum operating cash flow prior to the Project Completion Date up to EUR 250,000 (in each case, as confirmed in writing by the Issuer in the relevant Utilisation Request); and
  - (iii) any such relevant permitted Project Costs have become due and payable or will become due and payable within the next sixty (60) days (as confirmed in writing by the Issuer in the relevant Utilisation Request).
- (c) The Issuer may, in one last Bond Utilisation Request, request Bond Utilisations with respect to any amounts remaining to be withdrawn from the Bond Proceeds Account, provided that (as confirmed in writing by the Issuer in the relevant Utilisation Request) (i) the Project Completion Date has occurred on or about the date of the Bond Utilisation Request has been made, and (ii) such Bond Utilisation is made either to (x) cover any remaining payments to be made after the Project Completion Date under Schedule 6(b) of the EPC Contract and/or (y) fund a buffer for contingency amounts up to a maximum amount of 3% of the maximum amount of the Facility and the maximum amount of the Programme (as it may be extended and/or renewed) to the extent these amounts correspond to savings or efficiencies with respect to the Base Case.

## **23. PRIORITIES OF PAYMENTS**

### **23.1 Pre-Enforcement Cashflow Waterfall**

Save when otherwise provided in the Finance Documents, all funds credited to the General Account shall be withdrawn and disbursed in the following order of priority:

**first:** on a pro rata and *pari passu* basis, in and towards payment of fees, costs and expenses owed to the Administrative Parties under the Finance Documents;

**second:** on a pro rata and *pari passu* basis, towards payment of the Project Costs then due but unpaid (but excluding Financing Costs);

**third:** on a pro rata and *pari passu* basis, towards payment when due of interest and fees on the Senior Debt and set-off payments on Interest Rate Hedging Agreement;

**fourth:** on a pro rata and *pari passu* basis, towards payment when due of the principal amount of the Senior Debt and termination payments under the Interest Rate Hedging Agreement;

**fifth:** towards funding of the Maintenance Reserve Account subject to available cash up to the MRA Required Balance;

**sixth:** towards funding of Debt Service Reserve Account subject to available cash up to the DSRA Required Balance;

**seventh:** towards making any mandatory prepayments required in relation to the Senior Debt and related termination payments under the Interest Rate Hedging Agreement;

**eighth:** towards payment when due of any other Financing Costs not otherwise paid pursuant to foregoing paragraphs;

**ninth:** towards voluntary repayment of Senior Debt and associated breakage costs and close-out costs under the Interest Rate Hedging Agreement, any Bond Breakage Costs Amount and any payment in connection with the Tranche B Make Whole Payment (as this term is defined under the Term Loan Facility Agreement); and

**tenth:** any remaining funds shall be paid into the Distribution Account subject to the Permitted Distribution Test, in accordance with Clause 9.7 of the Common Terms Agreement.

## **23.2 Post-Enforcement Cashflow Waterfall**

At any time after the Security Agent has communicated the Issuer an Enforcement Instruction, the funds credited to the General Account and all amounts from time to time received or recovered by the Security Agent shall be disbursed or applied in the following order of priority in each case only if and to the extent that any higher ranking items have been paid or provided for in full:

**first:** on a pro rata and *pari passu* basis, in or towards payment of unpaid fees, costs and expenses of the Administrative Parties, any administrator or a receiver appointed in connection with the enforcement of security under the Security Documents;

**second:** towards taxes and payments required by law or authorised by the Senior Creditors;

**third:** on a pro rata and *pari passu* basis, towards payment when due of interest and fees on the Senior Debt;

**fourth:** on a pro rata and *pari passu* basis, towards payment of the principal amount of the Senior Debt and termination payments under the Interest Rate Hedging Agreement which have not been terminated or closed out;

**fifth:** towards payment when due of any other Financing Costs not otherwise paid pursuant to foregoing paragraphs;

**sixth:** towards payment of any other Project Costs; and

**seventh:** any surplus to the Concessionaire or to other persons entitled thereto.

## **24. ADMISSION TO MARF**

Admission (*incorporación*) will be requested for the Bonds on the MARF. Such request will take place within 30 days after the Closing Date and always during the validity period of the Programme.

MARF is a multilateral trading system and is not a regulated market in accordance with the provisions of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

## **25. SYNDICATE OF BONDHOLDERS AND COMMISSIONER**

### **25.1 Syndicate of Bondholders**

The Bondholders shall be members of a body (*sindicato de obligacionistas*, as such term is used in the Spanish Corporations Act) by virtue of which decisions concerning their general interests are taken (the **Syndicate of Bondholders**). Bondholders shall meet and take decisions in accordance with certain regulations governing the Syndicate of Bondholders attached hereto as **Schedule 25.1** (the **Regulations**). The Regulations contain the rules governing the Syndicate of Bondholders and the Commissioner, as well as the rules governing the relationship with the Issuer.

### **25.2 Membership of the Syndicate of Bondholders**

Bondholders shall, by virtue of purchasing and/or holding Bonds, be deemed to have agreed to: (i) the appointment of the relevant Commissioner; and (ii) become a member of the Syndicate of Bondholders.

### **25.3 Modification and waiver**

The Issuer may, with the consent of the Commissioner, but without the consent of the Bondholders, amend this Programme to correct a manifest or proven error or to make amendments of a formal, minor or technical nature or to comply with mandatory provisions of law.

Any other modification to this Programme shall be made with the express consent of the Senior Creditors, according to the rules in connection with this matter provided for in the Intercreditor Agreement.

### **25.4 Commissioner**

The Commissioner is the representative body of the general interests of the Bondholders. The Commissioner shall bear the legal representation of the Syndicate of Bondholders, and be the body for liaison between the Syndicate of Bondholders and the Issuer.

The Issuer shall appoint a Commissioner, which shall be recognisably experienced in law and/or economics. The remuneration of the Commissioner shall be determined by the Issuer.

The functions and faculties of the Commissioner shall be determined in the Regulations of the Syndicate of Bondholders.

## **26. THE COMMON AGENT AND THE SECURITY AGENT**

### **26.1 The Common Agent**

- (a) Under the Common Terms Agreement, Banco Bilbao Vizcaya Argentaria S.A. is appointed as joint agent to the Bondholders and the Lenders in connection with the Finance Documents assuming certain duties that are mechanical and administrative in nature.
- (b) The Common Agent shall have only those duties, obligations and responsibilities which are expressly specified in the Common Terms Agreement (and no others shall be implied).

- (c) The Common Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Creditors (or, if the relevant Finance Document stipulates the matter is a decision for any other Senior Creditor or group of Senior Creditors, from that Senior Creditor or group of Senior Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Common Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (d) Each Senior Creditor shall (in proportion to its participation in the Senior Debt) indemnify the Common Agent against any cost, loss or liability incurred by the Common Agent (otherwise than by reason of the Common Agent's gross negligence or wilful misconduct) in acting as the Common Agent under and in accordance with the Finance Documents (unless the Common Agent has been reimbursed by an Obligor pursuant to a Finance Document).

## **26.2 The Security Agent**

- (a) Under the Intercreditor Agreement, Banco Bilbao Vizcaya Argentaria S.A. is appointed as security agent with respect to the Security Documents assuming certain duties in connection with, among other things, the enforcement of the Security Documents.
- (b) The Security Agent shall have only those duties, obligations and responsibilities which are expressly specified in the Intercreditor Agreement (and no others shall be implied).
- (c) Each Secured Party shall (in proportion to its participation in the Liabilities) indemnify the Security Agent against any cost, loss or liability incurred by the Security Agent (otherwise than by reason of the Security Agent's gross negligence or wilful misconduct) in acting as the Security Agent under the Intercreditor Agreement and/or any of the Security Documents (unless the Security Agent has been reimbursed by an Obligor pursuant to the Intercreditor Agreement or a Security Document).
- (d) The Issuer shall immediately on demand reimburse any Secured Party for any payment that Secured Party makes to the Security Agent pursuant to paragraph (c) above.

## **27. MEETINGS OF SECURED PARTIES, MODIFICATION, WAIVER, AUTHORIZATION AND DETERMINATION**

### **27.1 Meeting of Secured Parties**

- (a) A meeting may be convened by the Concessionaire, the Common Agent or the Security Agent at any time, and shall be convened by the Common Agent if requested by Secured Parties holding not less than 50% of the nominal amount of Senior Debt for the time being outstanding. The meeting shall be convened at least twenty (20) Business Days before the date set for the meeting by notice to the Secured Parties in accordance with the Finance Documents.
- (b) The quorum for any meeting to consider:
  - (i) an Ordinary Resolution, shall be one or more Secured Parties holding or representing 50% or more (or at any adjourned meeting to be held the Business Day following the meeting for which a quorum was not reached, 25 % or more) of the nominal amount of the Senior Debt for the time being outstanding; and
  - (ii) the delivery of an Enforcement Instruction to the Security Agent, shall be one or more Secured Parties holding or representing not less than (a) two thirds of the nominal amount of the Senior Debt for the time being outstanding or (b) 50% of the nominal amount of the Senior Debt for the time being outstanding (if the meeting is convened to be held on or after the date falling six months after the occurrence of the Event of Default that gives rise to the delivery of the Enforcement Instruction).

