

**GUIDANCE FOR EPFIS ON INCORPORATING  
ENVIRONMENTAL AND SOCIAL CONSIDERATIONS  
INTO LOAN DOCUMENTATION  
December 2020**

**Disclaimer:** This Guidance Note has been prepared for use by Equator Principles Financial Institutions (**EPFIs**). The document should not be viewed as a required legal framework, but a guidance document to assist EPFIs in incorporating environmental and social considerations into Loan documentation, as appropriate. As such, it does not refer to any specific law. If this document is used by an EPFI it would be considered prudent to take into account the national law of the host country(ies) in which it is applied, and such law should prevail in case of any clear conflict with this Guidance Note. The structure of the Loan Agreement will depend on the nature of the Loan and the Project, and the complexity of the environmental and social risks (i.e., the category of the Project).

## **OVERVIEW**

The Equator Principles are intended to serve as a common baseline and framework for financial institutions to work in partnership with their Clients to identify, assess and manage environmental and social risks and impacts in a structured way, on an ongoing basis. This Guidance Note provides an overview of the Equator Principles and their applicability to certain financial transactions and services, along with template contractual provisions for Equator Principles Financial Institutions (**EPFIs**) to refer to in connection with, and adapt for use in, financing agreements.

EPFIs and other stakeholders should consult this Guidance Note in tandem with the Equator Principles themselves, and should not rely on this Guidance Note to the exclusion of the Equator Principles 4. Other documents and resources (such as Guidance Notes on particular implementation issues) are also available from the Equator Principles Association.

## **CONTENTS**

1.	INTRODUCTION.....	5
2.	KEY CHANGES INTRODUCED IN EQUATOR PRINCIPLES 4 .....	6
3.	RISK ASSESSMENT-BASED APPLICABILITY OF EQUATOR PRINCIPLES REQUIREMENTS .....	7
3.1	Basis for Categorization of Projects .....	7
3.2	Environmental and Social Standards .....	10
4.	KEY COMPONENTS OF A LOAN AGREEMENT .....	11
5.	ENVIRONMENTAL AND SOCIAL CLAUSES.....	13
6.	REPRESENTATIONS AND WARRANTIES .....	16
6.1	No Environmental or Social Claims.....	16
6.2	Environmental or Social Incidents .....	16
6.3	Environmental and Social Requirements .....	16
6.4	Environmental and Social Permits .....	16
6.5	Delivery of Reports and Information.....	16
6.6	Environmental and Social Management Plan and Environmental and Social Management System .....	17
6.7	Independent Environmental and Social Consultant Appointment .....	17
7.	CONDITIONS PRECEDENT .....	17
7.1	Conditions Precedent to Initial Disbursement.....	17
7.2	Conditions Precedent to All Disbursements .....	20
8.	COVENANTS.....	21
8.1	Positive Covenants .....	21
8.2	Negative Covenants.....	23
9.	REPORTING REQUIREMENTS.....	23
9.1	Reports Delivered as a Condition Precedent (Prior to Financial Close).....	23
9.2	Progress Reports (During Construction of the Project).....	24
9.3	Operational Reports (During Operation of the Project).....	24
9.4	Environmental or Social Claims .....	25
9.5	Environmental or Social Incidents .....	26
9.6	Other.....	27
10.	EVENTS OF DEFAULT .....	27
10.1	Environmental or Social Claims .....	27
10.2	Environmental or Social Incidents and Corrective Action Plans.....	27
10.3	Representations and Covenants .....	28
11.	CONDITIONS PRECEDENT TO THE PROJECT COMPLETION DATE .....	28
12.	DISCLOSURE IN CONNECTION WITH THE EQUATOR PRINCIPLES .....	29

12.1	Equator Principles Reporting by the EPFIs .....	29
12.2	Public Reporting by the Client .....	29
13.	GLOSSARY OF TERMS .....	30

