

DRAFT DATED 14 APRIL 2020
FOR DISCUSSION PURPOSES ONLY
SUBJECT TO COMMENTS AND REVIEW FROM LENDERS, RATING AGENCIES AND COUNSEL
SUBJECT TO MARKET DEVELOPMENTS, INCLUDING AROUND COVID-19

[•] 2020

ENEXIS HOLDING N.V.
as Borrower

THE SHAREHOLDERS
as the Lenders

**EUR 500,000,000 FIXED RATE
CONVERTIBLE SHAREHOLDER LOAN
FACILITY**

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THIS EUR 500,000,000 FIXED RATE CONVERTIBLE SHAREHOLDER LOAN FACILITY (the *Agreement*) is made on [●] 2020

BETWEEN:

- (1) **ENEXIS HOLDING N.V.**, a public company (*naamloze vennootschap*) incorporated under the laws of the Netherlands and registered with the Dutch Chamber of Commerce under number 17238877 (the **Borrower**); and
- (2) **THE SHAREHOLDERS** of the Borrower listed in Part A of Schedule 1 as Tranche A Lenders; and
- (3) **THE SHAREHOLDERS** of the Borrower acceding to this Agreement in accordance with the terms of this Agreement as Tranche B Lenders (together with the Shareholders referred to under (2) above, the **Lenders**).

IT IS AGREED:

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

Accession Deed means a document substantially in the form set out in Schedule 5 (*Form of Accession Deed*).

Arrears of Interest has the meaning provided in Clause 12.4.3;

Articles of Association means the articles of association (*statuten*) of the Borrower as amended from time to time;

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, registration or declaration;

Business Day means, a day (other than a Saturday or Sunday) on which banks are open for general business in the Netherlands;

Closing Agent means the province of Noord-Brabant;

Closing Date means:

- (a) in relation to the Tranche A Loan, 29 July 2020 (the **Tranche A Closing Date**); and
- (b) in relation to the Tranche B Loan, 30 November 2020 (the **Tranche B Closing Date**);

Commitment means the Tranche A Commitment or the Tranche B Commitment;

a **Compulsory Arrears of Interest Settlement Event** shall have occurred if a dividend (either interim or final), other distribution or payment was validly resolved on, declared, paid or made in respect of: (i) ordinary shares of the Borrower or any other Junior Securities; or (ii) any Parity Obligations, except where: (x) such dividend, other distribution or payment was required to be

resolved on, declared, paid or made in the form of ordinary shares of the Borrower; or (y) the Borrower is obliged under the terms of such Parity Obligations or Junior Securities to make such dividend, distribution or other payment;

Conversion Date has the meaning provided in in Clause 13.4.5;

Conversion Event means:

- (a) a downgrade of the Borrower's long term issuer credit rating below:
 - (i) A with S&P;
 - (ii) A2 with Moody's; or
 - (iii) a similar rating level with another credit rating agency that is recognized by the Dutch Central Bank (a **Recognized Credit Rating Agency**);
- (b) one of the credit ratings set out under (a) above being put under Credit Watch for a downgrade, or being subject to a similar rating action that could lead to a downgrade to a level one notch below A with S&P, A2 with Moody's or a downgrade from a similar rating level with a Recognized Credit Rating Agency; or
- (c) the Issuance Authorisation being declared null and void, revoked or having a remaining validity of 3 months or less.

Conversion Notice has the meaning provided in Clause 13.4.1;

Conversion Price has the meaning provided in Clause 13.1.1;

Conversion Right has the meaning provided in Clause 13.1.1;

Conversion Shares means the Ordinary Shares to be issued and delivered to the Lenders by the Borrower on the Settlement Date on and subject to the terms set out in Clause 13;

Credit Watch means the Borrower being included on a list of a Rating Agency or a Recognised Credit Rating Agency which signals that it may downgrade the Borrower's credit rating;

Deferred Interest Payment has the meaning given to it in Clause 12.4.1;

Deferral Notice has the meaning given to it in Clause 12.4.1;

Dutch Civil Code means *Burgerlijk Wetboek*;

Electricity Act 1998 means the Act of 2 July 1998 of The Netherlands, concerning the rules on production, transportation and supply of electricity (*Elektriciteitswet 1998*), as amended from time to time and most recently by the Act of 27 March 2019 amending the Electricity Act 1998 (Stb. 2019, 123) of The Netherlands;

Electricity Network means an electricity network (*net*) as described in Section 1, Subsection 1, sub i, of the Electricity Act 1998 which is owned and operated by one or more entities of the Group pursuant to Chapter 3 of the Electricity Act 1998;

Euro or € or EUR means the currency introduced at the start of the third stage of economic and monetary union pursuant to the Treaty establishing the European Community, as amended;

Event of Default means any event or circumstance specified as such in Clause 19 (*Events of Default*) or such other event or circumstance as the Borrower may agree in writing constitutes an Event of Default;

Excess Commitments means the aggregate of:

- (a) the difference between:
 - (i) the total commitments proposed by each Tranche A Lender in the Tranche A Commitment Proposals; and
 - (ii) the Maximum Tranche A Amount,to the extent (i) exceeds (ii); and
- (b) the difference between:
 - (i) the total commitments proposed by each Tranche B Lender in the Tranche B Commitment Proposals; and
 - (ii) the Maximum Tranche B Amount,to the extent (i) exceeds (ii).

Excess Commitments Confirmation means a letter substantially in the form of Schedule 8 (*Form of Excess Commitments Confirmation*);

Excess Lender means any Lender that has proposed to make available Excess Commitments;

Facility means the euro term loan made available under this Agreement as described in Clause 3 (*The Facility*);

Financial Indebtedness means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any acceptance credit;
- (c) any bond, note, debenture, loan stock or other similar instrument;
- (d) any redeemable preference share;
- (e) any balance sheet liabilities;
- (f) receivables sold or discounted (otherwise than on a non-recourse basis);

- (g) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset;
- (h) any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) will be used to calculate its amount);
- (i) any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing including, for the avoidance of doubt, any off-balance sheet financing arrangements;
- (j) any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution; or
- (k) any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in paragraphs (a) to (j) above other than (i) arising under a declaration of joint and several liability (*hoofdelijke aansprakelijkheid*) issued for the purpose of Article 2:403 Dutch Civil Code (and any residual liability (*overblijvende aansprakelijkheid*) under such declaration arising pursuant to Article 2:404(2) Dutch Civil Code) and (ii) any joint and several liability as a result of the establishment of a fiscal unity for corporate income tax of which the Borrower or any of the Borrower's Subsidiaries is the parent company (*moedermaatschappij*) or VAT purposes consisting solely of members of the Group;

First Reset Date means 30 November 2030;

Gas Act means the Act of 22 June 2000 of The Netherlands, concerning the rules on transportation and supply of natural gas (*Gaswet*), as amended from time to time and most recently by the Act of 27 March 2019 amending the Gas Act (Stb. 2019, 123) of The Netherlands;

Gas Network means a gas network (*gastransportnet*) as described in Section 1, Subsection 1, sub d, of the Gas Act which is owned and operated by one or more entities in the Group pursuant to paragraph 1.2 of the Gas Act;

Group means the Borrower and the Borrower's Subsidiaries taken as a whole and **member of the Group** shall be construed accordingly;

Heat Act means the Act of 17 June 2013 of The Netherlands, concerning rules on supply of heat (*Warmtewet*), as amended from time to time and most recently by the Act of 4 July 2018 amending the Heat Act (Stb. 2018, 311) of The Netherlands;

Heat Network an energy distribution network as defined in the Heat Act;

Hybrid Securities or **Hybrid Loans** means securities or loans that at the time of their sale or issuance have been and are continuing to be assigned “equity credit” (or such other nomenclature used by S&P from time to time);

Independent Valuation Opinion means the most recent opinion prepared on behalf of the Borrower at the start of each regulatory period applicable to the Borrower pursuant to the Sector Regulation, in accordance with, amongst other things, a valuation framework for purposes of valuating the Ordinary Shares, as included in Schedule 9 (*Valuation Framework*);

Independent Valuation Service Provider means an independent financial institution of international reputation, an independent accountancy firm of international standing or independent financial adviser with appropriate expertise, appointed by the Borrower in its sole discretion and at its own expense, **provided that** if the appointed valuation service provider does not finalise the valuation or significantly qualifies the valuation, the Borrower shall appoint a different valuation services provider in accordance with Clause 13.3;

Initial Allocated Commitments means the aggregate of the Initial Allocated Tranche A Commitments and the Initial Allocated Tranche B Commitments;

Initial Allocated Tranche A Commitments has the meaning given to it in Clause 6.1.2;

Initial Allocated Tranche A Commitments has the meaning given to it in Clause 6.2.2;

Initial Margin means:

- (a) in relation to a Tranche A Loan, [\bullet]% ([\bullet] per cent) per annum (the **Tranche A Initial Margin**), as confirmed by Deloitte Financial Advisory B.V. (*Deloitte*) to the Borrower in accordance with a calculation method agreed between the Borrower and the Shareholders prior to the date of this Agreement; and
- (b) in relation to a Tranche B Loan, a percentage per annum (the **Tranche B Initial Margin**) that is determined ultimately 7 Business Days prior to the Tranche B Closing Date on the basis of the calculation method used to determine the Tranche A Initial Margin. The underlying valuation report in relation to the Tranche B Initial Margin shall be shared by Deloitte with the Borrower, and the Borrower shall request Deloitte to share with the Lenders, ultimately 7 Business Days prior to the Tranche B Closing Date, a summary of the main findings of the valuation report in the form of a pricing report.