- (c) Subject to paragraph (4) of Clause 5.1 and paragraph (4) of Clause 5.3 of the Intercreditor Agreement, all of the Secured Parties shall attend (personally or through a representative) to any meeting to consider the adoption of a Unanimity Decision.
- (d) Bondholders will be represented by the Commissioner at any meeting of the Secured Parties.
- (e) The meetings can be held via conference call.

## **27.2 Modification**

An amendment of the Intercreditor Agreement shall not be made without the prior written consent of all the Parties of the abovementioned agreement. In addition, the Hedging Bank may not, amend or waive the Interest Rate Hedging Agreement in any way that could be prejudicial for the Senior Creditors without the consent of a Majority Creditors.

## **27.3 Waiver**

A waiver shall not be given unless in accordance with Clause 5 (*Decisions of the Secured Parties*) of the Intercreditor Agreement. This clause establishes that a decision shall be adopted or passed either at a meeting of Secured Parties, or through a resolution in writing of Secured Parties. Prior to passing any resolution of the Secured Parties, a resolution on the same matters shall be passed separately by the Bondholders in accordance with the Regulations. For purposes of the required quorums and majorities in this Clause, Bondholders representing 100% of the nominal amount of Bonds for the time being outstanding shall be deemed as (i) having approved, or voted in favour of, any resolution of the Secured Parties that has been previously approved by Bondholders in accordance with the Regulations, or (ii) having rejected, or voted against, any resolution of the Secured Parties that has been previously rejected or otherwise not approved by Bondholders in accordance with the Regulations. The Common Agent may agree, on a Negative Approval basis, to any amendment, waiver or consent, or any other decision to be taken in connection with a Transaction Document that is not materially prejudicial to the interests of the Secured Parties and which is not an Enforcement Instruction and/or a Unanimity Decision

## **27.4 Adoption of resolutions by the Secured Parties:**

- (a) An Ordinary Resolution shall be duly passed if approved in writing by Senior Creditors holding or representing not less than 50% of the nominal amount of the Senior Debt for the time being outstanding and present at a duly convened meeting.
- (b) An Enforcement Instruction shall be duly given as follows:
  - (i) an Enforcement Instruction relating to the early termination of the Senior Debt Secured Documents shall be duly given if approved in writing by one or more Senior Creditors holding or representing not less than two thirds of the nominal amount for the time being outstanding under the Senior Debt Secured Documents (or, if given at a meeting held on or after the date falling six months after the occurrence of the Event of Default that gives rise to the delivery of the Enforcement Instruction, by one or more Senior Creditors holding or representing not less than two thirds of the nominal amount for the time being outstanding under the Senior Debt Secured Documents and present at a duly convened meeting); and
  - (ii) any other Enforcement Instruction shall be duly given if approved in writing by one or more Secured Parties holding or representing not less than two thirds of the nominal amount for the time being outstanding under the Secured Documents (or, if given at : a meeting held on or after the date falling six months after the occurrence of the Event of Default that gives rise to the delivery of the Enforcement Instruction, by one or more Secured Parties holding



or representing not less than two thirds of the nominal amount for the time being outstanding under the Secured Documents and present at a duly convened meeting);

such required majorities, the **Reinforced Majority of Secured Parties**; provided, however, that in the case of an Enforcement Instruction regarding enforcement of the pledge over the Bond Proceeds Account and the Tranche B Proceeds Account, the Reinforced Majority of Secured Parties shall be computed only with respect to Bondholders or Tranche B Lenders (respectively) and on the nominal amount outstanding under the Bonds or the Tranche B Liabilities (respectively).

- (c) Subject to paragraph (4) of Clause 5.1 and to paragraph (4) of the Intercreditor Agreement, Unanimity Decisions shall be adopted in writing by all of the Secured Parties
- (d) In the event that any of the Secured Parties did not attend to the relevant meeting duly convened, the Liabilities owed to that Secured Party shall not be included for the purposes of calculating the relevant majority; provided that, Unanimity Decisions shall be duly adopted if approved by each and all of the Secured Parties present at a duly convened meeting and provided they hold or represent not less than two thirds of the nominal amount for the time being outstanding under the Secured Documents.

#### **27.5 Resolutions in writing of Secured Parties**

- (a) A resolution in writing signed by or on behalf of the holders of the required percentage of nominal amount of the Senior Debt (and, in relation to Clause 4 above, the Hedging Liabilities) for the time being outstanding or consented to electronically directly to the Common Agent or the Security Agent (as the case may be) shall for all purposes be as valid and effective as an Ordinary Resolution, Enforcement Instruction and Unanimity Decision, in each case passed at a meeting of Secured Parties duly convened and held.
- (b) Such a resolution in writing may be contained in one document or several documents substantially in the form attached to the Intercreditor Agreement, each signed by the Secured Parties.
- (c) Such resolution consented to electronically directly to the Security Agent may be contained in one document, sent by the Security Agent and signed by the relevant Secured Parties.
- (d) The Commissioner will sign any such resolution in writing on behalf of all Bondholders if applicable according to Clause 5.1 (3) of the Intercreditor Agreement.
- (e) In the event that any of the Secured Parties does not respond to a request for a resolution in writing from the Concessionaire, the Common Agent or the Security Agent within twenty (20) Business Days from the date such request is received by the relevant Secured Party, the Liabilities owed to that Secured Party shall not be included for the purposes of calculating the relevant majority; provided that, Unanimity Decisions shall be duly adopted if approved by all of the Secured Parties who have responded within that timeframe and provided they hold or represent not less than two thirds of the nominal amount for the time being outstanding under the Secured Documents.

#### **27.6 Special Rules Applicable to the Hedging Bank:**

- (a) The Hedging Bank shall be considered for purposes of the required quorums and majorities provided in Clause 5 (*Decisions of the Secured Parties*), but only to the extent that such Hedging Bank has declared the early termination of the relevant Interest Rate Hedging Agreement pursuant to paragraph (2) of the Intercreditor Agreement. In such event, the Close-Out Netting amounts to which the Hedging Bank is entitled would be used for purposes of computing the quorums and majorities they represent. Notwithstanding the above, Unanimity Decisions that may adversely affect the Hedging Bank shall in any event be adopted by the Hedging Bank. For these purposes, it

will be considered that a decision may adversely affect the Hedging Bank if it may increase its risk exposure in any manner.

- (b) The Hedging Bank may declare the early termination of the Interest Rate Hedging Agreement when one of the following circumstances occur:
- (i) there has been a payment default by the Concessionaire in connection with the Interest Rate Hedging Agreement; or
  - (ii) it has been declared the early termination of any of the Senior Debt Secured Documents by the Senior Creditors;

provided that, in both cases:

- (i) such early termination has been notified to the Concessionaire and to the Security Agent; and
- (ii) a twenty (20) Business Days' cure period has elapsed between such notification to the Concessionaire and the Security Agent and the declaration of early termination.

For the avoidance of doubt, the declaration of early termination of the Interest Rate Hedging Agreement shall not be subject to the majority regimes set out in Clause 5 of the Intercreditor Agreement.

## **28. RANKING AND PRIORITY; PARI PASSU TREATMENT**

### **28.1 Creditor Liabilities**

- (a) Each of the Parties agrees that the Agent Liabilities, the Senior Debt Liabilities and the Hedging Liabilities shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:
- (i) first, the Agent Liabilities *pari passu* and without any preference between them; and
  - (ii) second, the Senior Debt Liabilities and the Hedging Liabilities *pari passu* and without any preference between them.
- (b) Subject to Condition 23 (*Priorities of Payments*) where applicable, nothing in this Programme will prevent payment by any Issuer of the Agent Liabilities or the receipt and retention of such Agent liabilities by the relevant Administrative Party
- (c) The Debtors may only make Payments of the Senior Debt Liabilities to the extent expressly permitted by the Finance Documents.
- (d) Payments of principal of the Bond Liabilities, the Term Loan Liabilities and the Hedging Liabilities shall be made on a *pari passu* basis and without any preference between them, unless otherwise expressly permitted by the Finance Documents; provided, however, that, notwithstanding any other provision on this Agreement or any Finance Document to the contrary, the Issuer may make Payments of the Term Loan Liabilities and the Hedging Liabilities without a simultaneous equivalent discharge of other Liabilities pursuant to a Qualifying Term Loan Liabilities Refinancing.

### **28.2 Security and Guarantees**

- (a) Each of the Parties agrees that the Security (other than the Bond Proceeds Account Pledge and the Tranche B Proceeds Account Pledge) shall rank and secure the Senior Debt Liabilities and the Hedging Liabilities *pari passu* and without any preference between them.