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## 1. INTRODUCTION

The Equator Principles are intended to serve as a common baseline and framework for financial institutions to work in partnership with their Clients to identify, assess and manage environmental and social risks and impacts in a structured way, on an ongoing basis. The requirements of the Equator Principles apply to EPFIs. EPFIs are committed to implementing the Equator Principles across certain financial transactions and services to ensure that a minimum standard of environmental and social responsibility is met in connection with the Projects they finance. Therefore, while the Equator Principles apply directly to EPFIs, it is important for the Loan documentation for a Project to provide undertakings by the Project borrower with respect to substantive compliance and reporting obligations under the Equator Principles. The Loan documentation should not, however, place the obligation to comply with the Equator Principles on the Client; the Client's obligations should instead be tied to relevant IFC Performance Standards on Environmental and Social Sustainability and World Bank Group EHS Guidelines, as well as applicable law.

The Equator Principles apply to the following financial products<sup>1</sup>:

- Project Finance Advisory Services,
- Project Finance,
- Project-Related Corporate Loans,
- Bridge Loans,
- Project-Related Refinance, and
- Project-Related Acquisition Finance.

The **Loan Agreement** is a key legal document that provides EPFIs with the formal opportunity to require the Client to address environmental and social issues throughout the Project Development Lifecycle, following Financial Close and subsequent drawdowns. EPFIs facilitate achievement of these objectives through use of contractual provisions mandating, among other things, that their Clients:

- adhere to certain environmental and social requirements (both prior to the EPFI providing funds to the Client and throughout the Project Development Lifecycle);
- develop and implement plans to ensure the Project's compliance with environmental and social requirements; and

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<sup>1</sup> As defined in the [Equator Principles 4 \(July 2020\)](#).

- report on the Project's compliance with environmental and social requirements.

Where a Client is not in compliance with its environmental and social covenants, the EPFI will work with the Client on remedial actions to bring it back into compliance to the extent feasible. If the Client fails to re-establish compliance within an agreed grace period, the EPFI reserves the right to exercise remedies, as considered appropriate.

There are numerous ways an EPFI can structure a Project-specific Loan Agreement to incorporate appropriate environmental and social considerations that are consistent with Equator Principles requirements. Indeed, the structure of the Loan Agreement will depend on the business, sector, and complexity of environmental and social risks, as well as the precise nature of the Loan (including by reference to the financial products described above, all of which fall within the scope of the Equator Principles). Furthermore, some EPFIs may wish to detail environmental and social considerations in other key transaction documents referenced in the Loan documentation. In the case of financings that benefit from guarantees from a third party, such as export credit agency supported transactions, the Loan Agreement may need to reflect provisions inserted in another agreement (e.g., the export credit agency guarantee agreement or insurance policy).

As a consequence, the precise wording of the environmental and social provisions will largely depend upon the context. Sections 4 (Key Components Of A Loan Agreement) and 5 (Environmental and Social Clauses) of this Guidance Note outline a number of commonly used environmental and social clauses regarding the key components of a Loan Agreement that EPFIs may use as they relate to a specific Project-related finance transaction. Section 3 (Risk Assessment-Based Applicability Of Equator Principles Requirements) discusses the applicability of these types of provisions in different Project or investment scenarios.

## **2. KEY CHANGES INTRODUCED IN EQUATOR PRINCIPLES 4**

EPFIs and other stakeholders familiar with the prior edition of the Equator Principles (Equator Principles 3) should note that Equator Principles 4 implements a number of changes to Equator Principles' coverage of new Projects, as well as expansions of existing Projects. These changes include (but are not limited to):

- Project-related refinancing and acquisition finance may be within the scope of the Equator Principles in certain contexts;

- EPFIs are now required to evaluate Project risks in Designated Countries<sup>2</sup>, including whether any International Finance Corporation (IFC) Performance Standards should be used in addition to host country laws to cover risks specific to the Project;
- The applicability threshold for Project-related corporate Loans has been reduced from USD100 million to USD50 million;
- Loans to sovereign borrowers are within the Equator Principles' scope;
- Non-contiguous developments over one or more geographic areas, including expansions and upgrades to existing developments, are now included within the definition of "Project";
- Assessment of potential adverse Human Rights risks and impacts is required for every Project;
- New Climate Change risk assessment and reporting obligations aligned with Task Force on Climate-related Financial Disclosures (TCFD) categories may apply, with varying obligations depending on the Project's anticipated greenhouse gas emissions;
- Expanded obligations may apply with respect to Free, Prior, and Informed Consent of Indigenous Peoples affected by certain Projects; and
- New considerations may apply on biodiversity information sharing with national and global data repositories.