Interest Payment means in respect of an interest payment on an Interest Payment Date, the amount of interest payable for the relevant Interest Period applicable to a Loan;

Interest Payment Date means in relation a Loan, the last day of each Interest Period applicable to such Loan;

Interest Period means, in relation to a Loan, each period determined in accordance with Clause 12 (*Interest Periods*);

Interest Rate means:

- (a) for any year until the First Reset Date, the rate per annum agreed between the Borrower and the Lenders in accordance with Clause 11.2;
- (b) for any year from the First Reset Date, a rate per annum which shall be the aggregate of:
 - (i) the Margin; and
 - (ii) the applicable 10 Year Swap Rate,

provided that if such aggregate is less than zero, the interest rate shall be deemed to be zero;

Issuance Authorisation means the authority delegated to the management board of the Borrower in accordance with section 2:96 of the Dutch Civil Code to issue such number of ordinary shares as set out in the authorisation for the maximum statutory period of 5 years, as said authority is in place or renewed on a yearly basis;

Junior Securities means the Ordinary Shares, any preference shares in the capital of the Borrower and, if there are any preference shares outstanding, any other instruments outstanding which by their terms are expressed to rank *pari passu* with the preference shares, such instruments;

Lender means a Tranche A Lender or a Tranche B Lender;

Lender Committee means a committee of Lenders that may be installed by the Lenders in accordance with Clause 21;

Liquidation Preference means an amount equal to the aggregate outstanding principal amount of the Loan together with any accrued and unpaid interest up to the date of a winding-up of the Borrower;

Loan means the Tranche A Loan or the Tranche B Loan;

Majority Lenders means a Lender or Lenders whose Commitments aggregate more than $66 \frac{2}{3}$ per cent of the Total Commitment (or, if the Commitments have been reduced to zero, aggregated more than $66 \frac{2}{3}$ per cent of the Commitments immediately prior to that reduction);

Mandatory Settlement Date means the earlier of:

- (a) the date on which a Compulsory Arrears of Interest Settlement Event occurs; or
- (b) the date on which the Loans are repaid in accordance with Clause 9 (*Repayment*) or Clause 19 (*Events of Default*);

MAR means Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse;

Margin means:

- (a) in respect of the Reset Period commencing on the First Reset Date and ending on the Reset Date commencing on 30 November 2050, the aggregate of:
 - (i) the applicable Initial Margin; and
 - (ii) 0.25 per cent per annum; and
- (b) in respect of the Reset Period commencing on 30 November 2050 and ending on the Termination Date, the aggregate of:
 - (i) the applicable Initial Margin; and
 - (ii) 1.00 per cent per annum;

Maximum Tranche A Amount means EUR 500,000,000;

Maximum Tranche B Amount means EUR 500,000,000 less the Initial Allocated Tranche A Commitments;

Mitigation Period shall have the meaning given to such term in Clause 15.1.1;

Moody's means Moody's Investor Services Limited;

Optional Deferred Interest Settlement Date has the meaning provided in Clause 12.4.2;

Ordinary Shares means fully paid ordinary shares in the capital of the Borrower currently with a par value of €1 (one Euro) each;

Parity Obligations means any obligations of the Borrower which rank, or are expressed to rank, *pari passu* with the Loans;

Party means a party to this Agreement;

Pricing Report shall have the meaning given to such term in Clause 11.2.6;

Qualifying Loan means a loan that contains terms not materially less favourable to the Lenders than the terms of the Loan (as reasonably determined by the Borrower (in consultation with an independent investment bank or counsel of international standing)) and provided that a certification to such effect (and confirming that the conditions set out in (a) to (h) below have been satisfied) of two senior financial officers of the Borrower shall have been delivered to the Lenders prior to the substitution or variation of the relevant Loan upon which certificate the Lenders shall rely absolutely, provided that:

- (a) the qualifying loan shall be entered into by the Borrower;
- (b) the qualifying loan shall, upon a winding-up of the Borrower, rank *pari passu* with the Loan;
- (c) the qualifying loan shall contain terms which provide for at least the same interest rate from time to time applying to the Loan and preserve the same interest payment dates;

- (d) the qualifying loan shall preserve the obligations (including the obligations arising from the exercise of any right) of the Borrower as to prepayment of the Loan, including (without limitation) as to timing of, and amounts payable upon, such prepayment;
- (e) the qualifying loan shall preserve any existing rights to any accrued interest, any Deferred Interest Payment and any other amounts payable under the Loan which, in each case, has accrued to Lenders and not been paid;
- (f) the qualifying loan shall preserve the conversion mechanism and Issuance Authority mechanism agreed upon in this Agreement;
- (g) the qualifying loan shall not contain terms providing for loss absorption through principal write-down; and
- (h) the qualifying loan shall otherwise contain substantially identical terms to the Loans, save where any modifications to such terms are required to be made to avoid the occurrence or effect of a Rating Capital Event, a Tax Deductibility Event or, as the case may be, a Withholding Tax Event, provided that any such modifications required for Dutch tax purposes shall only be permitted if the Borrower has certified to the Lenders that it has consulted with and obtained written advice to this effect from a reputable tax advisor for purposes of such modifications;

Rating Agency means Moody's or any of its subsidiaries and their successors or S&P or any of its subsidiaries and their successors or any rating agency substituted for any of them (or any permitted substitute of them) by the Borrower from time to time;

Rating Capital Event means the Borrower having received confirmation from S&P that, as a result of a change, or proposed change, in its hybrid capital methodology or the interpretation thereof which becomes, or would become, effective on or after the date of this Agreement, the Loans will no longer be eligible for the same, or higher amount of, "equity credit" (or such other nomenclature as S&P may then use to describe the degree to which an instrument exhibits the characteristics of an ordinary share) attributed to the Loans at the Tranche A Closing Date or Tranche B Closing Date, as applicable, or, if later, at the time when S&P first publishes its confirmation of the "equity credit" attributed by it to the Loans;

Relevant Amount means, at any Relevant Time, the aggregate principal amount of the Borrower's outstanding Hybrid Securities and Hybrid Loans at that time;

Relevant Time means the time of the first prepayment after the applicable Closing Date or, if the aggregate principal amount of the Borrower's outstanding Hybrid Securities and Hybrid Loans have increased after the applicable Closing Date, the time of the first prepayment after the most recent increase;

Remaining Available Sum means the Total Commitments minus the Initial Allocated Commitments;

Repayment Date has the meaning given to it in Clause 9.1;

Repayment Notice has the meaning given to it in Clause 9.3;

Representation means each of the representations and warranties set out in Clause 17.1 (*Representations and warranties*);

Request means a request for a Loan, substantially in the form of Schedule 3 (*Form of request*);

Reset Date means the First Reset Date and each date falling on the tenth anniversary of the First Reset Date;

Reset Period means the period from one Reset Date to the next following Reset Date;

Reset Reference Bank Rate means the percentage rate determined by the Borrower and the Lender Committee (acting on the instructions of the Majority Lenders) jointly on the basis of the 10 Year Swap Rate Quotations provided by five leading swap dealers in the interbank market selected by the Borrower and the Lender Committee (the **Reset Reference Banks**) to the Borrower and the Lender Committee at approximately 11:00 a.m. (Central European time) on the relevant Reset Date. If (a) at least three quotations are provided, the 10 Year Swap Rate will be determined by the Borrower and the Lender Committee on the basis of the arithmetic mean (or, if only three quotations are provided, the median) of the quotations provided, eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest); (b) if only two quotations are provided, the Reset Reference Bank Rate will be the arithmetic mean of the quotations provided; (c) if only one quotation is provided, the Reset Reference Bank Rate will be the quotation provided; and (d) if no quotations are provided, the Reset Reference Bank Rate for the relevant period will be (i) in the case of each Reset Period other than the Reset Period commencing on the First Reset Date, the Reset Reference Bank Rate in respect of the immediately preceding Reset Period, or (ii) in the case of the Reset Period commencing on the First Reset Date, equal to the last available 10 year mid-swap rate for euro swap transactions, expressed as an annual rate, on the Reset Screen Page;

Sector Regulation means any mandatory regulatory requirement pursuant to EU or the Netherlands energy sector regulation, including but not limited to any mandated reorganisation, amalgamation, acquisition, disposal or consolidation of an Electricity Network and/or Gas Network and/or Heat Network;

Securities means any securities including, without limitation, shares in the capital of the Borrower, or options, warrants or other rights to subscribe for or purchase or acquire shares in the capital of the Borrower;

Selected Independent Valuation Service Provider has the meaning provided in Clause 13.3.1;

Senior Obligations means all obligations of the Borrower, issued directly or indirectly by it, other than: (i) Parity Obligations; and (ii) the share capital of the Borrower and any other instruments which by their terms are expressed to rank *pari passu* with the shares in the capital of the Borrower;

Substantial Repurchase Event shall be deemed to occur if prior to the giving of the relevant notice of prepayment the Borrower or any of its Subsidiaries repurchases (and effects corresponding cancellations) or prepays all Loans in respect of 80 per cent or more in the principal aggregate amount of the Loans;

Settlement Date means the date on which the Ordinary Shares are delivered on exercise of the Conversion Right;

Shareholders means the holders of Ordinary Shares in the capital of the Borrower from time to time;

S&P means Standard & Poor's Rating Services a division of the McGraw Hill Companies, Inc. or any successor to its rating business;

Subsidiary means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent of the voting capital or similar right of ownership and **control** for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise;

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

Tax Deductibility Event means the Borrower having sufficiently obtained an opinion in writing from a reputable law firm of good standing, a decision of the Dutch tax authorities and/or a court ruling to the effect that interest payments under the loan are not or will no longer be, tax-deductible by the Borrower for Dutch corporate income tax purposes;

"Tax Law Change" means a change in or proposed change in, or amendment or proposed amendment to, the laws or regulations of The Netherlands or any political subdivision or any authority thereof or therein having the power to tax corporate profits and dividends (*vennootschaps-en dividendbelasting*), including any treaty or convention to which The Netherlands is a party, or any change in the application or interpretation of such laws or regulations or any such treaty or convention, including a decision of any court or tribunal, or any interpretation or pronouncement by any relevant tax authority that provides for a position with respect to such laws or regulations or interpretation thereof that differs from the previously generally accepted and applied position in relation to similar transactions, which change or amendment becomes, or would become, effective on or after the Closing Date;

Termination Date means 30 November 2080;

Tranche A Commitment Proposal means a document substantially in the form set out in Schedule 6 (*Form of Tranche A Commitment Proposal*);

Tranche A Loan means the term loan facility made available under this Agreement on the Tranche A Closing Date;

Tranche A Commitments means, in relation to each Tranche A Lender, the amount set opposite its name in Part A of Schedule 1 (*The Lenders*) and the amount of any other Commitment transferred to it under this Agreement, in each case to the extent not cancelled, reduced or transferred by it under this Agreement;

Tranche A Lender means each Lender included in Part A of Schedule 1 (*The Lenders*) and each Shareholder which becomes a lender under the Tranche A Loan in accordance with Clause 5 (*Lender accessions*);

Tranche B Commitment Proposal means a document substantially in the form set out in Schedule 7 (*Form of Tranche B Commitment Proposal*);

Tranche B Loan means the term loan facility made available under this Agreement on the Tranche B Closing Date;

Tranche B Commitments means, in relation to each Tranche B Lender, the amount set opposite its name in Part B of Schedule 1 (*The Lenders*) and the amount of any other Commitment transferred to it under this Agreement, in each case to the extent not cancelled, reduced or transferred by it under this Agreement;

Tranche B Lender means each Lender included in Part B of Schedule 1 (*The lenders*) and each Shareholder which becomes a lender under the Tranche B Loan in accordance with Clause 5 (*Lender accessions*);

Transfer Certificate means a certificate, substantially in the form of Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Majority Lenders and the Borrower;

Total Commitments means the aggregate of the Commitments being EUR 500,000,000 as at the date of this Agreement;

Unpaid Sum means any sum due and payable but unpaid by the Borrower under this Agreement;

Utilisation means the utilisation of a Loan under the Facility;

Utilisation Date means each date on which the Facility is utilised.