- (b) Each of the Parties agrees that the Bonds Proceeds Account Pledge shall rank and secure the Bond Liabilities *pari passu* and without any preference between them.
- (c) Each of the Parties agrees that the Tranche B Proceeds Account Pledge shall rank and secure the Tranche B Liabilities *pari passu* and without any preference between them.
- (d) The Secured Parties may only take, accept or receive the benefit of any Security Interest from the Issuer and/or any Obligor in respect of any Liabilities in addition to the Security if and to the extent legally possible, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in paragraph (a) above.
- (e) Each Secured Party shall, without the consent of other Secured Parties and at the request (and cost) of the Issuer, promptly execute such documents and give such instructions to the Common Agent and the Security Agent as are reasonably necessary to implement successfully the terms of a Qualifying Term Loan Liabilities Refinancing by the providers of that refinancing and to give effect to the providing of Security Interests in respect of such Qualifying Term Loan Liabilities Refinancing, including, without limitation, any amendment required to the terms of this Agreement or any other Finance Document and any amendment, consent, waiver or release in respect of any Security Document and any grant of security pursuant to a new Security Document, provided that this paragraph (4) shall not require any Secured Party to facilitate a release of, or amendment to, the Security or any guarantee, indemnity or other assurance against loss if so doing would have an adverse effect on any Secured Party.

### **28.3 Shareholder Liabilities**

- (a) Each of the Parties agrees that the Shareholder Liabilities are postponed and subordinated to the Senior Debt Liabilities and the Hedging Liabilities.
- (b) Prior to the Final Discharge Date:
  - (i) the Issuer shall not make any payment or discharge of the Shareholder Liabilities unless such payment or discharge is made from amounts standing to the credit of the Distribution Account;
  - (ii) the Shareholders may not take, accept or receive the benefit of any Security Interest, guarantee, indemnity or other assurance against loss in respect to the Shareholder Liabilities; and
  - (iii) the Shareholder may not take any Enforcement Action in respect of any of the Shareholder Liabilities unless they are required by law.

## **29. NOTICES**

### **29.1 Notices to Bondholders**

As the Bonds will be admitted on MARF, notices to Bondholders shall be published by the Issuer in the official bulletin of MARF (*Boletín de Cotización MARF*), as well as in any other place, system or platform required by applicable laws or regulations.

In addition, so long as the Bonds are represented by book entries in Iberclear, all notices to Bondholders shall be made through Iberclear on transmission to their respective accountholders, which will in turn give notice to the relevant Bondholders, if applicable.

Any such notice shall be deemed to have been given on the date of the first publication or, where required to be published in more than one place or on more than one system, on the date on which publication in all required platforms has been made. If publication as provided above is not practicable, a notice shall

be given in such other manner, and shall be deemed to have been given on such date, as the Commissioner may approve.

Notwithstanding the foregoing and only for the purposes of complying with the information covenants set out in Condition 9 above, any communication and/or document shall be deemed received by the Information Recipients when made available to them by the Issuer through the Investor Website, but only to the extent that the Information Recipients have received an e-mail notifying them that such communication and/or document has been published on such Investor Website.

**29.2 Notice of a general meeting of the Syndicate of Bondholders**

Notice of a general meeting of the Syndicate of Bondholders must be given in accordance with the Regulations.

**29.3 Notice to the Commissioner**

Copy of any notice given to any Bondholders will by also given to the Commissioner.

**30. GOVERNING LAW AND JURISDICTION**

**30.1 Governing Law**

The status of the Bonds, the capacity of the Issuer, the terms and conditions of the Bonds and all related documentation, any other contractual or non-contractual obligation of the Issuer, shall be governed by, and construed in accordance with, Spanish Law.

**30.2 Jurisdiction**

The courts and tribunals of the city of Madrid have exclusive jurisdiction to settle any dispute arising from, or in connection with, the Bonds.

The Issuer irrevocably waives any other jurisdiction that could be competent to solve any dispute arising from, or in connection with, the Bonds.

## **SALE OF THE BONDS**

### **Subscription Agreement**

The Issuer has entered into a Subscription Agreement with the Initial Bondholders in which they commit to subscribe for, or procure subscribers for, Bonds issued under the Programme up to the Maximum Amount of the Programme.

Under the Subscription Agreement, the Initial Bondholders have undertaken not to transfer their commitments to purchase Bonds until the Project Completion Date without the prior approval of the Issuer unless it is made to a bank or financial institution with a minimum rating of A- by S&P or its equivalent by Moody's. Notwithstanding the above, issued and fully disbursed Bonds will be freely transferable.

### **Selling Restrictions**

#### **General**

The Issuer has not made any representation that any action will be taken in any jurisdiction that would permit a public offering of the Bonds, or possession or distribution of this Information Memorandum (in preliminary, proof or final form) or any other offering or publicity material relating to the Bonds (including roadshow materials and investor presentations), in any country or jurisdiction where action for that purpose is required.

#### **United States**

The Bonds will not be registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons. Terms used in this paragraph have the meanings given to them by Regulation S under the Securities Act.

#### **Spain**

This Information Memorandum has not been registered with the CNMV. The Issue of the securities does not constitute a public offering in accordance with the provisions of Article 35 of Royal Decree 4/2015 of 23 October, approving the revised text of the Securities Market Act (**SMA**). This Issue is intended exclusively for professional clients and qualified investors in accordance with the provisions of Article 205 of the SMA and Article 39 of Royal Decree 1310/2005 of 4 November, which partially develops Law 24/1988, of 28 July, on the Securities Market, with regard to the admission of securities to trading on official secondary markets, public offerings or subscription and the prospectus required for this purpose (**Royal Decree 1310/2005**).

#### **European Union**

The Bonds are only directed to qualified investors according to the provisions in Article 2.1.e) of Directive 2003/71/EC. Therefore, this Information Memorandum has not been registered with any competent authority of any Member State.

## **USE OF PROCEEDS**

The Issuer shall apply the amounts borrowed by it under the Bonds and the Loan towards:

- (a) paying Project Costs;
- (b) covering required levels of minimum operating cash up to the Project Completion Date;
- (c) the initial funding of the DSRA and the MRA;
- (d) the initial working capital requirements (financed minimum treasury) after the Project Completion Date in accordance with the Base Case; and
- (e) funding, at the moment of the last Utilisation being made, a buffer for contingency amounts up to 3% of the maximum amount of the Facility and the maximum amount of the Programme (as it may be extended and/or renewed), which shall correspond to savings or efficiencies with respect to the Base Case.

## **FUNCTIONS OF THE REGISTERED ADVISER (ASESOR REGISTRADO) OF MARF**

### **Registered Adviser**

The Issuer has appointed Intermoney Valores, S.V. S.A. as its Registered Adviser for the listing of the Bonds (**Intermoney** or the **Registered Adviser**). Intermoney is a company incorporated before the Notary of Madrid, Mr Antonio Huerta Trólez, on 14 May 1998, under number 1,200 of his official records, registered in the Madrid Companies Register in Volume 13,186, Page 164, Sheet M-213521, Inscription 1st.

As Registered Adviser, Intermoney is required to assist the Issuer with: (i) the admission of the Bonds on MARF; (ii) its compliance with any obligations and responsibilities deriving from the Issuer having issued the Bonds on MARF; (iii) the preparation and presentation of financial and business information required by the Issuer's participation on MARF; and (iv) the review of any such information to ensure that it complies with the applicable standards. The Registered Adviser will assist the Issuer in complying with its obligations and responsibilities as an issuer of securities on MARF and will act as specialised facilitator between MARF and the Issuer.

The Registered Adviser shall provide MARF with the periodic reports required by it and MARF, in turn, may request from the Registered Adviser any information it deems necessary in connection with the Registered Adviser's role (and obligations as Registered Adviser). MARF may take any measures in order to ensure the veracity of the information that has been provided.

Whilst the Bonds are admitted to trading on MARF, the Issuer must have named a Registered Adviser that is listed on MARF's "Registered Advisers Market Registry".

### **Confirmations of the Registered Adviser**

The Registered Adviser, with respect to the admission of the Bonds to trading on MARF, confirms:

- (a) that the Issuer complies with the MARF regulations in relation to the admission of the Bonds to trading;
- (b) that it has assisted the Issuer in preparing the Information Memorandum and has reviewed all information provided by the Issuer to MARF in connection with the application for admission to trading of the Bonds on MARF; and
- (c) that the information provided by the Issuer complies, to the best of the Registered Adviser's knowledge, with the requirements of the applicable laws and contains no omission likely to mislead potential investors.

### **Obligations of the Registered Adviser**

Once the Bonds are admitted to trading on MARF, the Registered Adviser will:

- (a) review the information that the Issuer prepares and send to MARF periodically or on an ad hoc basis, and verify that the content meets the requirements and time limits provided in the MARF rules and regulations;
- (b) advise the Issuer on any factors that might affect the Issuer's compliance with its obligations as an issuer of Bonds that have been admitted to trading on MARF and provide advice as to how to avoid breaching such obligations;
- (c) inform MARF of any facts that would constitute a breach by the Issuer of its obligations in the event of a potential material breach by the Issuer that had not been cured by the Registered Adviser's advice; and
- (d) manage, attend and answer queries and requests for information from MARF that MARF may request in relation to the situation of the Issuer, the evolution of its activity, the level of performance of its obligations and such other market data deemed relevant.

To this effect, the Registered Adviser shall perform the following actions:

- (a) maintain regular and necessary contact with the Issuer and analyse exceptional situations that may occur in the evolution of the market price, trading volume and other relevant circumstances in the trading of the Bonds;
- (b) sign such statements as may be required under the MARF regulations as a result of the admission to trading of the Bonds on MARF; and
- (c) send to MARF, as soon as possible, any information received from the Issuer in response to enquiries and requests for information that MARF may have.