EPFIs should carefully consult Equator Principles 4 to ensure that any new compliance and reporting obligations are understood and adequately captured in Loan documentation.



### **3. RISK ASSESSMENT-BASED APPLICABILITY OF EQUATOR PRINCIPLES REQUIREMENTS**

#### **3.1 Basis for Categorization of Projects**

EPFIs are responsible for categorizing Projects based on their potential environmental and social impacts, using the IFC's environmental and social categorization process and appropriate due diligence. The categories are summarized below.

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<sup>2</sup> Defined in the Equator Principles as those states with sufficiently robust environmental and social governance, legislation systems, and institutional capacities to protect their people and natural environment.

	<u>Category A</u>	<u>Category B</u>	<u>Category C</u>
 <b>Decreasing risk profile and Equator Principles requirements</b> 			
<b>Summary of Categories</b>	<p>Projects with potential significant adverse environmental and social risks and/or impacts that are:</p> <ul style="list-style-type: none"> <li>• diverse;</li> <li>• irreversible; or</li> <li>• unprecedented.</li> </ul>	<p>Projects with potential limited adverse environmental and social risks and/or impacts that are:</p> <ul style="list-style-type: none"> <li>• few in number;</li> <li>• generally site-specific;</li> <li>• largely reversible; and</li> <li>• readily addressed through mitigation measures.</li> </ul>	<p>Projects with minimal or no adverse environmental and social risks and/or impacts.</p>
<b>High level comparison with other Categories</b>	<p>Category A Projects represent greater environmental and/or social risks, and EPFIs are required to impose correspondingly more stringent compliance and reporting obligations on Clients engaged in Category A Projects.</p>	<p>There can be a range of potential environmental and social risks within Projects classified as Category B. In general terms, higher risk Category B Projects will be treated similarly to Category A Projects, while lower risk Category B Projects may be treated with a lighter regime.</p>	<p>Category C Projects will also be subject to reporting and compliance requirements commensurate to their level of environmental and social risk (which may be assessed to have minimal or no adverse impact in this regard).</p>



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The key parameters of each of the Equator Principles as applied to each Category of Projects are summarized at a high level below (numbers in the list generally correspond to the Equator Principles).

### **Category A Projects**

1. Environmental and Social Impact Assessment required.
2. Assessment of Human Rights risks and impacts required. Climate Change risks assessment required.
3. Review and confirmation required on how the Project and transaction meet each of the Equator Principles (with support from Independent Environmental and Social Consultant).
4. Client required to develop/maintain Environmental Social Management System and Environmental and Social Management Plan.
5. Client required to demonstrate Stakeholder Engagement commensurate with potential risk to affected communities, including Indigenous Peoples where relevant.
6. Client required to establish effective grievance mechanisms for use by affected communities and workers, scaled appropriately.
7. Independent Environmental and Social Consultant to carry out review of all mechanisms assessing compliance with the Equator Principles.
8. Client required to covenant to: (i) comply with Environmental and Social Standards (as further detailed below), including relevant host country laws, (ii) comply with management/action plans to ensure relevant Equator Principles compliance, (iii) report on and document compliance with relevant environmental and social obligations and local law, and (iv) decommission facilities appropriately.
9. Independent monitoring and reporting required.
10. Client required to report on various environmental and social metrics, including greenhouse gas emissions and Human Rights.

### **Category B Projects**

1. Environmental and Social Impact Assessment *may* be required; alternatively, limited or focused environmental and social assessment may be appropriate.
2. Assessment of Human Rights risks and impacts required. Climate Change risks assessment *may* be required.