Withholding Tax Event means an event that shall be deemed to occur if as a result of a Tax Law Change, in making any payments on any of the Loans, the Borrower has paid or will or would on the next Interest Payment Date be required to pay Additional Amounts on any of the Loans and the Borrower cannot avoid the foregoing in connection with the Loans by taking reasonable measures available to it;

10-year Swap Rate means, in respect of any Reset Period, the mid-swap rate expressed as an annual rate for swap transactions in euro with a term of 10 years commencing on the relevant Reset Date as displayed on Reuters screen "ICESWAP2" or, if such rate is not displayed on such screen as at the relevant

time, the mid-swap rate expressed as an annual rate for swap transactions in euro with a term of 10 years commencing on the relevant Reset Date as displayed on such other page or service as the Borrower and the Lender Committee (acting on the instructions of the Majority Lenders) jointly determine may replace it for the purposes of displaying swap rates of leading reference banks for swaps in euro (in each case, the **Reset Screen Page**) as at 11:00 a.m. (Central European time) on the relevant Reset Date. In the event that the relevant 10 Year Swap Rate does not appear on the Reset Screen Page on the relevant Reset Date, the 10 Year Swap Rate will be the Reset Reference Bank Rate on such Reset Date;

10 Year Swap Rate Quotations means, in relation to any Reset Period, the arithmetic mean of the bid and offered rates for the annual fixed leg (calculated on a 30/360 day count basis) of a fixed-for-floating euro interest rate swap which (i) has a term of ten years commencing on the relevant Reset Date, (ii) is in an amount that is representative of a single transaction in the relevant market at the relevant time with an acknowledged dealer of good credit in the swap market, and (iii) has a floating leg based on the 6-month EURIBOR rate (calculated on the basis of the actual number of days elapsed and a year of 360 days) or, if the 6-month EURIBOR rate is no longer being calculated or administered as at the relevant Reset Date, any alternative rate which has replaced EURIBOR in customary market usage for the purposes of determining floating rates of interest in respect of euro-denominated securities, as determined by an independent financial adviser of international reputation or an independent financial adviser with appropriate expertise (the **IFA**) appointed by the Borrower in its sole discretion. The alternative rate will be notified to the Borrower by the IFA, and promptly thereafter by the Borrower to the Lenders, provided however, that if the IFA determines, in good faith and following consultation with the Borrower, that there is no clear market consensus as to whether any rate has replaced EURIBOR in customary market usage for the purposes of determining floating rates of interest in respect of euro-denominated securities, the IFA may determine an appropriate alternative rate, and the decision of the IFA will be binding on the Borrower, the Lender Committee and the Lenders. If the IFA is unable to determine an appropriate alternative rate, the Reset Reference Bank Rate for the relevant period will be (i) in the case of each Reset Period other than the Reset Period commencing on the First Reset Date, the Reset Reference Bank Rate in respect of the immediately preceding Reset Period, or (ii) in the case of the Reset Period commencing on the First Reset Date, equal to the last available 10 year mid-swap rate for euro swap transactions, expressed as an annual rate, on the Reset Screen Page; and

12-Year Swap Rate means, in respect of any Reset Period, the mid-swap rate expressed as an annual rate for swap transactions in euro with a term of 12 years commencing on the relevant Reset Date as displayed on Reuters screen “ICESWAP2” or, if such rate is not displayed on such screen as at the relevant time, the mid-swap rate expressed as an annual rate for swap transactions in euro with a term of 12 years commencing on the relevant Reset Date as displayed on the **Reset Screen Page** as at 11:00 a.m. (Central European time) on the relevant Reset Date. In the event that the relevant 12 Year Swap Rate

does not appear on the Reset Screen Page on the relevant Reset Date, the 12 Year Swap Rate will be established by the Borrower and the Lender Committee (acting on the instructions of the Majority Lenders) in accordance with the mechanics applicable to the 10 Year Swap Rate.

1.2 Construction

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

- (a) the list of contents and headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (b) “Clauses” and “Schedules” are to be construed as references to the clauses of, and schedules to, this Agreement;
- (c) the words “include(s)”, “including” and “in particular” shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (d) the expression “this Clause” shall, unless followed by reference to a specific provision, be deemed to refer to the whole clause (not merely the clause, paragraph or other provision) in which the expression occurs;
- (e) any “assignee” of a person shall include any person who has assumed all or some of the rights and/or obligations of the relevant person, whether by assignment, novation or otherwise;
- (f) “in writing” means any communication made by letter or fax;
- (g) “assets” includes revenues, property and rights of every kind, present, future, actual and contingent and whether tangible or intangible (including uncalled share capital);
- (h) the words “other” and “otherwise” shall not be construed ejusdem generis with any preceding words where a wider construction is possible;
- (i) words importing the “plural” shall include the “singular” and vice versa and words importing genre shall include any genre;
- (j) any “person” or “Person” includes one or more of that person’s assigns, transferees, successors in title, delegates, sub-delegates and appointees (in the case of a Party, in so far as such assigns, transferees, successors in title, delegates, sub-delegates and appointees are permitted) and any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality);

- (k) a “regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law, but if not having the force of law, only if the persons to whom it is intended to apply generally comply with it) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (l) any “statute” or “statutory provision” includes any statute or statutory provision which amends, extends, consolidates or replaces it, or which has been amended, extended, consolidated or replaced by it, and any orders, regulations, instruments or other subordinate legislation made under it; and
- (m) this “Agreement” or any other agreement or instrument is a reference to the Agreement or other agreement or instrument as amended, varied, novated, supplemented or replaced from time to time.

1.2.2 Unless the contrary intention appears, a reference to a “month” or “months” is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) if the numerically corresponding day is not a Business Day, the period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in that month in which that period is to end, that period shall end on the last Business Day in that month; and
- (c) notwithstanding paragraph (a) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.

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

1.2.3 Unless the contrary intention appears, a reference to a “year” or “years” is a reference to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar year, except that:

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

- (b) if there is no numerically corresponding day in the calendar year in which that period is to end, that period shall end on the last Business Day in that calendar year; and
- (c) if an Interest Period begins on the last Business Day of a calendar year, that Interest Period shall end on the last Business Day in the calendar year in which that Interest Period is to end.

The above rules 1.2.3 to (c) will only apply to the last Year of any period.

1.2.4 Section, clause and schedule headings are for ease of reference only.

1.3 **Third party rights**

1.3.1 Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right to enforce or to enjoy the benefit of any term of this Agreement.

1.3.2 Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.4 **Dutch terms**

In this Agreement, a reference to:

1.4.1 a “necessary action to authorise” includes without limitation, where applicable, compliance with any requirements of *Wet op de ondernemingsraden* (Works Councils Act of The Netherlands);

1.4.2 a “winding-up”, “administration” or “dissolution” includes a Dutch entity being:

- (a) declared bankrupt (*failliet verklaard*);
- (b) dissolved (*ontbonden*);

1.4.3 any “step or procedure” taken in connection with insolvency proceedings includes a Dutch entity having filed a notice under section 36 of the *Invorderingswet 1990* (Tax Collection Act of The Netherlands); and

1.4.4 a “merger” includes a *juridische fusie*.

2. **Subordination**

2.1.1 In the event of the winding-up, liquidation or dissolution of the Borrower, the Lenders shall be entitled to claim a cash payment equal to the Liquidation Preference. Such claim of the Lenders under the Facility shall rank:

- (a) junior to the Senior Obligations;
- (b) *pari passu* with the Parity Obligations; and

(c) senior only to the Junior Securities.

2.1.2 Accordingly, no amounts shall be payable in such winding-up, liquidation or dissolution of the Borrower in respect of the Facility unless all the claims of all other Senior Obligations shall have been paid in full.

2.1.3 Subject to applicable law, no Lender may exercise or claim any right of set-off in respect of any amount owed to it by the Borrower arising under or in connection with the Facility and each Lender will be deemed to have waived all such rights of set-off.

2.1.4 This Clause 2 (*Subordination*) is an irrevocable stipulation (*derdenbeding*) for the benefit of the creditors of the Senior Obligations and each such creditor may rely on and enforce this Clause 2 (*Subordination*) under Section 6:253 of the Dutch Civil Code.

3. The facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a euro term loan facility in a maximum aggregate amount equal to the Total Commitments, which shall be split into two tranches for purposes of enabling the Lenders to make available their Commitments under the Loans on the Tranche A Closing Date and the Tranche B Closing Date, respectively.

4. Purpose

4.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility towards its general corporate and working capital purposes, including but not limited to refinancing of its existing financial indebtedness.

4.2 Monitoring

No Lender is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

5. Lender accessions

5.1.1 Subject to compliance with the provisions of this Agreement, any Shareholder which is not a Lender on the date of this Agreement may become a Tranche A Lender or a Tranche B Lender, as the case may be.

5.1.2 A Shareholder shall become a Lender if the Shareholder delivers to the Borrower and the Lender Committee a duly completed and executed Accession Deed, setting out the date of accession as Lender to this Agreement and the qualification of the Shareholder as a Tranche A Lender or a Tranche B Lender.

6. Allocation of Commitments

The Commitments of each Lender shall be established and allocated in

accordance with the provisions of this Clause 6.

6.1 **Tranche A Lenders**

6.1.1 Each Tranche A Lender shall no later than 5 Business Days prior to the Tranche A Closing Date, deliver to the Borrower a duly completed and executed Tranche A Commitment Proposal.

6.1.2 Upon receipt of all Tranche A Commitment Proposals, the Borrower shall:

- (a) allocate the available commitments, taking into account the Maximum Tranche A Amount and provided that a Tranche A Lender shall only be entitled to a maximum amount of Tranche A Commitments equal to its pro rata ownership of the Ordinary Shares held by each Tranche A Lender. The total commitments so allocated shall constitute the *Initial Allocated Tranche A Commitments*; and
- (b) no later than 5 Business Days prior to the Tranche A Closing Date, inform each Tranche A Lender of its Commitments.