#### **Breaches by the Registered Adviser**

Any breach by the Registered Adviser of its obligations to MARF may result in MARF taking any of the following measures:

- (a) a written warning which would be required to result in the adoption by the Registered Adviser of steps to cure any breaches. The Managing Director or the Market Supervision Committee of MARF has the power to issue such written warning;
- (b) a suspension of the Registered Adviser by MARF which would result in a ban on the Registered Adviser being appointed in such role by new issuers. This measure does not affect previous appointments and thus the Registered Adviser may continue to act as Registered Adviser regarding such existing issuers; and/or
- (c) removal of the Registered Adviser from the Registered Advisers Market Registry.

The measures listed in (b) and (c) of this paragraph (above) must be agreed upon by the board of directors of AIAF following a report of the Securities Incorporation Commission (*Comisión de Incorporación de Valores*) and after hearing the Registered Adviser concerned. Such measures shall be communicated to the CNMV on the same day of their adoption, and subsequently published on MARF's website.



## **SUMMARY OF CLEARANCE AND SETTLEMENT PROCEDURES APPLICABLE TO BOOK-ENTRY NOTES**

*Below is a brief summary of the Spanish clearance and settlement procedures applicable to book-entry notes such as the Bonds.*

### **Iberclear**

Iberclear is the Spanish central securities depository in charge of both the register of securities held in book-entry form, and the clearing and settlement of all trades from the Spanish Stock Exchanges, Latibex (the Latin American stock exchange denominated in euro), the Book-Entry Public Debt Market, the Alternative Stock Market (MAB), MARF and AIAF. To achieve this, Iberclear uses two technical platforms, SCLV (for the Spanish Stock Exchanges, Latibex and the Alternative Stock Market (MAB)) and CADE (for The Book-Entry Public Debt Market, AIAF and MARF).

Iberclear is owned by *Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros, S.A.*, a holding company, which holds a 100% interest in each of the Spanish official secondary markets and settlement systems.

### **Iberclear Securities Registration System**

Iberclear and the Iberclear Members have, among others, the function of keeping the book-entry register of securities traded on MARF.

The book-entry register structure is divided into: (i) the Spanish Central Registry managed by Iberclear, that reflects the aggregate balance of the securities held by each of the Iberclear Members (segregated into the Iberclear Members' own account and accounts held on behalf of third parties); and (ii) an itemised individual register managed by each of the Iberclear Members, in which securities are listed under the security owner's name.

Spanish law considers the legal owner of the securities to be:

the Iberclear Member appearing in the records of Iberclear as holding the relevant securities in its own name; or  
the investor appearing in the records of the Iberclear Member as holding the securities.

### **Iberclear Settlement of securities traded on MARF**

Securities traded on MARF are private fixed-income securities represented in the form of book entries.

In the MARF settlement system, transactions may be settled spot transactions, forward transactions (settlement date more than five days after the relevant trade date), with a repurchase agreement on a fixed date and double or simultaneous transactions (two trades in opposite directions with different settlement dates).

The settlement system used for securities admitted to listing on MARF is the Model 1 delivery versus payment system, as per the classification of the Bank for International Settlements: that is, it is a "transaction-to-transaction" cash and securities settlement system, simultaneous in its finality.

Transactions are settled on the business day agreed by participants at the moment of the trade.

### **Settlement Cycles: the CADE Platform**

The process of settling all reported trades with a value date on a specific day is carried out in three phases:

First settlement cycle;

Real-time settlement; and

Session close.

The first cycle includes all transactions reported to CADE up to 6.00pm of D-1, and these are settled if sufficient funds and an adequate securities balance are available in the pertinent accounts.

The real-time settlement process is carried out between 7.00am and 4.00pm of the settlement day, and the system first checks if a sufficient securities balance is available. If it is available, but the buyer of the securities does not have available funds, the order is rejected and returned to CADE, and placed in a queue. The process is periodically activated until enough balance is available in the relevant accounts to settle outstanding orders with finality. If the balance in the seller's securities account is insufficient, the transaction is placed in a queue. When a credit is lodged in a securities account, the system checks whether queued orders can be processed.

At the end of the day, the system tries one last time to settle all transactions not settled in the first cycle or during the process in real time. The settlement cycle at the end of the day takes place at 5.00pm.

If the seller's securities account has sufficient balance, the system checks – by means of a comparison with the payment side – whether there is also sufficient balance in the buyer's cash account. That is, securities and cash are not immediately blocked. Once the transfers of securities and cash have been executed, each of the transactions is considered final.

### Potential Changes

Notwithstanding the above, it should be noted that Royal Decree-law 4/2015 of 23 October approving the restated text of the Spanish Securities Market Act (*Real Decreto Legislativo 4/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Mercado de Valores*) provides for certain changes that are yet to be implemented in the Spanish clearing, settlement and registry procedures of securities transactions. These will modify the system and allow for the integration of the post-trading Spanish systems into the TARGET2 System (**TARGET2**), which is scheduled to be fully implemented in September 2017.

The project to reform Spain's clearing, settlement and registry system and its connection to the TARGET2 System (the **Reform**) introduces significant new features that affect all classes of securities and all post-trade activities.

The Reform will be implemented in two phases:

- (a) The first phase took place during the last quarter of 2015 and involved setting up a new system for equities to include all the changes envisaged in the Reform, including the creation of a central clearing counterparty in post-trade whose design must be compatible with the TARGET2 System (messages, account structure, definition of operations, etc.). Accordingly, the SCLV (*Servicio de Compensación y Liquidación de Valores*) platform will be discontinued.

Since the first week of October 2016 the new settlement and registration platform (ARCO) operates under a T+2 settlement standard by which any transaction within two stock-exchange business days following the date in which the relevant trade is completed.

The CADE (*Central de Anotaciones de Deuda Pública*) platform will continue to operate unchanged and cash settlements in the new system will be made in the TARGET2-Bank of Spain cash accounts, as they are currently.

- (b) The second phase will be implemented to coincide with Iberclear's connection to the TARGET2 System, scheduled for the third quarter of 2017. At that time, fixed-income securities will be transferred to the new ARCO platform, and CADE will be discontinued.

Equities will also be settled in accordance with the procedures and time periods of the TARGET2 System, so that the interim settlement procedure used in the first phase will be discontinued.

The second phase will entail unifying the registry and settlement approach for both equities and fixed-income.

## TAXATION

### SPANISH TAXATION

#### Introduction

The following summary describes the main Spanish tax implications arising in connection with the acquisition and holding of the Bonds by individuals or entities who are the beneficial owners of the Bonds (the **Bondholders** and each a **Bondholder**). The information provided below does not purport to be a complete analysis of the tax law and practice currently applicable in Spain and does not purport to address the tax consequences applicable to all categories of investors, some of which may be subject to special rules.

Similarly, this information does not take into account specific regulations established in Navarra or in the historic territories of the Basque Country or the specialties in place in other autonomous communities of Spain (including the cities of Ceuta and Melilla).

All the tax consequences described in this section are based on the general assumption that the Bonds are initially registered for clearance and settlement in Iberclear being listed in MARF.

Prospective purchasers of the Bonds should consult their own tax advisers as to the tax consequences, including those under the tax laws of the country in which they are resident, of purchasing, owning and disposing of Bonds.

This tax section is based on Spanish law as in effect on the date of this document as well as on administrative interpretation thereof, and is subject to any change in such law that may take effect after such date.

This information has been prepared in accordance with the following Spanish tax legislation in force at the date of this Information Memorandum:

- (a) of general application, Additional Provision One of Law 10/2014 which also applies to debt instruments issued by Spanish-resident companies and Spanish public entities having corporate form, as well as Regional Decree 47/2003, of December 17, of the Territory of Guipúzcoa ;
- (b) for individuals resident for tax purposes in Spain who beneficially own the Bonds which are subject to the Personal Income Tax ("PIT"), Law 35/2006 of November 28 on the PIT Law and on the partial amendment of the Corporate Income Tax Law, the Non-Resident Income Tax Law and the Net Wealth Tax Law, as amended, and Royal Decree 439/2007 of March 30, promulgating the PIT Regulations; and Law 29/1987, dated 18 December 1987, on Inheritance and Gift Tax ("IGT"), as amended;
- (c) for legal entities resident for tax purposes in Spain which are subject to CIT, Law 27/2014, dated 27 November 2014, ("CIT") as amended, and Royal Decree 634/2015 of July 10 promulgating the CIT Regulations;
- (d) for non-Spanish tax resident investors acting through a permanent establishment in Spain who beneficially own the Bonds which are subject to the Non-Resident Income Tax ("NRIT"), Royal Legislative Decree 5/2004 of March 5 promulgating the Consolidated Text of the NRIT Law, as amended, and Royal Decree 1776/2004 of July 30 promulgating the NRIT Regulations.

#### Indirect taxation

Whatever the nature and residence of the Bondholder, the acquisition and transfer of Bonds will be exempt from indirect taxes in Spain, i.e. exempt from Transfer Tax and Stamp Duty, in accordance with the Consolidated Text of such tax promulgated by Royal Legislative Decree 1/1993, dated 24 September 1993, and exempt from Value Added Tax, in accordance with Law 37/1992, dated 28 December 1992, as amended, regulating such tax.