3. Review and confirmation required on how the Project and transaction meet each of the Equator Principles (potentially with support from Independent Environmental and Social Consultant) [as appropriate].
4. Client required to develop/maintain Environmental Social Management System [as appropriate] and Environmental and Social Management Plan.
5. Client required to demonstrate Stakeholder Engagement commensurate with potential risk to affected communities, including Indigenous Peoples where relevant.
6. Client *may* be required to establish effective grievance mechanisms for use by affected communities and workers, scaled appropriately.
7. Independent Environmental and Social Consultant *potentially* to carry out review of all mechanisms assessing compliance with the Equator Principles, as appropriate; other due diligence may satisfy this requirement.
8. Client required to covenant to: (i) comply with Environmental and Social Standards (as further detailed below), including with relevant host country laws, (ii) comply with management/action plans to ensure relevant Equator Principles compliance, (iii) report on and document compliance with relevant environmental and social obligations and local law, and (iv) decommission facilities appropriately.
9. Independent monitoring and reporting *may* be required.
10. Client *may* be required to report on various environmental and social metrics, including greenhouse gas emissions and Human Rights when relevant.

### **Category C Projects**

1. Limited or focused Environmental and Social Impact Assessment *may* be required, and/or other relevant requirements agreed by the parties.
2. Assessment of Human Rights risks and impacts required.

### **3.2 Environmental and Social Standards**

Equator Principle 3 sets out the applicable environmental and social standards against which an EPFI will evaluate a Project's compliance.

For Projects located in **Non-Designated Countries**, such standards are the IFC Performance Standards on Environmental and Social Sustainability and the World Bank Group Environmental, Health and Safety Guidelines (the details of which are set out in Exhibit III to the Equator Principles).

For Projects located in **Designated Countries**, such standards are compliance with relevant host country laws, regulations and permits that pertain to environmental and social issues, although the EPFI will evaluate the specific risks of the Project to determine whether one or more of the IFC Performance Standards on Environmental and Social Sustainability could be used as guidance to address those risks, in addition to host country laws. Please see The Equator Principles Implementation Note for further information and examples to support the understanding of the applicable standards requirements.

The EPFI may, at its sole discretion, undertake additional due diligence against additional standards relevant to specific risks of the Project and apply additional requirements.

In addition to undertaking due diligence, it is through the defined terms used in Loan Agreements that EPFIs can incorporate the environmental and social laws and standards with which a Client's Project must comply. The Glossary of Terms set out in Section 13 (Glossary Of Terms) of this Guidance Note includes, for example, definitions for "Environmental and Social Requirements" and "Environmental and Social Assessment Documentation". These definitions can be adapted by the EPFIs to specify the applicable laws, standards and policies that are to apply to a given Project. In turn, the Loan Agreement can include clauses (e.g., representations and covenants) to the effect that the Project has at all times complied and will continue to comply with all applicable Environmental and Social Requirements. As noted in Equator Principle 8, an important strength of the Equator Principles is the incorporation of covenants linked to compliance.

EPFIs may review and consider use of the contractual provisions discussed in Sections 4 (Key Components Of A Loan Agreement) and 5 (Environmental and Social Clauses) of this Guidance Note to implement the Equator Principles requirements that are appropriate for the Project in question. See the introduction to Section 5 (Environmental and Social Clauses) for an overview of these provisions' potential applicability to EPFIs' Finance Documents.

#### **4. KEY COMPONENTS OF A LOAN AGREEMENT**

This Section outlines the key components of a Loan Agreement and is intended to be used as a reference tool for EPFIs.