6.2 **Tranche B Lenders**

6.2.1 Each Tranche B Lender shall no later than 5 Business Days prior to the Tranche B Closing Date, deliver to the Borrower a duly completed and executed Tranche B Commitment Proposal.

6.2.2 Upon receipt of all Tranche B Commitment Proposals, the Borrower shall:

- (a) allocate the available commitments, taking into account the Maximum Tranche B Amount and provided that a Tranche B Lender shall only be entitled to a maximum amount of Tranche B Commitments equal to its pro rata ownership of the Ordinary Shares held by each Tranche B Lender. The total commitments so allocated shall constitute the *Initial Allocated Tranche B Commitments*; and
- (b) no later than 5 Business Days prior to the Tranche B Closing Date inform each Tranche B Lender and of its Commitments.

6.3 **Allocation of Remaining Available Sum**

- (a) Within 2 Business Days following each Tranche B Lender having been informed by the Borrower of its Commitments in accordance with Clause 6.2.2(b), the Borrower shall inform each Excess Lender of its relative interest in the Excess Commitments, by delivering to each Excess Lender a duly completed and executed Excess Commitments Confirmation. Each Excess Lender shall within 2 Business Days following receipt of the Excess Commitments Confirmation, reconfirm to the Borrower whether its part in the Excess Commitments is still available to the Borrower as Excess Commitments, by

returning a countersigned Excess Commitments Confirmation to the Borrower.

- (b) If applicable, the Borrower shall allocate the Remaining Available Sum to the Excess Lenders, pro rata to their relative interest in the Excess Commitments (as reconfirmed by each Excess Lender pursuant to Clause 6.3(b) above) or otherwise as reasonably determined by the Borrower.
- (c) Immediately upon such allocation, the Borrower shall deliver to each Lender an updated Schedule 1 setting out the Commitments of each Lender on the Tranche B Closing Date.
- (d) Interest on the Excess Commitments shall accrue from the Tranche B Closing Date, applying the Interest Rate applicable to the Tranche B Loan and otherwise in accordance with the terms of this Agreement.

7. Conditions of utilisation

7.1 Conditions precedent to utilisation

- 7.1.1 The Borrower may not deliver a Request unless the Closing Agent has received all the documents and other evidence listed in Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Closing Agent. The Closing Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.
- 7.1.2 Other than to the extent that the Majority Lenders notify the Closing Agent in writing to the contrary before the Closing Agent gives the notification described in paragraph 7.1.1 above, the Lenders authorise (but do not require) the Closing Agent to give that notification. The Closing Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

7.2 Further conditions precedent

The obligations of each Lender to participate in any Loan are subject to the further conditions precedent that on both the date of the Request and the Utilisation Date for that Loan, the Borrower represents and warrants for the benefit of the Lenders that:

- 7.2.1 no Event of Default was continuing or would result from the proposed Loan; and
- 7.2.2 the Representations made by the Borrower (other than the representations set out in Clause 17.5 (*No Rating Capital Event or Conversion Event*) and Clause 17.6 (*Tax Deduction*)) by reference to the facts and circumstances then existing were true.

8. Loans

8.1 Delivery of a request

The Borrower shall utilise the Facility by delivery to the Closing Agent of a duly completed Request not later than:

8.1.1 for the Tranche A Loan, three Business Days prior to the Tranche A Closing Date; and

8.1.2 for the Tranche B Loan, three Business Days prior to the Tranche B Closing Date.

8.2 Lenders' participation

If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the applicable Closing Date.

9. Repayment and prepayment

9.1 The Borrower shall repay the Loans in full on the Termination Date.

9.2 The Borrower may, if it gives the Lenders no less than 30 nor more than 60 days' notice, prepay the whole of the Loans (together with any accrued and unpaid interest and any outstanding Arrears of Interest up to (but excluding) the date of repayment), as follows:

9.2.1 on any Reset Date; or

9.2.2 the date on which the whole of the Loans is repaid following the occurrence of a Rating Capital Event, a Substantial Repurchase Event, a Tax Deductibility Event or in relation to a Withholding Tax Event, in each case at 101 per cent of the principal amount of each Loan,

each a *Repayment Date*.

9.3 Any notice of repayment given by the Borrower pursuant to this Clause 9 (a *Repayment Notice*) shall be irrevocable. The Repayment Notice shall specify: (i) the Repayment Date; (ii) the principal amount of the relevant Loan outstanding, in each case as at the latest practicable date prior to the publication of the Repayment Notice; and (iii) the amount of accrued interest and Arrears of Interest (if any) payable in respect of the relevant Loan on the Repayment Date.

9.4 Cancellation

If all or part of any Lender's participation in a Loan is repaid or in respect of which Conversion Rights are exercised, an amount of that Lender's Commitment (equal to the amount of participation which is repaid or the amount of the Loan in respect of which Conversion Rights are exercised) will be deemed to be cancelled on the date of repayment or the Conversion Date, as applicable.

9.5 **Multiple notices**

If more than one notice of repayment is given pursuant to this Clause 9, the first of such notices to be given shall prevail.

9.6 **Re-borrowing**

The Borrower may not re-borrow any part of the Facility which is repaid or in respect of which conversion has occurred pursuant to Clause 13 (*Conversion*).

9.7 **Limitation**

The Borrower shall not prepay all or any part of a Loan or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.

9.8 **Prepayment intention**

The Borrower intends (without thereby assuming a legal or contractual obligation) that it will prepay the Loans only to the extent that the part of the aggregate principal amount of the Loans to be prepaid which was assigned “equity credit” (or such similar nomenclature used by S&P from time to time) at the time of the entering into of the Loans does not exceed such part of the net proceeds received by the Borrower or any subsidiary of the Borrower after the Effective Date but on or prior to the date of such prepayment from the sale or issuance of securities or the borrowing of a loan by the Borrower or such subsidiary to third party purchasers or from third party lenders (other than group entities of the Borrower) which are assigned by S&P “equity credit” (or such similar nomenclature used by S&P from time to time) (but taking into account any changes in hybrid capital methodology or another relevant methodology or the interpretation thereof since the entering into of the Loans), unless:

- 9.8.1 the rating assigned by S&P to the Borrower at the time of such prepayment is at least equal to the rating at the time of the last additional hybrid issuance and the Borrower is comfortable that such rating would not fall below this level, as a result of such prepayment;
- 9.8.2 in the case of a prepayment, such prepayment is, taken together with relevant repurchases or redemptions of other Hybrid Securities or Hybrid Loans of the Borrower: (a) in any period of 12 consecutive months starting at the Relevant Time, of less than 10 per cent of the Relevant Amount; or (b) in any period of 10 consecutive years starting at the Relevant Time, of less than 25 per cent of the Relevant Amount, provided that such prepayment has no materially negative effect on the Borrower’s credit profile;
- 9.8.3 if, in the case of a repurchase, such repurchase is in an amount necessary to allow the Borrower’s aggregate amount of hybrid capital remaining outstanding after such repurchase to remain below the maximum aggregate principal amount of hybrid capital to which S&P would assign equity content under its prevailing methodology;

- 9.8.4 the Loans are prepaid pursuant to a Substantial Repurchase Event, or a Tax Deduction Event, a Withholding Tax Event, or a Rating Event;
- 9.8.5 the Loans are not assigned an “equity credit” by S&P (or such similar nomenclature then used by S&P) at the time of such prepayment; or
- 9.8.6 such prepayment occurs on or after the Reset Date falling on 30 November 2050.

10. Substitution or variation

The Borrower may, upon the occurrence of a Rating Capital Event, a Tax Deductibility Event or a Withholding Tax Event, at any time, without the consent of the relevant Lenders, either: (i) substitute the Loans (in full) for; or (ii) vary the terms of the Loans with the effect that the Loans remain or become, as the case may be, a Qualifying Loan. The Lenders shall be obliged to cooperate with such substitution or variation.

11. Costs of utilisation

11.1 Interest

The rate of interest on the Loan is the Interest Rate.

11.2 Interest rate for any year until the First Reset Date

11.2.1 The interest rate for any year until the First Reset Date will be the midpoint of a range that is quoted by an independent reputable party (the *Selected Party*), such as a bank or a financial advisory firm, rounded to the nearest 5 basis points, in accordance with this Clause 11.2.

11.2.2 The Selected Party will be engaged by the Borrower at least 25 Business Days before the Tranche A Closing Date and the Tranche B Closing Date, respectively, acting in good faith. Upon instruction, the Borrower shall immediately send a notice to the Lenders informing them of the instruction (the *Selection Notice*). The Majority Lenders have the right to reject, acting in good faith, the Selected Party once, by sending a notice to the Borrower within 15 Business Days of receipt by the Lenders of the Selection Notice. Upon receipt of such notice, the Borrower will engage an alternative independent reputable party (the *Alternative Party*). The Borrower may delay the Closing Date for the purpose of engaging an Alternative Party if the Lenders exercise their rights to reject the Selected Party.

11.2.3 The interest rate will be set during the period that starts no earlier than 5 Business Days before the Tranche A Closing Date and the Tranche B Closing Date, respectively.

11.2.4 Two Business Days prior to:

- (a) the Tranche A Closing Date, the rate which results from interpolating on a linear basis between:

(i) the applicable 10 Year Swap Rate; and

(ii) the applicable 12 Year Swap Rate,

will be added to the Tranche A Initial Margin to create the interest rate applicable to Tranche A; and

(b) the Tranche B Closing Date, the 10 Year Swap Rate will be added to the Tranche B Initial Margin to create the interest rate applicable to Tranche B.

11.2.5 For purposes of paragraph 11.2.4 above, any reference to a 'Reset Date' in the definitions of 10 Year Swap Rate and 12 Year Swap Rate shall be deemed to refer to the date that is two Business Days prior to the Tranche A Closing Date or the Tranche B Closing Date, as applicable.

11.2.6 A Pricing Report will be drafted by the Selected Party, which will be shared with the Borrower and Lenders, excluding any information that cannot be made public on the basis of applicable law (including, for avoidance of doubt, the MAR) (the *Pricing Report*).

11.3 **Payment of interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period with the final interest payment in respect of each Loan being paid on the applicable Repayment Date for the Loan.

12. **Interest periods**

12.1 **Interest periods**

12.1.1 Subject to Clause 12.1.4, interest payable on the Loans shall be payable in arrears and calculated by reference to successive Interest Periods of one (1) years' duration (or such shorter period as may be agreed between the Borrower and the Lender, acting reasonably, with respect to: (i) the Repayment Date for the Loans; or (ii) the last Interest Period in respect of the Loans).

12.1.2 Interest on the Loans shall be calculated and payable on the basis of the actual number of days elapsed in a 360-day year.