#### Direct taxation

The Issuer understands that the Bonds should be deemed as financial assets with an explicit yield for Spanish tax purposes, according to article 91 of the PIT Regulations and article 63 of the CIT Regulations.

## ***Individuals with tax residency in Spain***

### ***Personal Income Tax (Impuesto sobre la Renta de las Personas Físicas)***

Both interest periodically received and income derived from the transfer, redemption or repayment of the Bonds constitute a return on investment obtained from the transfer of a person's own capital to third parties in accordance with the provisions of Section 25.2 of the PIT Law, and must be included in the investor's PIT savings taxable base and taxed, currently, at a flat rate of 19% on the first €6,000, 21% on the following €44,000 and 23% for any amount in excess of €50,000.

Individual investors subject to PIT will be subject to a (current) 19% withholding on account of PIT by the Issuer on interest payments as well as on income derived from the redemption or repayment of the Bonds.

### ***Wealth Tax (Impuesto sobre el Patrimonio)***

Individual Spanish Bondholders are subject to Spanish Wealth Tax (Impuesto sobre el Patrimonio) on all their assets (such as the Bonds) owned every 31 December irrespective of where the assets are located.

Reestablishment of the Net Wealth Tax (NWT), which was originally foreseen for years 2011 and 2012, has been also extended for years 2013 to 2017.

In general terms, for tax year 2017, Spanish resident tax individuals are subject to NWT (Spanish Law 19/1991), which imposes a tax on property and rights in excess of €700,000 held at December 31st for each year. Spanish tax resident individuals whose net worth is above €700,000 and who hold Bonds on the last day of any year would therefore be subject to NWT for such year at marginal rates varying between 0.2% and 2.5% of the average market value of the Bonds during the last quarter of such year.

Notwithstanding the above, Spanish regions are authorized to set their own tax rates and allowances and also to modify the minimum tax exemption and tax benefits. Therefore, an analysis must be made in each specific case to determine to what extent any regional legislation might be applicable, since there might be differences depending on the region in which an investor resides.

From 2018 onwards, in principle, a general 100% tax relief applies (set forth by article 4 of Royal Decree 3/2016 of 2 December), but it cannot be fully ruled out that the Spanish Net Wealth Tax will ultimately be imposed as it has been in previous years.

### ***Inheritance and Gift Tax (Impuesto sobre Sucesiones y Donaciones)***

Individuals who are resident in Spain for tax purposes who acquire ownership or other rights over any Bonds by inheritance, gift or legacy will be subject to IGT in accordance with the applicable Spanish regional and state rules. Effective tax rates range between 7.65% and 81.6%., depending on relevant factors.

It is necessary to take into account that the IGT is a tax, in some relevant aspects (including certain tax benefits), which has been transferred to the Spanish regions and, following this power, some territories govern different tax rates etc and in certain cases have, in practice, eliminated the taxation.

Then, a particular analysis should be made in each specific case since there might be relevant differences vis-à-vis the tax treatment above summarised.

## ***Legal entities with tax residency in Spain***

### ***Corporate Income Tax (Impuesto sobre Sociedades)***

Both interest periodically received and income derived from the transfer, redemption or repayment of the Bonds are subject to CIT (at the current general tax rate of 25%) in accordance with the rules for such tax.

In particular, income obtained due to the payment of interest or the transfer, redemption or reimbursement of the Bonds, by entities which are considered taxable persons for CIT purpose will not be subject to withholding tax on

account of CIT, in accordance with the provisions of Article 61. q) of the CIT Regulations provided that the Bonds are:

- (e) registered in book-entry form (*anotaciones en cuenta*); and
- (f) negotiated in a Spanish official secondary market (*mercado secundario oficial*) or in the Alternative Fixed-Income Securities Market (*Mercado Alternativo de Renta Fija*).

Notwithstanding the above, it shall be fulfilled the information and payment of income procedure foreseen in Royal Decree 1145/2011 as described in section *Compliance with certain requirements in connection with income payments*.

#### *Wealth Tax (Impuesto sobre el Patrimonio)*

Legal entities resident in Spain for tax purposes that acquire ownership or other rights over the Bonds are not subject to Wealth Tax.

#### *Inheritance and Gift Tax (Impuesto sobre Sucesiones y Donaciones)*

Legal entities resident in Spain for tax purposes that acquire ownership or other rights over the Bonds by inheritance, gift or legacy are not subject to IGT but generally must include the market value of the Bonds in their taxable income for CIT purposes.

#### ***Individuals and legal entities that are not tax resident in Spain***

*Investors that are not resident in Spain for tax purposes, acting in respect of the Bonds through a permanent establishment in Spain*

#### Non-Resident Income Tax (Impuesto sobre la Renta de no Residentes)

If the Bonds form part of the assets affected to a permanent establishment in Spain of a person or legal entity that is not resident in Spain for tax purposes, the tax rules applicable to income deriving from such Bonds are, generally, the same as those set forth above for Spanish CIT taxpayers. See "*Legal entities with tax residency in Spain – Corporate Income Tax (Impuesto sobre Sociedades)*" section above.

Ownership of the Bonds by investors who are not resident in Spain for tax purposes will not in itself create the existence of a permanent establishment in Spain.

#### Wealth Tax (Impuesto sobre el Patrimonio)

Non-resident companies acting through a permanent establishment in Spain that acquire ownership or other rights over the Bonds are not subject to Wealth Tax

#### Inheritance and Gift Tax (Impuesto sobre Sucesiones y Donaciones)

Non-resident companies acting through a permanent establishment in Spain that acquire ownership or other rights over the Bonds by inheritance, gift or legacy are not subject to IGT but generally must include the market value of the Bonds in their taxable income for Non-resident Income Tax purposes.

*Investors that are not resident in Spain for tax purposes, not acting in respect of the Bonds through a permanent establishment in Spain*

#### Non-Resident Income Tax (Impuesto sobre la Renta de no Residentes)

Both interest payments periodically received under the Bonds and income derived from the transfer, redemption or repayment of the Bonds, obtained by individuals or entities who are not resident in Spain for tax purposes and who do not act, with respect to the Bonds, through a permanent establishment located in Spain, are exempt from NRIT in the same terms as the returns derived from public debt, even in case the income is obtained through a tax haven. No withholding on account of NRIT will be levied on such income subject to the fulfilment of the relevant

requirements, as described in "*Compliance with certain requirements in connection with income payments*" section below.

#### Wealth Tax (Impuesto sobre el Patrimonio)

In relation to fiscal year 2017, non-Spanish tax resident individuals holding the Bonds will be subject to Wealth Tax to the extent that such Bondholders own the Bond (along with any other property located in Spain and rights which could be exercised in Spain) valued at a combined net amount in excess of €700,000 as of 31 December. Spanish general Wealth Tax rates vary between 0.2% and 2.5%. To the extent that income deriving from the Bonds is exempt from NRIT, individuals who do not have tax residency in Spain who hold such Bonds on the last day of the year will be exempt from Wealth Tax. If the exemptions outlined do not apply, individuals who are not tax resident in Spain will be subject to Wealth Tax to the extent that the Bonds are located in Spain or the rights deriving from the Bonds can be exercised in Spain. Bondholders who benefit from a Double Tax Treaty that provides for taxation only in the Bondholder's country of residence will not be subject to Wealth Tax.

Individuals that are not resident in Spain for tax purposes and who are resident in an EU or European Economic Area Member State may apply the rules approved by the autonomous region where the assets and rights with more value: (i) are located; (ii) can be exercised; or (iii) must be fulfilled. As such, prospective Bondholders should consult their tax advisers.

Non-Spanish tax resident legal entities that acquire ownership or other rights over the Bonds are not subject to Wealth Tax.

#### Inheritance and Gift Tax (Impuesto sobre Sucesiones y Donaciones)

Individuals not resident in Spain for tax purposes who acquire ownership or other rights over the Bonds by inheritance, gift or legacy will be subject to IGT in accordance with the applicable Spanish state rules (EU individuals not resident in Spain for tax purposes are entitled to apply regional rules as explained below), unless they reside for tax purposes in a country with which Spain has entered into a double-tax treaty in relation to IGT. In such case, the provisions of the relevant double-tax treaty will apply.

If no double-tax treaty in relation to IGT applies, applicable IGT effective tax rates would range between 7.65% and 81.6% for 2017, depending on relevant factors (as explained in previous sections, the Autonomous Regions are allowed to govern certain matters of the tax).

However, if the deceased, heir or the donee is resident in an EU or European Economic Area Member State, depending on the specific situation, the applicable rules will be those corresponding to the relevant autonomous regions according to the law. Accordingly, prospective Bondholders should consult their tax advisers.

Non-Spanish tax resident legal entities that acquire ownership or other rights over the Bonds by inheritance, gift or legacy are not subject to IGT. Such acquisitions may be subject to NRIT (as described above), unless otherwise applicable under the provisions of any applicable double-tax treaty entered into by Spain. In general, double-tax treaties provide for the taxation of this type of income in the country of tax residence of the Bondholder.