<u>Type of clause</u>	<u>Description</u>
<b>Definitions</b> <b>Section (see</b> <b>Section 13</b> <b>(Glossary Of</b> <b>Terms))</b>	<p>An important component of any legal agreement is the definition of specific terms. EPFIs should ensure that environmental and social standards applicable to a Project are specifically defined in the Loan Agreement (see Section 3.2 (Environmental and Social Standards)). Section 13 (Glossary Of Terms) includes an outline of the key defined terms that are typically used in Loan Agreements in connection with environmental and social matters.</p>
<b>Representations</b> <b>and Warranties</b> <b>(see Section 6</b> <b>(Representations</b> <b>And Warranties))</b>	<p>A series of statements of fact made by one party, true on the date the statements are made, that are given to induce the other party to enter into the agreement. In the context of a Loan Agreement related to a Project, the representations will typically cover such matters as the legality and enforceability of documentation, compliance with relevant environmental and social laws, the financial condition of the Client, and the absence of any material litigation or other proceedings against the Client. In line with standard Loan documentation, the representations are made on the date the Loan Agreement is signed and then repeated by the Client on various dates during the term of the Loan Agreement by reference to the facts and circumstances existing on each such date. Material inaccuracies in Client representations will normally constitute an Event of Default under the Loan Agreement.</p>
<b>Conditions</b> <b>Precedent (see</b> <b>Section 7</b> <b>(Conditions</b> <b>Precedent))</b>	<p>A set of pre-conditions that must be satisfied before the Client can request drawdown, or before other credit facilities can be made available under a Loan Agreement. Conditions Precedent can be used to require Clients to make certain progress on environmental and social issues before disbursement.</p>
<b>Covenants (see</b> <b>Sections 8</b> <b>(Covenants) and</b> <b>9 (Reporting</b> <b>Requirements))</b>	<p>Also known as undertakings, the promises made by the Client to the lenders to: (i) undertake certain actions (positive covenant); (ii) deliver key information (reporting covenants); or (iii) refrain from taking certain actions (negative covenant).</p>

<u>Type of clause</u>	<u>Description</u>
	<p>Covenants set out the parameters within which the lenders are prepared to lend. Unlike representations, which are only made at specific times and therefore only need to be true at the time they are made, covenants are forward-looking in nature and typically need to be complied with on a continual basis. A key covenant of Loan Agreements related to a Project is compliance with environmental and social laws and regulations, and the Project’s Environmental and Social Management Plan and Equator Principles Action Plan (where applicable). Reporting requirements should also be included as a covenant. Material non-compliances with the covenants will normally constitute an Event of Default under the Loan Agreement. Because covenants serve a purpose different from representations and warranties, yet often address the same underlying subject matter, similar or duplicate language will often be used in both covenants and representations. For example, a Loan Agreement may include both a representation/warranty that the Project complies with all relevant Environmental and Social Requirements and a positive covenant that the Project will comply with all relevant Environmental and Social Requirements.</p>
<p><b>Event of Default (see Section 10 (Events Of Default))</b></p>	<p>An event that entitles the lenders to cancel a commitment, declare all amounts owed by the Client to become immediately due and payable, and/or enforce security. For Projects with complex environmental or social issues, the lenders and Client may want to include specific environmental or social Events of Default that may for instance refer to specific remedy periods (e.g., it may specify that if the lenders consider that a breach can be remedied, the breach will not be an Event of Default if it is remedied within a specified period of time).</p>

A general note on materiality qualifiers: it may be appropriate for some provisions to be qualified by terms such as ‘*material*’ or ‘*reasonably likely to have a Material Adverse Effect*’. Approaches vary depending on the Project and the EPFIs’ commercial imperatives. Typically the term ‘Material Adverse Effect’ is defined in the Loan Agreement on the basis of financial

performance, which is often inapt to environmental and social clauses. Materiality for environmental and social clauses should instead take into account the Client's ability to comply with environmental and social requirements and/or the Project's impacts on the environment and people. Therefore, this Guidance Note no longer includes 'Material Adverse Effect' as a qualifier in the environmental and social clauses.