12.1.3 No Interest Period for the Loans shall extend beyond the applicable Repayment Date.

12.1.4 The first Interest Period for the Tranche A Loan starts on the Tranche A Closing Date and the first Interest Period for the Tranche B Loan starts on the Tranche B Closing Date. In each case, the first Interest Period ends on 30 November 2020.

12.2 **Non-business days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that

calendar month (if there is one) or the preceding Business Day (if there is not) and the Interest payable shall be adjusted accordingly.

12.3 **Accrual of interest**

Each Loan will cease to bear interest:

12.3.1 where the Conversion Right shall have been exercised by the Borrower, from the Interest Payment Date immediately preceding the relevant Conversion Date or, if none, the applicable Closing Date (subject in any such case as provided in Clause 13 (*Conversion*)); or

12.3.2 where such Loan is repaid pursuant to Clause 9 (*Repayment*) or Clause 19 (*Events of Default*), from the due date for repayment thereof unless, upon due presentation thereof, payment of principal in respect of such Loan is improperly withheld or refused, in which event interest will continue to accrue at the rate specified in Clause 11.1 (*Interest*) (both before and after judgment) until the day on which all sums due in respect of a Loan up to that day are received by or on behalf of the relevant holder.

12.4 **Optional deferral of interest by the borrower**

12.4.1 The Borrower may, at its discretion, elect to defer all or part of any Interest Payment (a *Deferred Interest Payment*) which is otherwise scheduled to be paid on an Interest Payment Date by giving notice (a *Deferral Notice*) of such election to the Lenders in accordance with Clause 25 (*Notices*) not less than 15 Business Days prior to the relevant Interest Payment Date, provided that the Borrower shall use reasonable efforts to provide the notice earlier. Subject to Clause 12.5 (*Mandatory Settlement of Interest*), if the Borrower elects not to make all or part of any Interest Payment on an Interest Payment Date, then it will not have any obligation to pay such interest on the relevant Interest Payment Date and any such non-payment of interest will not constitute an Event of Default or any other breach of its obligations under this Agreement or for any other purpose.

12.4.2 Arrears of Interest (as defined below) may be satisfied at the option of the Borrower in whole or in part at any time (the *Optional Deferred Interest Settlement Date*) following delivery of a notice to such effect given by the Issuer to the Lenders in accordance with Clause 25 (*Notices*) not more than 15 nor less than 10 Business Days prior to the relevant Optional Deferred Interest Settlement Date informing them of its election to so satisfy such Arrears of Interest (or part thereof) and specifying the relevant Optional Deferred Interest Settlement Date.

12.4.3 Any Deferred Interest Payment shall itself bear interest (such further interest together with the Deferred Interest Payment, being *Arrears of Interest*), at the Interest Rate prevailing from time to time, from (and including) the date on which (but for such deferral) the Deferred Interest Payment would otherwise have been due to be made to (but excluding) the relevant Optional Deferred Interest Settlement Date or,

as appropriate, such other date on which such Deferred Interest Payment is paid in accordance with Clause 12.5 (*Mandatory Settlement of Interest*), in each case such further interest being compounded on each Interest Payment Date.

12.4.4 Non-payment of Arrears of Interest shall not constitute a default by the Borrower under this Agreement or for any other purpose, unless such payment is required in accordance with Clause 12.5 (*Mandatory Settlement of Interest*).

12.5 **Mandatory settlement of interest**

Notwithstanding the provisions of this Clause 12 (*Interest*) relating to the ability of the Borrower to defer Interest Payments, the Issuer shall pay any outstanding Arrears of Interest, in whole but not in part, on the first occurring Mandatory Settlement Date following the Interest Payment Date on which a Deferred Interest Payment first arose.

13. **Conversion**

13.1 **Conversion right**

13.1.1 If

- (a) a Conversion Event has occurred and as long as it is continuing or
- (b) the Majority Lenders have so requested and the Borrower has so agreed,

and subject to and as provided in this Agreement, the Borrower shall be entitled to convert each Loan and any Arrears of Interest (together, the *Convertible Amount*) relating to such Loan into new and/or existing Ordinary Shares, as determined by the Borrower, credited as fully paid (a *Conversion Right*).

13.1.2 The number of Ordinary Shares to be issued on exercise of a Conversion Right in respect of a Loan shall be determined by dividing the Convertible Amount outstanding on the Conversion Date by the market value per Ordinary Shares (such value per Ordinary Share, as calculated in accordance with Clause 13.2, the *Conversion Price*) in effect on the relevant Conversion Date.

13.1.3 Conversion Rights may only be exercised in respect of the Convertible Amount in relation to such Loan (if any).

13.1.4 the resultant Conversion Price, if not an integral multiple of € 1.00 (Euro one), shall be rounded down to the nearest whole multiple of €1.00 (Euro one).

13.1.5 Fractions of Conversion Shares will not be issued to the Lenders upon the exercise of a Conversion Right and no cash payment will be made in lieu thereof.

13.2 Conversion price

13.2.1 The Conversion Price shall be calculated by the Selected Independent Valuation Service Provider, which shall prepare a valuation report for this purpose. Upon receipt of the valuation report, the Borrower shall request the Selected Independent Valuation Service Provider to share with the Lenders a summary of the main findings of the report, in line with the information the Borrower shares with its Shareholders in the ordinary course of its corporate housekeeping. Such information shall include, to the extent permitted by applicable law (including, for avoidance of doubt, the MAR), information about the Conversion Price and applicable calculation methods.

13.2.2 The Selected Independent Valuation Service Provider shall base the valuation of the Ordinary Shares on:

- (a) events, circumstances and assumptions assuming a Conversion Event has occurred based on events, circumstances and assumptions on the last day of the month ending prior to the date of the Conversion Notice;
- (b) internationally accepted valuation methodologies for Distribution Network Operators; and
- (c) the premise of value and framework assumptions, which were used in the most recent Independent Valuation Opinion, as included in Schedule 9 (*Valuation Framework*), to the extent possible and considered to be reasonable by the Independent Valuation Service Provider.

13.3 Independent valuation service provider

13.3.1 The Conversion Notice sent by the Borrower to the Lenders shall include the details of no more than three parties that the Borrower would be willing to appoint as Independent Valuation Service Provider.

13.3.2 Within 3 Business Days of receipt by the Lenders of the Conversion Notice, the Lender Committee shall select one of the three proposed parties as Independent Valuation Service Provider (the ***Selected Independent Valuation Service Provider***) and inform the Borrower accordingly. In case the Borrower is not so informed or the Lenders have not made a selection, in each case within 3 Business Days of receipt by the Lenders of the Conversion Notice, it shall appoint, in its sole discretion, any of the three parties suggested to the Lenders in the Conversion Notice.

13.3.3 The engagement of the Selected Independent Valuation Service Provider shall provide for a 60-day term to prepare the valuation report and promptly deliver the valuation results to the Borrower.

13.3.4 Should the Selected Independent Valuation Service Provider not issue the valuation report in accordance with the terms of this Clause 13 or significantly qualify the valuation:

- (a) the Borrower shall immediately inform the Lenders in writing; and
- (b) the Borrowers and the Lenders shall appoint a different valuation services provider in accordance with this Clause 13.3.

13.3.5 The Selected Independent Valuation Service Provider will be given access to the Borrower's most recent long term financial plan taking into account the facts and circumstances which have precipitated the Conversion Event, and other information reasonably required by the Selected Independent Valuation Service Provider in order to prepare the valuation on the basis of a non-disclosure agreement and will be made an insider for the purposes of the MAR.

13.4 **Procedure for exercise of conversion right**

13.4.1 The Conversion Right may be exercised by the Borrower by delivering to the Lenders, during usual business hours, a duly completed and signed notice of conversion (a *Conversion Notice*) stating the principal amount of the Loans and any amount of Arrears Interest related thereto, the Borrower's explicit statement of exercise of the Conversion Right, the name and details of the Selected Independent Valuation Service Provider, a confirmation that the proposed conversion will comply with applicable fiscal or other laws and regulations applicable to the Borrower and containing such further information as may be required pursuant to this Agreement.

13.4.2 Conversion Rights shall be exercised subject in each case to any applicable fiscal or other laws or regulations applicable to the Borrower.

13.4.3 If the delivery of the Conversion Notice as described in the foregoing paragraph is made after the end of normal business hours or on a day which is not a business day in the Netherlands, such delivery shall be deemed for all purposes of this Agreement to have been made on the next following such business day.

13.4.4 A Conversion Notice, once delivered, shall be irrevocable.

13.4.5 The conversion date in respect of a Loan (the *Conversion Date*) shall be the first day of any calendar quarter immediately following the receipt by the Borrower of the valuation report prepared by the Selected Independent Valuation Service Provider, or such later date as may be agreed by the Borrower and the Lender Committee (acting on the instructions of the Majority Lenders) in writing.

13.4.6 Upon the delivery of a Conversion Notice and if required for purposes of effectuating the Conversion Right, the Borrower shall promptly:

- (a) provide evidence of the Issuance Authorisation; and
- (b) if required, call a shareholders' meeting for the purpose of amending the Articles of Association and increasing the share capital of the Borrower by an amount to be calculated in accordance with the Conversion Price, subject to applicable law; and

The Borrower and the Shareholders, and to the extent required under applicable law or the Articles of Association, the Lenders, shall take any such action, at the cost and expense of the Borrower, as may be necessary to effect the registration and effectiveness of the capital increase.

13.5 Ordinary shares

13.5.1 Ordinary Shares issued upon exercise of Conversion Rights will be fully paid and will in all respects rank *pari passu* with the fully paid Ordinary Shares in issue, in the case of the Ordinary Shares, on the relevant Conversion Date, except in any such case for any right excluded by mandatory provisions of applicable law and except that such Ordinary Shares will not rank for (or, as the case may be, the relevant holder shall not be entitled to receive) any rights, distributions or payments the record date or other due date for the establishment of entitlement for which falls prior to the relevant Conversion Date.

13.5.2 No payment or adjustment shall be made on exercise of Conversion Rights for any interest which otherwise would have accrued on the Loans since the last Interest Payment Date preceding the Conversion Date (or, if such Conversion Date falls before the first Interest Payment Date, since the applicable Closing Date).

13.6 Limitations on ownership of ordinary shares

The Lenders acknowledge that the Ordinary Shares issued upon conversion of any Loan are subject to the provisions of Dutch corporate law and the limitations on ownership in accordance with the Articles of Association of the Borrower, relating to the requirement that the Borrower must at all times be owned or controlled by municipalities or provinces that are (partly or in full) located in the area serviced by the grid operator for which the Borrower is responsible.