#### ***Compliance with certain requirements in connection with income payments***

Section 4 of article 56 of Regional Decree 47/2003 establishes in respect of Bonds that met the conditions set in forth in Additional Provision One of Law 10/2014, which are registered originally in a compensation and liquidation entity domiciled within the Spanish territory that, (i) the entities maintaining the bonds in its third parties accounts, and (ii) entities managing the bonds compensation and liquidation systems established in a foreign country which have signed an agreement with such compensation and liquidation entity domiciled within the Spanish territory, shall file before the issuer a statement which will include:

- (a) Identification of the Bonds;
- (b) Income payment date;

- (c) Total amount of the income paid by the Issuer;
- (d) Amount of the income corresponding to individual residents in Spain that are PIT taxpayers; and
- (e) Amount of the income that must be paid on a gross basis.

Income corresponding to non-residents without a permanent establishment in Spain, to taxpayers of Corporate Income Tax and to non-residents with permanent establishment in Spain, will be paid on its gross amount.

In the same manner, income corresponding to the balance registered in the own account of the depositary entities will be also paid on its gross amount.

According to the wording of section 6 of article 56 after the aforesaid legal modification, such statement will be submitted the working day prior to the maturity date of the interests, taking into account the situation at the end of the market of the mentioned day. Such statement could be presented through electronic processes.

The lack of submission of the statement referred to in article 56, by any of the obliged entities, at the date foreseen in first paragraph of article 56.6 would imply that for the issuer or its authorized paying agent, the obligation of paying the interest corresponding to such entity on its net amount resulting after deducting withholding taxes at the general tax rate over the total amount of such interest. Subsequently, if the obliged entity submits the statement established in article 56 prior to the 10th day of the month following to the month when the maturity of the interest derived from the Bonds takes place, the issuer or its authorized paying agent will refund the exceeded withholding.

All the above will be applicable notwithstanding the general obligations of information established by the tax legislation for the issuers and financial intermediaries being Spanish resident entities acting as depositaries of the bonds regarding taxpayers of Personal Income Tax, Corporate Income Tax and Non Resident Income Tax acting through permanent establishment in Spain, being holders of the securities according to the registers of such entities.

***Prospective investors should note that the Issuer does not accept any responsibility relating to the lack of delivery of a duly executed and completed Payment Statement in connection with each payment of income under the Bonds. Accordingly, the Issuer will not be liable for any damage or loss suffered by any Bondholder who would otherwise be entitled to an exemption from Spanish withholding tax but whose income payments are nonetheless paid net of Spanish withholding tax because the Payment Statement was not duly delivered to the Issuer. Moreover, the Issuer will not pay any additional amounts with respect to any such withholding tax.***

## GENERAL INFORMATION

- (a) It is expected that the Bonds to be issued under this Programme will be admitted to trading on the Multilateral Trading System known as Alternative Fixed Income Market (*Mercado Alternativo de Renta Fija* or MARF). Application will be made to MARF for the Bonds to be admitted to trading on this multilateral trading system operated by the Spanish AIAF Fixed Income Securities Market (AIAF) in accordance with the rules of such system.
- (b) The Issuer has obtained all necessary consents, approvals and authorisations in the Kingdom of Spain in connection with the issue of the Bonds. The issue of the Bonds was authorised by resolutions of the board of directors of the Issuer passed on 24 May 2017.
- (c) Save as described under the section of this Information Memorandum headed “*Description of the Issuer-Tribunal Administrative and arbitration proceedings*”, the Issuer is not involved in any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) during the 12 months preceding the date of this Information Memorandum which may have or have had in the recent past significant effects on the financial position or profitability of the Issuer.
- (d) The clearance of Bonds to be issued under the Programme will be made through Iberclear systems (which are the entities in charge of keeping the records).

The address of Iberclear is Plaza de la Lealtad, 1, 28014 Madrid, Spain.

- (e) Where information in this Information Memorandum has been sourced from third parties, this information has been accurately reproduced and, as far as the Issuer is aware and is able to ascertain from the information published by such third parties, no facts have been omitted which would render the reproduced information inaccurate or misleading. The source of third-party information is identified where used.
- (f) For a period of 12 months starting on the date of this Information Memorandum, copies of the following documents will be available, during usual business hours on any weekday (Saturdays and public holidays excepted), at the office of the Issuer:
  - (i) the Security Documents;
  - (ii) the Agency Agreement;
  - (iii) the Account Bank Agreement;
  - (iv) the Direct Agreements;
  - (v) the Common Terms Agreement;
  - (vi) the Intercreditor Agreement;
  - (vii) the Base Case;
  - (viii) the Financial Model;
  - (ix) the constitutional documents of the Issuer;
  - (x) a copy of this Information Memorandum together with any supplement to this Information Memorandum or further Information Memorandum; and
  - (xi) each private issuance document (*documento privado de emisión*).
- (g) Costs of all legal, financial and audit services and other costs to the Issuer and placement costs and, if necessary, underwriting costs, originated by the Issuer, placement and admission (*incorporación*):



€1,828,000

- (h) The Issuer may provide each Bondholder with access to the Investor Website (by providing both a link to the Investor Website and a password) upon proof (in substantially the form required by the Agency Agreement) from such Bondholder that it is a holder of the Bonds.

## **SIGNATURES**

In witness to their knowledge and approval of the contents of this Information Memorandum drawn up according to Circular 1/2015 of MARF, dated 5 October and its related regulations, it is hereby signed by, this Information Memorandum is hereby signed by Mrs. María Jesús Ramírez acting as attorney of the Issuer, in Madrid, on 1 June 2017.

---

Mr. María Jesús Ramírez

**Registered Office of the Issuer**

**Ekondakin Energía y Medioambiente, S.A.**

Paseo de Errotaburu, nº1, 5ª

San Sebastián

**Commissioner**

**Bondholders, S.L.**

**Security Agent and Common Agent**

**Banco Bilbao Vizcaya Argentaria, S.A.**

**Legal Advisers**

*To the Issuer*

*To the Bondholders*

**Cuatrecasas**

Almagro 9  
28010 Madrid  
Spain

**Gómez-Acebo & Pombo**

Castellana 216  
28046 Madrid  
Spain

**Registered Adviser**

**Intermoney Valores, S.V. S.A.**

Príncipe de Vergara 131, 3rd floor  
28002 Madrid,  
Spain

**SCHEDULE 1**  
**FINAL CONDITIONS**

**[DENOMINATION OF THE ISSUE]**

**[TOTAL VOLUME OF THE ISSUE]**

Issued under the Information Memorandum ("*Documento de Base Informativo de Incorporación*") registered with MARF on June 1, 2017.

These Final Conditions (the "**Final Conditions**") are complemented with the Documento Base Informativo de Incorporación registered with the Alternative Fixed-Income Market ("**MARF**") on [●] and available on the webpage of MARF, and should be read in any case jointly with such document.

These Final Conditions include the information required by Annex 1-C of Circular 1/2015 of MARF.

The securities described in these Final Conditions are issued by Ekondakin Energía y Medioambiente, S.A., with registered office at San Sebastián, in Paseo de Errotaburu, nº1, 5ª (the "**Issuer**").

The Bonds issued under these Final Conditions are within the maximum nominal amount of the Programme.

Mr. [●], in the name and on behalf of the Issuer, acting as [●], is responsible for the entire contents of this Final Conditions.

**1. DESCRIPTION, CLASS AND CHARACTERISTICS OF THE BONDS ISSUED**

**A. MAIN CHARACTERISTICS**

1. Nature and denomination of the Bonds:

- Denomination of the issue: [●]
- ISIN code: [●]
- [If the issue is fungible with another previous issue, state so here]

2. Currency of the issue: Euros

3. Nominal and effective amount of the issue:

- Number of Bonds: [●]
- Nominal Amount: [●]
- Effective Amount: [●]

4. Nominal and effective amount of the Bonds:

- Unitary nominal amount: 100,000
- Effective amount: [●]
- Issue Price: [●]%

5. Issue Date: [●]

6. Disbursement Date: [●]

7. Interest rate: Fixed

8. Final Maturity: 30 May 2047

9. Options of early amortization:

- For the Issuer: yes
  - For the investor: [yes / no]
10. Admission to listing of the securities: MARF
11. Representation of the securities: [account entries managed by Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. (IBERCLEAR), located at Plaza de la Lealtad nº 1, Madrid/ Others]
- B. INTEREST RATE AND AMORTIZATION**
12. Fixed interest rate: [●]%
- Date of commencement of accrual of interest: [●]
  - Interest payment dates: [●]
  - Irregular period / amount: [●]
  - Base Calculation: [●]
  - Day Count Fraction: Actual/Actual ICMA unadjusted basis
13. Amortization of the Bonds:
- Maturity Date: 30 May 2047
  - Amortization Price: [●]
  - Early amortization by the Issuer: Yes
- C. ADDITIONAL INFORMATION**
14. Representation of the bondholders: Bondholders, S.L.
15. Paying Agent: Banco Bilbao Vizcaya Argentaria, S.A
16. Relevant Calendar: [●]
17. Rating: [●]

## **2. ISSUE AGREEMENTS OF THE SECURITIES AND ON THE CONSTITUTION OF THE SYNDICATE OF BONDHOLDERS**

Pursuant to the Documento Base Informativo de Incorporación under which this issue of Bonds is made and according to the rules and Regulations established therein in relation to the constitution of the Syndicate of Bondholders, for this issue of bonds a Syndicate of Bondholders has been constituted, called “Ekondakin Energía y Medioambiente, S.A. Senior Secured Bonds Programme’s Syndicate of the Bondholders”.