13.7 Issuance Authorisation

The Lenders shall from time to time cast their vote at a shareholders' meeting of the Borrower, in favour of such a resolution to ensure that the Issuance Authorisation has a remaining validity of 3 months or more.

14. Taxation

14.1 Definitions

14.1.1 In this Agreement:

- (a) **Protected Party** means a Lender which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under this Agreement.
- (b) **Tax Credit** means a credit against, relief or remission for, or repayment of any Tax.
- (c) **Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under this Agreement.
- (d) **Tax Payment** means either the increase in a payment made by an Obligor to a Lender under Clause 14.2 (*Tax gross-up*) or a payment under Clause 14.3 (*Tax indemnity*).

14.2 Tax gross-up

- 14.2.1 The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- 14.2.2 The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender Committee accordingly. Similarly, a Lender shall notify the Lender Committee on becoming so aware in respect of a payment payable to that Lender. If the Lender Committee receives such notification from a Lender it shall notify the Borrower.
- 14.2.3 If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- 14.2.4 If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- 14.2.5 Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lender Committee for the Lender entitled to the payment such evidence reasonably satisfactory that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

14.3 Tax indemnity

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

14.3.2 Paragraph 14.3.1 above shall not apply:

- (a) with respect to any Tax assessed on a Lender if that Tax is imposed on or calculated by reference to the net income (deemed) received or receivable by that Lender; or
- (b) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*).

14.3.3 A Protected Party making, or intending to make a claim under paragraph 14.3.1 above shall promptly notify the Lender Committee of the event which will give, or has given, rise to the claim, following which the Lender Committee shall notify the Company.

14.3.4 A Protected Party shall, on receiving a payment from the Borrower under this Clause 14.3, notify the Lender Committee.

14.4 **Tax credit**

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

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Lender has or could have obtained and utilised that Tax Credit,

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

14.5 **Stamp taxes**

14.5.1 The Borrower shall pay and, within three Business Days of demand, indemnify each Lender against any cost, loss or liability that Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of this Agreement.

14.6 **Value added tax**

14.6.1 All amounts expressed to be payable under this Agreement by any Party to a Lender which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Lender to any Party under this Agreement and such Lender is required to account to the relevant tax authority for the VAT, that Party must pay to such Lender (in addition to and at the same time as paying any other consideration for such

supply) an amount equal to the amount of the VAT (provided such Lender promptly provides an appropriate VAT invoice to that Party).

14.6.2 If VAT is or becomes chargeable on any supply made by any Lender (the *Supplier*) to any other Lender (the *Recipient*) under this Agreement, and any Party other than the Recipient (the "Relevant Party") is required by the terms of this Agreement to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

- (a) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (a) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- (b) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

14.6.3 Where this Agreement requires any Party to reimburse or indemnify a Lender for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Lender for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Lender reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

14.6.4 Any reference in this Clause 14.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994) .

14.6.5 In relation to any supply made by a Lender to any Party under this Agreement, if reasonably requested by such Lender, that Party must promptly provide such Lender with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Lender's VAT reporting requirements in relation to such supply.

15. Mitigation by the Lenders

15.1 Mitigation

15.1.1 If any circumstances arises which could result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 14 (*Taxation*) and Clause 9 (*Repayment and prepayment*), the Parties will consult with each other until the expiry of thirty (30) days (each such period, a ***Mitigation Period***) to try to find a means of avoiding or mitigating the effect of such additional payment obligation, but subject always to the Borrower's right pursuant to Clause 9 (*Repayment and prepayment*).

15.1.2 No Party will be obliged to implement any arrangement proposed during the consultations referred to in Clause 15.1.1.

15.1.3 Clause 15.1.1 does not in any way limit the obligations of the Borrower under this Agreement.

15.1.4 The Majority Lenders may, by written notice to the Borrower, terminate the Mitigation Period at any time if:

- (a) an Event of Default has occurred and is continuing; or
- (b) the continuation of the consultations would cause the Lenders to breach any applicable law.

15.2 Limitation of liability

15.2.1 The Borrower shall promptly indemnify the Lenders for all costs and expenses reasonably incurred by the Lenders as a result of steps taken by it under Clause 14 (*Mitigation*). The Lenders shall reasonably substantiate the amount of, and the grounds for, any such claim for indemnification.

15.2.2 The Lenders are not obliged to take any steps under Clause 14 (*Mitigation*) if, in the opinion of the Majority Lenders, to do so might be prejudicial to the Lenders.

16. Costs and expenses

16.1 Transaction costs

Each of the Parties will be responsible for their own costs and expenses (including legal fees) incurred by them in connection with the negotiation, preparation, printing and execution of this Agreement and any other documents referred to in this Agreement.

16.2 Amendment costs

If the Borrower requests an amendment, waiver or consent, the Borrower shall reimburse the Lenders for the amount of all documented costs and expenses (including legal fees) reasonably incurred by the Lenders in responding to, evaluating, negotiating or complying with that request or requirement. The

Lenders shall provide such Borrower with an invoice setting out such costs and expenses in reasonable detail.

16.3 **Enforcement costs**

The Borrower shall on demand, pay to the Lenders the amount of all costs and expenses (including legal fees of one legal advisor to the Lenders) reasonably incurred by the Lenders in connection with the enforcement of, or the preservation of any rights under, this Agreement.

17. **Representations and warranties**

17.1 **Representations and warranties**

Each of the Lenders has entered into this Agreement in reliance on the representations given in this Clause 17, and the Borrower, unless the context requires otherwise, makes the representations set out in this Clause 17.

17.2 **Status**

It is a public company, duly incorporated and validly existing under the laws of the Netherlands.

17.3 **Power and authority**

It has the power to enter into and perform, and has taken all necessary action to authorise, (i) the entry into and performance of, this Agreement and (ii) the transactions contemplated by this Agreement.

17.4 **No Default**

No Event of Default is outstanding or will result from the execution of, or the performance of any transaction contemplated by, this Agreement.

17.5 **No Rating Capital Event or Conversion Event**

No Rating Capital Event or Conversion Event has occurred.

17.6 **Tax deduction**

17.6.1 It takes the position that it is not required to make any Tax Deduction from any payment it may make under this Agreement to a Lender.

17.6.2 It takes the position that the deduction of interest paid, accrued or otherwise due under this Agreement is not restricted on the basis of article 10, paragraph 1, sub a, b or d, of the Corporate Tax Act (*Wet op de vennootschapsbelasting 1969*).

17.6.3 It has submitted or shall submit a tax ruling request to the Dutch tax authorities requesting to confirm the position taken by it in Clause 17.6.1 and Clause 17.6.2 (the ***Tax Ruling***).

17.7 **Tax status**

No notice under Article 36 Tax Collection Act (*Invorderingswet 1990*) has been given by any member of a fiscal unity or a value added tax group of which the

Borrower is a member.

17.8 Tax payment and filings

17.8.1 It has duly and punctually paid and discharged all Taxes imposed upon it or its assets within the time period allowed without incurring interest or penalties (save to the extent that (i) payment is being contested in good faith, (ii) it has maintained adequate reserves for the payment of such Taxes and (iii) payment can be lawfully withheld).

17.8.2 It is not (and none of its subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its subsidiaries) is overdue in the payment of any amount in respect of Tax, in each case to the extent having or being reasonably likely to have a material adverse effect.

17.8.3 No claims or investigations are being or are reasonably likely to be conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group would have or would be reasonably likely to have a material adverse effect.

17.9 Stamp duty

No stamp, transaction, registration or similar taxes are assessable or payable in the Netherlands in connection with the execution, delivery, performance and enforcement of this Agreement.

17.10 Times for making representations

17.10.1 The representations set out in this Clause are made by the Borrower on the date of this Agreement.

17.10.2 Unless a representation is expressed to be given at a specific date, each representation (other than the representations set out in Clause 17.5 (*No Rating Capital Event or Conversion Event*) and Clause 17.6 (*Tax Deduction*)) is deemed to be repeated by the Borrower on each Closing Date, on the date of each Utilisation Request and the first day of each Interest Period.

17.10.3 The representation set out in Clause 17.5 (*No Rating Capital Event or Conversion Event*) is deemed to be repeated by the Borrower on each Closing Date.

17.10.4 When a representation is made (or (if expressly required herein) repeated) after the date of this Agreement, it will be deemed to be made (or (if expressly required herein) repeated) by reference to the facts and circumstances then existing at the time made (or (if expressly required herein) repeated), taking into account any changes in law since the date of this Agreement.

18. Undertakings

The undertakings in this Clause 18 remain in force from the date of this Agreement for as long as any Commitment is in force or any amount is outstanding under this Agreement until the Termination Date. The Borrower shall, save with the approval of the Majority Lenders,

18.1 not in any way modify the rights attaching to the Ordinary Shares with respect to voting, dividends or liquidation nor issue any other class of equity share capital carrying any rights which are more favourable than such rights attaching to the Ordinary Shares but so that nothing in this Clause 18.1 shall prevent:

18.1.1 the issue of equity share capital to employees or former employees or directors (including directors holding or formerly holding executive office or the personal service company of any such person) (or the spouse or relative of any such person) whether of the Borrower or any of the Borrower's Subsidiaries or associated companies by virtue of their office or employment pursuant to any scheme or plan approved by the Borrower in general meeting or which is established pursuant to such a scheme or plan which is or has been so approved;

18.1.2 any consolidation, reclassification or subdivision of the Ordinary Shares;

18.1.3 any modification of such rights which is not, in the determination in its absolute discretion of an independent financial adviser, materially prejudicial to the interests of the Lenders;

18.1.4 any alteration to the articles of association of the Borrower made in connection with the matters described in this Clause 18 or which is supplemental or incidental to any of the foregoing (including any amendment made to enable or facilitate procedures relating to such matters and any amendment dealing with the rights and obligations of holders of Securities, including Ordinary Shares, dealt with under such procedures);

18.1.5 any issue of equity share capital where the issue of such equity share capital results, or would, but for the provisions of Clause 13.4 (*Procedure for exercise of Conversion Rights*) relating to roundings, otherwise result in an adjustment to the Conversion Price;

18.1.6 any issue of equity share capital or modification of rights attaching to the Ordinary Shares, where prior thereto the Borrower shall have instructed an independent financial adviser to determine in its absolute discretion what (if any) adjustments should be made to the Conversion Price as being fair and reasonable to take account thereof and such independent financial adviser shall have determined in its absolute discretion either that no adjustment is required or that an adjustment to the Conversion Price is required and, if so, the new Conversion Price as a result thereof and the basis upon which such adjustment is to be made and, in any such case, the date on which the adjustment shall take

effect (and so that the adjustment shall be made and shall take effect accordingly);

- 18.2 not make any issue, grant or distribution or take or omit to take any other action if the effect thereof would be that, on the exercise of Conversion Rights, Ordinary Shares could not, under any applicable law then in effect, be legally issued as fully paid;
- 18.3 not reduce its issued share capital or any uncalled liability in respect thereof, or any non-distributable reserves, except:
 - 18.3.1 pursuant to the terms of issue of the relevant share capital;
 - 18.3.2 by means of a purchase or redemption of share capital of the Borrower to the extent, in any such case, permitted by applicable law;
 - 18.3.3 where the reduction does not involve any distribution of assets;
 - 18.3.4 solely in relation to a change in the currency in which the nominal value of the Ordinary Shares is expressed;
 - 18.3.5 to create distributable reserves;
 - 18.3.6 by way of transfer to reserves as permitted under applicable law;
 - 18.3.7 where the reduction is permitted by applicable law and an independent financial adviser, acting as expert and in its absolute discretion, advises that the interests of the Lenders will not be materially prejudiced by such reduction;
 - 18.3.8 where the reduction is permitted by applicable law and results in an adjustment to the Conversion Price or is otherwise taken into account for the purposes of determining whether such an adjustment should be made, or
 - 18.3.9 provided that, without prejudice to the other provisions of this Agreement, the Borrower may exercise such rights as it may from time to time be entitled pursuant to applicable law to purchase, redeem or buy back its Ordinary Shares and any depositary or other receipts or certificates representing Ordinary Shares without the consent of any Lender;
- 18.4 provide to the Lenders, by no later than the Tranche A Closing Date, all of the documents and evidence referred to in Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Lenders (acting reasonably) provided that the conditions may be waived by the Lenders in whole or in part; and
- 18.5 pay and discharge all Taxes due and payable by it prior to the accrual of any fine or penalty for late payment, unless (and only to the extent that) (i) payment of those Taxes is being contested in good faith, (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them (iii) the payment can be lawfully withheld and (iv) failure to pay those Taxes is not reasonably likely to have a material adverse effect.

18.6 take all reasonable efforts to ensure that it will obtain the Tax Ruling as submitted in accordance with Clause 17.6.3.

19. Events of default

Each of the events or circumstances set out in this Clause 19 is an Event of Default (save for Clause 19.5 (*Acceleration*)).

19.1 Non-payment of principal

The Borrower does not pay any amount of principal payable under this Agreement at the place and in the currency in which it is expressed to be payable within 14 days of the due date, unless the non-payment is caused by technical or administrative error.

19.2 Non-payment of interest

The Borrower does not pay any amount of interest payable under this Agreement at the place and in the currency in which it is expressed to be payable within 21 days of the due date, unless the non-payment is caused by technical or administrative error.

19.3 Insolvency proceedings

A court order is made or an effective resolution is passed for the suspension of payments, winding-up, liquidation or dissolution of the Borrower except in any such case for the purpose of and followed by a solvent reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by Majority Lenders.

19.4 Tax Status

19.4.1 A notice under Article 36 Tax Collection Act (*Invorderingswet 1990*) has been given by the Borrower.

19.5 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Majority Lenders may by notice to the Borrower:

19.5.1 cancel the Commitment whereupon it shall immediately be cancelled;

19.5.2 declare that all or part of the Loans, together with accrued interest including any outstanding Arrears of Interest, and all other amounts accrued and outstanding under the Agreement be immediately due and payable, whereupon they shall become immediately due and payable; and/or

19.5.3 declare that all or part of the Loans be payable on demand by the Majority Lenders, whereupon they shall immediately become payable on demand by the Lender.

A Lender may at its discretion and without further notice institute such proceedings or take such steps or actions against Borrower as it may think fit to enforce any term or condition binding on the Borrower but in no event shall

the Borrower, by virtue of the institution of any such proceedings, steps or actions, be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.

No remedy against the Borrower, other than as referred to in this Clause 19, shall be available to the Lenders whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its other obligations under or in respect of this Agreement.

20. Changes to parties

20.1 Transfers

20.1.1 In this Clause:

- (a) **Transfer Date** means, for a Transfer Certificate, the later of:
 - (i) the proposed Transfer Date specified in the relevant Transfer Certificate; and
 - (ii) the date on which the New Lender or the Borrower, as applicable, executes the relevant Transfer Certificate.

20.1.2 The Borrower may not assign any of its rights or transfer any of its rights or obligations under this Agreement without the prior written consent of all the Lenders.

20.1.3 A Lender (the **Existing Lender**) may transfer its contractual position in accordance with Section 6:159 DCC to:

- (a) any other Lender (a **New Lender**), provided such Lender is a Shareholder at the time of the transfer; and
- (b) the Borrower,

in each case, in accordance with applicable law (including, for avoidance of doubt, the MAR).

20.1.4 The Borrower and each Lender agree and confirm that it in advance provided its cooperation (as required by Section 6:159 DCC) to any transfer which complies with Clause 20.1.3 above.

20.1.5 Any reference in this Agreement to a Lender includes a New Lender but excludes a Lender if no amount is or may be owed to or by it under this Agreement.

20.2 Procedure for transfer

20.2.1 Subject to the conditions set out in Clause 20.1 (*Transfers*) a transfer is effected in accordance with paragraph 20.2.2 below when the New Lender or the Borrower, as applicable, executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender.

20.2.2 On the Transfer Date:

- (a) the entire or part of the legal relationship under the Agreement of the existing Lender which is a party to the Transfer Certificate, expressed to be transferred thereby, will be transferred to the New Lender or the Borrower, as applicable, by way of an assumption of contract (*contractsoverneming*) pursuant to Section 6:159 DCC; and
- (b) the New Lender shall become a Party as a **Lender**.

20.2.3 The New Lender shall notify the Borrower of any transfer promptly on execution of the Transfer Certificate in respect of such transfer and shall as soon as reasonably practicable after it has executed a Transfer Certificate, send to the Borrower a copy of that Transfer Certificate.

20.2.4 The Existing Lender shall notify the Borrower promptly of any proposed transfer.

21. Lender Committee

21.1 The Majority Lenders shall, within 6 months from the date of this Agreement, establish a committee of Lenders whose Commitments aggregate more than 10 per cent of the Total Commitment (or, if the Commitments have been reduced to zero, aggregated more than 10 per cent of the Commitments immediately prior to that reduction) (the **Lender Committee**).

21.2 The Lender Committee shall have an administrative role only for purposes of organising the group of Lenders and, if required, supporting the role of the Closing Agent under the documentation.

22. The Closing Agent

22.1 No fiduciary duties

Nothing in this Agreement constitutes the Closing Agent as trustee or fiduciary of any other person.

22.2 Rights and discretions of the Closing Agent

22.2.1 The Closing Agent may rely on:

- (a) any representation, warranty, notice or document believed by it to be genuine, correct and appropriately authorised; and
- (b) any statement made by any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

22.2.2 The Closing Agent may assume (unless it has received notice to the contrary) that:

- (a) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 19.1 (*Non-payment of principal*) and/or 19.2 (*Non-payment of interest*));

- (b) any right, power, authority or discretion vested in any Party has not been exercised; and
- (c) any notice or request delivered or made by the Borrower is made on behalf of and with the consent and knowledge of the Borrower.

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

22.2.4 The Closing Agent may act in relation to this Agreement through its personnel and agents.

22.2.5 Notwithstanding any other provision of this Agreement to the contrary, the Closing Agent shall not be obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

22.3 **Exclusion of liability**

22.3.1 No Party (other than the Closing Agent) may take any proceedings against any officer, employee or agent of the Closing Agent in respect of any claim it might have against the Closing Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Agreement and any officer, employee or agent of the Closing Agent may rely on this Clause subject to Clause 1.3. This paragraph 22.3.1 constitutes an irrevocable third party stipulation for no consideration (*onherroepelijk derdenbeding om niet*) as referred to in Section 6:253 DCC for the benefit of any officer, employee or agent of the Closing Agent.

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

23. **Conduct of business by the Lenders and the Closing Agent**

No provision of this Agreement will:

- 23.1 interfere with the right of the Lenders or the Closing Agent to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- 23.2 oblige the Lenders or the Closing Agent to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- 23.3 oblige the Lenders or the Closing Agent to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax,

except as expressly otherwise set out herein.

24. Administration

24.1 Payments

24.1.1 Payments of principal and interest in respect of a Loan will be by transfer to the registered account of the Lenders.

24.1.2 All payments in respect of a Loan are subject to all applicable fiscal or other laws and regulations.

24.2 Application of certain payments

24.2.1 If a Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under this Agreement or receives any surplus amounts, such Lender shall apply that payment or such amounts towards the obligations of the Borrower under this Agreement in the following order:

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

24.2.2 If a Lender (a **Recovering Lender**) receives or recovers any amount from the Borrower in excess of the pro rata amount it is entitled to under this Agreement, then:

- (a) the Recovering Lender shall, within three Business Days, notify details of the receipt or recovery, to the Lenders;
- (b) the Lender Committee (acting on the instructions of the Majority Lenders) shall determine whether the receipt or recovery is in excess of the amount the Recovering Lender is entitled to under this Agreement; and
- (c) the Recovering Lender shall, within three Business Days of demand by the Lender Committee (acting on the instructions of the Majority Lenders), pay to the Lenders an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Lender Committee (acting on the instructions of the Majority Lenders) determines may be retained by the Recovering Lender as its share of any payment to be made, in accordance with this Agreement.

24.2.3 The Lenders shall treat the Sharing Payment as if it had been paid by the Borrower to the Lenders and the Lender Committee (acting on the instructions of the Majority Lenders) shall instruct the relevant Lenders to distribute the Sharing Payment between the Lenders (other than the Recovering Lender) in accordance with the terms of this Agreement towards the obligations of the Borrower to such Lenders.

24.2.4 Clause 24.1 (*Payments*) will override any appropriation made by the Borrower.

24.3 **No set-off permissible by the borrower**

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

24.3.2 Clause 24.3.1 above shall not apply to any payments to be made by the Borrower in relation to any rights and obligations the Borrower acquired from an Existing Lender in accordance with Clause 20.1.3(b).

24.4 **Business days**

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

24.4.2 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date and in accordance with the provisions of Clause 11.3 (*Payment of interest*).

24.5 **Currency of amount**

24.5.1 Subject to this Clause 24.5, Euro is the currency of account and payment for any sum due from the Borrower under this Agreement.