Bondholders, S.L. through the signing of these Final Conditions, accepts its appointment as Commissioner of the Syndicate of Bondholders, having the powers attributed to him in the Regulations included in the Documento de Base Informativo de Incorporación.

### **3. AGREEMENTS ON ISSUANCES AND ADMISSION TO TRADING**

The admission to trading will be requested of the Bonds described in these “Final Conditions” on MARF and their listing is ensured within a period of less than one month as from the date of disbursement and within the validity period of the Programme.

These Final Conditions include the information necessary for the admission to listing of the securities on the market mentioned above.

Settlement will take place through [Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U., (IBERCLEAR)/ other depositaries to be stated here].

Signing on behalf of the Issuer; Mr. [NAME AND SURNAMES], acting as [POSITION], by virtue of the [TYPE OF EMPOWERMENT AND DATE THIS WAS GRANTED] and in the name and on behalf of the Issuer, with address at [●].

## SCHEDULE 9.8

### BUDGET

BUDGET		2 020
<b>Total Operational Income</b>		<b>33 718 796</b>
Availability income		24 564 060
Demand related Income		2 741 334
Electricity Income		6 413 402
<b>Total Operational Expenses</b>		<b>(12 259 957)</b>
SPV Costs (including Insurances)		(1 718 485)
O&M Expenses		(9 430 294)
Replacements and Major Maintenance		(1 111 178)
<b>Operational CF</b>		<b>21 458 839</b>
Taxes (including Corporate Taxes)		(2 515 472)
Contingencies		-
<b>Cash Flow available</b>		<b>18 943 367</b>

\* Please note that the amounts in this template are only indicative and they don't constitute any real budget  
The real figures will be included in accordance with the Finance Documents at the required time

## SCHEDULE 11.2

### FORM OF COMPLIANCE CERTIFICATE

**To:** **BANCO BILBAO VIZCAYA ARGENTARIA, S.A.** (as Common Agent and Security Agent) and **BONDHOLDERS S.L.** (as Commissioner)

**From:** **EKONDAKIN ENERGÍA Y MEDIOAMBIENTE, S.A.** (as Concessionaire)

**Date:** [\*]

**Re:** **Compliance Certificate under Common Terms Agreement**

Dear Sirs,

Reference is made to the Common Terms Agreement dated 31 May 2017 among EKONDAKIN ENERGÍA Y MEDIOAMBIENTE, S.A. (as **Concessionaire**), NATIXIS S.A., SUCURSAL EN ESPAÑA KDB BANK EUROPE LTD. SIEMENS BANK GMBH AG INSURANCE SA/NV *CREDIT INDUSTRIEL ET COMMERCIAL*, S.A. (as **Lenders**), BONDHOLDERS S.L. (as **Commissioner**) and BANCO BILBAO VIZCAYA ARGENTARIA, S.A. (as **Security Agent** and **Common Agent**) and raised into public status before the Notary Public of Madrid, Mr. Fernando Sánchez-Arjona, under the number [•] of his official records (the “**Common Terms Agreement**”).

Capitalized terms used in this certificate and not otherwise defined herein shall have the meaning attributed to them in the Common Terms Agreement.

This Compliance Certificate is delivered pursuant to Clause 8.2 of the Common Terms Agreement with respect to [30 June/31 December] [\*] (the “**Calculation Date**”).

We hereby confirm that, on the Calculation Date:

- (i) the Historic Debt Service Coverage Ratio in respect of the Relevant Period ending on (and including) the Calculation Date was [\*], being [compliant/non-compliant] with the minimum Historic DSCR required under the Permitted Distribution Test;
- (ii) the Debt Life Coverage Ratio in respect of the Relevant Period commencing on (but excluding) the Calculation Date was [\*], being [compliant/non-compliant] with the minimum DLCR required under the Permitted Distribution Test;
- (iii) the level of the MRA Required Balance was [\*], being the balance of the MRA [\*];
- (iv) the level of the DSRA Required Balance was [\*], being the balance of the DSRA [\*];
- (v) [all requirements and conditions of the Permitted Distribution Test have been met/the following requirements and conditions of the Permitted Distribution Test have not been met: [\*]]; and



(vi) the Distributable Amount was [\*].

We set out in Schedule I hereto the computations (in reasonable detail) made in respect of the calculation of the Ratios and other amounts set forth above.

We hereby also confirm that:

- (i) the contents of this Compliance Certificate are accurate in all material respects as at the date hereof;
- (ii) each of the Ratios and other amounts included in this Compliance Certificate has been calculated in accordance with the requirements, terms and conditions of the Finance Documents; and
- (iii) no Default has occurred or is continuing.

Yours faithfully,

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EKONDAKIN ENERGÍA Y MEDIOAMBIENTE, S.A.

By: *[Name of Authorised Officer]*

## SCHEDULE 22.9

### FORM OF CERTIFICATE OF COMPLETION OF THE RELEVANT MILESTONES

To: **BANCO BILBAO VIZCAYA ARGENTARIA, S.A.** (as Common Agent and Security Agent)

From: **G-ADVISORY CONSULTORÍA TÉCNICA, ECONÓMICA Y ESTRATÉGICA, S.L.P.** (as Technical Adviser)

Date: [●]

Re: **Certificate regarding the completion of milestones under the Project Documents.**

Dear Sirs,

Reference is made to the Common Terms Agreement dated [\*] among EKONDAKIN ENERGÍA Y MEDIOAMBIENTE, S.A. (as **Issuer**), [•] [•] [•] (as **Lenders**), BONDHOLDERS S.L. (as **Commissioner**) and BANCO BILBAO VIZCAYA ARGENTARIA, S.A. (as **Security Agent** and **Common Agent**) and raised into public status before the Notary Public of Madrid, Mr. Fernando Sánchez-Arjona, under the number [•] of his official records (the “**Common Terms Agreement**”).

Capitalized terms used in this certificate and not otherwise defined herein shall have the meaning attributed to them in the Common Terms Agreement.

We hereby confirm that the following milestone, identified in Schedule 3-A of the EPC Contract, has been validated on [date]:

**Milestone:** [\_\_\_\_\_]

**Completed:** [YES/NO]

Yours faithfully,

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**G-ADVISORY CONSULTORÍA TÉCNICA,  
ECONÓMICA Y ESTRATÉGICA, S.L.P.**

By: [Name of Authorised Officer]

## **SCHEDULE 25.1 REGULATIONS**

These regulations (the “**Regulations**”) that follow correspond to the syndicate of bondholders of the bonds issued or to be issued under the issuance programme (the “**Programme**”) incorporated by Ekondakin Energía y Medioambiente, S.A. (the “**Issuer**”) in MARF on [•].

### **TITLE I**

#### **INCORPORATION, NAME, PURPOSE, ADDRESS AND DURATION FOR THE SYNDICATE OF BONDHOLDERS.**

##### **Article 1. Incorporation**

In accordance with the provisions of Chapter IV of the Spanish Royal Legislative Decree 1/2010, of 2 July 2010, approving the Spanish Capital Companies Act (“*Real Decreto Legislativo 1/2010, de 2 de julio, que aprueba el texto refundido de la Ley de Sociedades de Capital*”) (the “**Spanish Capital Companies Act**”), once the Bonds issued under the first Issuance have been fully subscribed and paid up, a syndicate of the owners of the Bonds shall be incorporated (the “**Syndicate**” and the “**Bondholders**”, respectively).

This Syndicate shall be governed by these Regulations, by the Spanish Capital Companies Act, by the applicable provisions of the articles of association the Issuer and other applicable legislation.

##### **Article 2. Name**

The Syndicate shall be named “Ekondakin Energía y Medioambiente, S.A. Senior Secured Bonds Programme’s Syndicate of the Bondholders”.

##### **Article 3. Purpose**

This Syndicate is formed for the purpose of representing and protecting the lawful interest of the Bondholders before the Issuer, by means of the exercise of the rights granted by the applicable laws, the Bonds issued under the Programme and these Regulations, to exercise and preserve them in a collective way and under the representation determined by these Regulations.

##### **Article 4 Address**

The address of the Syndicate shall be located at San Sebastián, in Paseo de Errotaburu, n1, 5..

However, the Bondholders General Meeting is also authorised to hold a meeting, when considered convenient, in any other place in Madrid that is specified in the notice convening the meeting.

##### **Article 5 Duration**

This Syndicate shall be in force until the Bondholders have been reimbursed for any rights deriving from the Bonds they may hold for the principal, interest or any other concept, or until the redemption of all the Bonds takes place according to the Programme or the relevant Final Conditions.

### **TITLE II**

#### **SYNDICATE’S REGIME**

##### **Article 6. Syndicate management bodies**

The Management bodies of the Syndicate are:

(a) The General Meeting of Bondholders (the “**General Meeting**”).

(b) The Commissioner appointed by the Bondholders (the “**Commissioner**”).

#### **Article 7. Legal nature**

The General Meeting, duly called and constituted, is the body of expression of the Bondholders’ will, subject to the provisions of these Regulations, and its resolutions are binding for all the Bondholders in the way established by the Law, provided that such resolutions have been taken in accordance with the provisions set forth herein.