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

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

25. **Notices**

25.1 **Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

25.2 **Addresses**

25.2.1 Except as provided below, the contact details of each Party for all communications in connection with this Agreement are those notified

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

25.4 English language

25.4.1 Any notice given under or in connection with this Agreement must be in English.

25.4.2 All other documents provided under or in connection with this Agreement must be:

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

26. Calculations and certificates

26.1 Certificates and determinations

Any certification or determination by the Borrower of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

26.2 Day count convention

Any interest, commission or fee accruing under this Agreement will (unless otherwise expressly stated in this Agreement) accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days.

27. Partial invalidity

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

28. Remedies and waivers

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

29. Amendments and waivers

29.1 Required consents

Any term of this Agreement may be amended or waived only with the written consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.

30. Counterparts

This Agreement may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

31. Governing Law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Dutch law.

32. Execution of the agreement by attorney

If a Party incorporated in The Netherlands, is represented by an attorney in connection with the signing and/or execution of this Agreement or any other agreement, deed or document referred to in this Agreement or made pursuant to this Agreement, it is hereby expressly acknowledged and accepted by the other Parties that the existence and scope of the attorney's authority and the effect of attorney's exercise or purported exercise of his authority shall be governed by Dutch law.

33. Enforcement

33.1.1 The courts of Amsterdam, The Netherlands have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a *Dispute*).

33.1.2 The Parties agree that the courts of Amsterdam, The Netherlands are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

Schedule 1
The Lenders

Part A

Tranche A Lenders

Name	Commitment (€)
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]

Part B

Tranche B Lenders

Name	Commitment (€)
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]

Schedule 2

Conditions precedent

1. The borrower

- (a) A copy of the constitutional documents of the Borrower, including an up-to-date extract of the trade register of the chamber of commerce.
- (b) A copy of a resolution of the board of directors of the Borrower:
 - (i) approving the terms of, and the transactions contemplated by, this Agreement and resolving that it execute this Agreement;
 - (ii) authorising a specified person or persons to execute this Agreement on its behalf; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with this Agreement.
- (c) A certificate from the secretary of the board of supervisory directors of the Borrower evidencing its approval of the execution of, and the terms of, and the transactions contemplated by, this Agreement.
- (d) Evidence of (i) the request for advice from each works council, or central or European works council with jurisdiction over the transactions contemplated by this Agreement and (ii) positive or neutral advice and, to the extent subject to conditions, such conditions shall not (x) lead, or be reasonably expected to lead, to a breach of the terms of this Agreement and (y) be negative for the Lenders.

2. Legal opinion

- (a) A legal and tax opinion of Clifford Chance LLP, legal and tax advisers to the Lenders, substantially in the form distributed to the Lenders prior to signing this Agreement.

3. Other documents and evidence

- (a) Evidence that any fees, costs and expenses due from the Borrower have been paid or will be paid by the date of this Agreement.

Schedule 3
Form of request

To: [●] as Closing Agent
From: Enexis Holding N.V.
Date: [●]

Enexis Holding N.V. - EUR 500,000,000 fixed rate convertible shareholder loan facility dated [●] 2020 (the Agreement)

1. We refer to the Agreement. This is a Request.
2. We wish to borrow a Loan on the following terms:
 - (a) Utilisation Date: [●]
 - (b) Amount: €[●]
3. Payment instructions are: [●].
4. We confirm that each condition precedent under the Agreement which must be satisfied on the date of this Request is so satisfied.
5. This Request is irrevocable.

Enexis Holding N.V.

By:

Schedule 4
Form of Transfer Certificate

To: [[●] as New Lender (the *New Lender*)]/[the Borrower]
From: [THE EXISTING LENDER] (the *Existing Lender*)
Date: [●]

Enexis Holding N.V. - EUR 500,000,000 fixed rate convertible shareholder loan facility dated [●] 2020 (the *Agreement*)

We refer to the Agreement. This is a Transfer Certificate.

1. The Existing Lender transfers by way of transfer of contract to the [New Lender]/[Borrower] the Existing Lender's rights and obligations referred to in the Schedule below in accordance with the terms of the Agreement.
2. The proposed Transfer Date is [●].
3. [On the Transfer Date the New Lender becomes Party to the Agreement as a Lender.]
4. [The administrative details of the New Lender for the purposes of the Agreement are set out in the Schedule.]
7. This Transfer Certificate acts as notice to the Borrower of the transfer referred to in this Transfer Certificate.
8. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
9. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by Dutch law.
10. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

THE SCHEDULE

Rights and obligations to be transferred

[insert relevant details, including applicable Commitment (or part)]

[Administrative details of the New Lender

[insert address for notices and payment details etc.]

**[EXISTING
LENDER]/[BORROWER]**

[NEW LENDER]

By: [•]

By: [•]

By: [•]

Schedule 5
Form of Accession Deed

To: Enexis Holding N.V.

From: [●]

Date: [●]

Enexis Holding N.V. - EUR 500,000,000 fixed rate convertible shareholder loan facility dated [●] 2020 (the Agreement)

1. We refer to the Agreement. This is an Accession Deed.
2. We wish to become a [Tranche A Lender]/[Tranche B Lender].
3. The date of accession is: [●].
4. Our administrative details for the purposes of the Agreement are set out below:
[●].
5. We have reviewed the Agreement and acknowledge and confirm that we are bound by the terms of the Agreement.
6. This Accession Deed is irrevocable.

[●]

By:

For acknowledgement

Enexis Holding N.V.

By:

Schedule 6
Form of Tranche A Commitment Proposal

To: Enexis Holding N.V.

From: [●]

Date: [●]

Enexis Holding N.V. - EUR 500,000,000 fixed rate convertible shareholder loan facility dated [●] 2020 (the Agreement)

1. We refer to the Agreement. This is a Tranche A Commitment Proposal.
2. We are the legal owner of [●] Ordinary Shares in the Borrower.
3. We confirm that our proposed Tranche A Commitment is EUR [●].
4. We acknowledge that our final Commitment will be allocated by you in accordance with Clause 6 (*Allocation of Commitments*) of the Agreement.
5. Our administrative details for the purposes of the Agreement are set out below:

[●].
6. This Tranche A Commitment Proposal is irrevocable.

[●]

By:

Schedule 7
Form of Tranche B Commitment Proposal

To: Enexis Holding N.V.

From: [●]

Date: [●]

Enexis Holding N.V. - EUR 500,000,000 fixed rate convertible shareholder loan facility dated [●] 2020 (the Agreement)

1. We refer to the Agreement. This is a Tranche B Commitment Proposal.
2. We are the legal owner of [●] Ordinary Shares in the Borrower.
3. We confirm that our proposed Tranche B Commitment is EUR [●].
4. We acknowledge that our final Commitment will be allocated by you in accordance with Clause 6 (*Allocation of Commitments*) of the Agreement.
5. Our administrative details for the purposes of the Agreement are set out below:

[●].
6. This Tranche B Commitment Proposal is irrevocable.

[●]

By:

Schedule 8
Form of Excess Commitments Confirmation

To: [●]
From: Enexis Holding N.V.
Date: [●]

Enexis Holding N.V. - EUR 500,000,000 fixed rate convertible shareholder loan facility dated [●] 2020 (the Agreement)

1. We refer to the Agreement. This is an Excess Commitments Confirmation.
2. We refer to your [Tranche A]/[Tranche B] Commitment Proposal dated [●].
3. Your Excess Commitments are [●]. In total, an amount of [●] Excess Commitments has been made available by Excess Lenders.
4. Subject to your acknowledgement, we hereby allocate your Excess Commitments [pro rata to your relative interest in the total amount of Excess Commitments (to the extent reconfirmed by each Excess Lender pursuant to Clause 6.36.3(b) of the Agreement)]/[as follows [●]].
5. Interest on the Excess Commitments shall accrue from the Tranche B Closing Date and otherwise in accordance with the terms of the Agreement.
6. By confirming your acknowledgement you accepted that the Excess Commitments allocated to you shall be [●].
7. Please confirm your acknowledgement to the above by countersigning this letter.

Enexis Holding N.V.

By:

For acknowledgement

[●]

By:

Schedule 9

Valuation Framework

Premise of value

1. The premise of value is *fair value*, which is defined as: ‘*The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date*’.
2. The valuation analysis is performed from a ‘stand-alone’ perspective of Enexis. This means the value of Enexis, capable of operating independently, with no application of any strategic and synergic effects and/or control premiums that potential purchasers may be willing to pay for.
3. In the valuation analysis also a ‘going concern’ state of Enexis is assumed, in which the business is expected to continue to operate for an indefinite time into the future without materially changing its operations.

Framework assumptions

4. The valuation analysis will include a Discounted Cash Flow (“DCF”) analysis and Building Block analyses (*bouwstenenmethode*) as primary valuation methods.
5. The most recent long term financial plan of Enexis, excluding potential future acquisitions, mergers or exchanges of assets or shares, is used as a basis for the valuation analysis.
6. Any potential over- or underperformance, in terms of operational expenses (OPEX) or investments (CAPEX), of Enexis relative to ‘*efficient benchmark*’, as meant in the regulatory framework applicable to Enexis, is assumed to be temporary. This implies that it is assumed that Enexis will operate as an efficient DSO at the end of the explicit forecast period.
7. The explicit forecast period will cover the projection period of the most recent long term financial plan of Enexis, but not less than two regulatory periods (currently 2x five years = 10 years). The value beyond the explicit forecast period, the terminal value, should be a proper reflection of the expected future sustainable cash flows of Enexis.
8. The regulatory assumptions in regulatory periods after the current regulatory period are equivalent to the regulatory assumptions in the current regulatory period, unless the most recent long term financial plan of Enexis contains a projection of these assumptions and / or the Authority for Consumers & Markets (“ACM”) issued draft or final decisions on future regulatory assumptions.
9. The discount rate applied in the DCF analysis should reflect the current market assessment of risk of Enexis and the time value of money, and may therefore deviate from the regulatory WACC as determined by ACM.
10. The calculated value of the business of Enexis (the enterprise value) will be adjusted for the market value of net-debt (and non-operating assets and liabilities) in order to calculate the market value of the shares (the equity value).
11. No premiums or discounts will be applied to the market value of shares to take into account the liquidity of the Enexis shares, transactions costs, etc.

12. The market value of the shares may be presented in a range, to address uncertainties in expected future assumptions, but the valuation analysis should contain at least a mid-point estimate, which is to be used as the conversion price.

SIGNATURE PAGES

The borrower

Enexis Holding N.V.

By _____

Name:

Title: jointly authorised attorney

By _____

Name:

Title: jointly authorised attorney

[LENDER SIGNATURE PAGES TO BE ADDED]