#### **Article 8. Convening meetings**

The General Meeting shall be convened by the Board of Directors of the Issuer or by the Commissioner, whenever they may deem it convenient.

Notwithstanding the above, the Commissioner shall convene a General Meeting when Bondholders representing at least (i) 25% of the total nominal amount of the Bonds issued under the Programme or (ii) the minimum established by law, formally request it in writing specifying the purpose and the agenda to be discussed. In such case, the General Meeting shall be held within fifteen (15) days following the receipt by the Commissioner of a valid written notice for this purpose.

Remote attendance at the General Meeting using electronic methods (including video conference) that guarantee the Bondholder’s identity is allowed if the Issuer, at the discretion of the governing body, provides those methods. For that aim, the notice of the meeting must describe the time frame, and how the Issuer will allow Bondholders to exercise such rights and ensure the meeting is conducted in a correct manner. Specifically, the Issuer may require the Bondholders attending the meeting electronically to send the opinions and proposals they plan to raise with the Issuer before the meeting date.

#### **Article 9. Procedure for convening meetings**

The General Meeting shall be convened at least (i) fifteen (15) Business Days before the date set for the meeting, or (ii) within the term established by law; by (a) notice published in the web page of the Issuer and Relevant Fact (*Hecho Relevante*) in MARF, or (b) notice published in the Official Gazette of the Mercantile Registry and, if considered convenient, in one or more newspapers of significant national or international circulation, or (c) notice to the Bondholders in accordance with the terms and conditions of the Bonds.

The term shall count from the date on which the notice is published or from the date on which the notice is communicated to the last Bondholder, as applicable. The term shall not include the day on which the notice is published or communicated, nor the day on which the General Meeting takes place.

In any case, the notice shall contain the name of the Issuer and of the Syndicate, the place and date of the meeting, at both first and second calls, with at least a 24-hour period between one call and the other, the matters to be discussed and the way in which the ownership of the Bonds shall be credited in order to have the right to attend the General Meeting.

Nevertheless, the General Meeting shall be deemed validly constituted to conduct any business within the remit of the Syndicate if Bondholders representing all the outstanding Bonds are present or duly represented, and provided that they unanimously approve the holding of such meeting and the agenda.

#### **Article 10. Right to attend meetings**

Bondholders who had such condition at least five (5) days prior to the date on which the meeting is scheduled, shall have the right to attend the meeting.

The members of the Board of Directors of the Issuer, the Common Agent and the Security Agent (as these terms are defined in the Programme) shall have the right to attend the meeting even if they have not been requested to attend.

#### **Article 11. Right to be represented**

All Bondholders having the right to attend the meetings also have the right to be represented by another Bondholder. Furthermore, every Bondholder with the right to attend the meetings may, in case it is unable to delegate its representation to another Bondholder, be represented by another person, including the Commissioner, the Common Agent or the Security Agent, but under no circumstances shall be represented by any directors of the company, even if they are Bondholders. Appointment of a proxy must be in writing and only for each particular meeting.

#### **Article 12. Requirements for the approval of resolutions: majorities and quorums**

- (1) The General Meeting shall approve the resolutions by the majority of the votes issued in such meeting. Such General Meeting shall be validly constituted when Bondholders representing 50% of the outstanding Bonds at the first call and 25% of the outstanding Bonds at the second call attended to it.
- (2) As an exception, matters which have the condition of Unanimity Decisions (as this term is defined in the Programme) shall be approved by each Bondholder.
- (3) In case the Secured Parties intend to deliver an Enforcement Instruction to the Security Agent, the following rules shall be applicable:
  - (i) The quorum for any meeting to consider the delivery of an Enforcement Instruction to the Security Agent by the Bondholders, shall be one or more Bondholders holding or representing not less than (i) two thirds of the nominal amount of the Bonds for the time being outstanding (if the meeting is convened to be held before the date falling six months after the occurrence of the Event of Default that gives rise to the delivery of the Enforcement Instruction) or (ii) 50% of the nominal amount of the Bonds for the time being outstanding (if the meeting is convened to be held on or after the date falling six months after the occurrence of the Event of Default that gives rise to the delivery of the Enforcement Instruction).
  - (ii) Bondholders shall be deemed to have approved the delivery of an Enforcement Instructions to the Security Agent:
    - (A) in case of an Enforcement Instruction relating to the early termination of the Senior Debt Secured Documents, if approved in writing by one or more Bondholders holding or representing not less than two thirds of the nominal amount for the time being outstanding under the Senior Debt Secured Documents (or, if given at a meeting held on or after the date falling six months after the occurrence of the Event of Default that gives rise to the delivery of the Enforcement Instruction, by one or more Senior Creditors holding or representing not less than two thirds of the nominal amount for the time being outstanding under the Senior Debt Secured Documents and present at a duly convened meeting); and
    - (B) any other Enforcement Instruction shall be duly given if approved in writing by one or more Secured Parties holding or representing not less than two thirds of the nominal amount for the time being outstanding under the Secured Agreements (or, if given at a meeting held on or after the date falling six months after the occurrence of the Event of Default that gives rise to the delivery of the Enforcement Instruction, by one or more Secured Parties holding or representing not less than two thirds of the nominal amount for the time being outstanding under the Secured Agreements and present at a duly convened meeting);

#### **Article 13. Voting right**

In the meetings of the General Meeting one vote shall be conferred to each Bond present or represented. In any case, if the notice convening the meeting of the General Meeting of Bondholders foresees it, the vote shall be enforced by means of remote communication, including ordinary mail or telematics means as long as (a) the identity of the Bondholder exercising its voting right is duly accredited and (b) it is recorded by any means.

#### **Article 14. President of the general meeting**

The Commissioner shall be the president of the General Meeting or, when applicable, the person appointed by the General Meeting of Bondholders, shall chair the discussions, shall have the right to bring the discussions to an end when he considers it convenient and shall arrange for matters to be put to the vote. Furthermore, given the case, the attendants shall appoint a person to act as secretary of the General Meeting.

#### **Article 15. Attendance list**

Before discussing the agenda for the meeting, the Commissioner shall form the attendance list, stating the nature and representation of each of the Bondholders present and the outstanding amount under the Bonds at the meeting, both directly owned and/or represented.

#### **Article 16. Power of the general meeting**

The General Meeting may pass resolutions necessary for the best protection of Bondholders' lawful interests vis-à-vis the Issuer; to modify, in accordance with the Issuer, the terms and conditions of the Bonds, being those modifications essential or non-essential; to dismiss or appoint the Commissioner; to exercise, when appropriate, the corresponding legal claims and to approve the expenses caused by the defence of the Bondholders' interest.

Additionally, the General Meeting, represented by the Commissioner, shall start the enforcement of the Security Interest (as this term is defined in the Programme) granted in favour of the Bonds, in accordance to the terms and conditions of the Bonds and the Security Documents.

#### **Article 17. Challenge of resolutions**

The resolutions of the General Meeting may be challenged by the Bondholders in accordance with provisions of the Spanish Capital Companies Act regarding the challenge of corporate resolutions.

#### **Article 18. Minutes**

The minutes of the meeting may be approved by the General Meeting, after the meeting has been held or, if not, and within a term of fifteen (15) days by the Commissioner and at least one Bondholder appointed for such purpose by the General Meeting.

#### **Article 19. Certificates**

The certificates of the minutes shall be issued by the Commissioner.

#### **Article 20. Individual exercise of actions**

The Bondholders will only be entitled to individually exercise judicial or extra judicial claims if such claims do not contradict the resolutions previously adopted by the Syndicate, within its powers, and are compatible with the faculties conferred upon the Syndicate.

#### **Article 21. Expenses of the Syndicate**

The ordinary expenses resulting from the maintenance of the Syndicate shall be for the account of the Issuer, but they will not exceed, in any year, an amount of two per cent. (2%) of the annual interests accrued by the Bonds.

### **TITLE III**

### **THE COMMISSIONER**

**Article 22. Nature of the Commissioner**

The Commissioner shall bear the legal representation of the Syndicate and shall be the body for liaison between the Syndicate and the Issuer.

**Article 23. Appointment and duration of the office**

Notwithstanding the appointment of Bondholders, S.L. as Commissioner by the Issuer, the General Meeting shall appoint other person if it deems it necessary. The retribution of the Commissioner shall be established and borne by the Issuer.

**Article 24. Faculties**

The Commissioner shall have all the faculties necessary to protect the common interest of the Bondholders and those granted to it by the Spanish Companies Act, as well as any other applicable regulation. Among others, the Commissioner shall have the following faculties:

- (i) to call and act as president of the General Meeting, if applicable;
- (ii) to inform the Issuer of the resolutions passed by the Syndicate;
- (iii) to control the payment of the principal and the interest;
- (iv) to carry out all those actions provided for in the terms and conditions of the Bonds to be carried out or that may be carried out by the Commissioner;
- (v) to execute the resolutions of the General Meeting;
- (vi) to exercise the actions against the Issuer, the directors or liquidators; and
- (vii) to accept, on behalf of the Bondholders, any guarantees, including any security, granted in their favour and sign any other documents, public or private, related to such guarantees that may result necessary.