In addition, with respect to representations, examples of two approaches on materiality qualifiers are: (1) **Unqualified representation and reliance on reporting requirements:** Upon entry into the Loan Agreement, the Client should be aware of the status of any environmental or social claims, incidents and compliance matters. It should therefore be in a position (on the date of the Loan Agreement) to give unqualified representations concerning these issues. Thereafter, EPFIs can rely on the Client's information covenants (see Section 9.4 (Environmental or Social Claims)) to ensure that it notifies them of any significant issues going forward. Failure to comply with these notification obligations will constitute an Event of Default under the 'breach of other obligations' Event of Default in the Loan Agreement; and (2) **Qualified representation and reliance on Repeating Representations:** If a representation includes 'materiality qualifiers' (with which the EPFIs are comfortable given the specific circumstances of the Project), then the EPFIs may request that the representation is made on a repeated basis, at various key milestones throughout the life of the Loan (such as dates on which interest is payable and utilizations are requested and made). In order to achieve this, the representation should be included in the definition of 'Repeating Representations'. If the representation is false as at the date on which it is repeated, this will constitute an Event of Default under the 'misrepresentation' Event of Default in the Loan Agreement.

## **5. ENVIRONMENTAL AND SOCIAL CLAUSES**

This Section outlines environmental and social clauses that are commonly included in Loan Agreements related to Projects and is intended to be used as a reference tool for EPFIs.

The relevant clauses will be strictly subject to commercial agreement and negotiations between the Client and the EPFIs involved in the Project, and will depend on the nature of the Loan and Project, the complexity of the environmental and social risks, and on the development phase of the Project. The clauses should be read in the context of the terms of the Loan Agreement and any existing provisions therein. EPFIs may differ in the type of environmental and social clause they prefer to use. This Guidance Note contains suggestions

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for EPFIs' reference, which should be read and considered on a Project-by-Project basis in conjunction with the Equator Principles and alongside advice from external counsel.

The Equator Principles recognize that financial institutions and their Clients have a responsibility to respect Human Rights, and each Client is expected to include assessments of potential adverse Human Rights impacts and Climate Change risks as part of its due diligence, with the depth of such assessments being dictated by the scope of Project risks. The environmental and social clauses of the Loan Agreement should include requirements for these assessments as part of the Project documentation. Depending on the outcome of these assessments, there may be a need for specific conditions to be included in the Loan Agreement, such as periodic monitoring and evaluation of risk exposure on Human Rights issues, and benchmarking against relevant international standards.<sup>3</sup>

Not all clauses will be appropriate for all Loan Agreements. For example, an Independent Review<sup>4</sup> by an Independent Environmental and Social Consultant is required for all Category A Projects, but only when appropriate for Category B Projects, as defined in Equator Principle 7.

Bridge Loans are not subject to Equator Principle 8 covenant requirements. Nonetheless, there may be cases where an EPFI may, voluntarily and at its own discretion, refer to this Guidance Note to help it draft appropriate clauses for Bridge Loans.

Terms which are included in brackets should be specifically defined in the Definitions section of the Loan Agreement. For guidance as to the scope of these defined terms, please refer to Section 13 (Glossary Of Terms).

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<sup>3</sup> Please refer to the ['Guidance Note on Implementation of Human Rights Assessments Under the Equator Principles' \(September 2020\)](#).

<sup>4</sup> For detailed information on Independent Review please refer to the ['Guidance for Consultants on the Contents of a Report for an Independent Environmental and Social Due Diligence Review' \(2020\)](#).

## **6. REPRESENTATIONS AND WARRANTIES**

### **6.1 No Environmental or Social Claims**

There is no [Environmental or Social Claim] outstanding, pending, threatened or likely to occur against the Client<sup>5</sup> or in respect of, or in connection with, the Project.

### **6.2 No Environmental or Social Incidents**

No [Environmental or Social Incident] has occurred.

### **6.3 Environmental and Social Requirements**

Each of the Client<sup>6</sup> and the Project have at all times complied and currently comply with, [and will continue,<sup>7</sup>] during all phases of construction and operation, to comply with all applicable [Environmental and Social Requirements].

### **6.4 Environmental and Social Permits**

The Client<sup>8</sup> has obtained and has at all times complied and currently complies with, [and will continue,] during all phases of construction and operation, to comply with all necessary [Environmental and Social Permits] and conditions therein.

### **6.5 Delivery of Reports and Information**

The Client has produced to the Lenders all relevant reports and information on [Environmental and Social Matters].

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<sup>5</sup> EPFIs may need to consider extending this representation to cover other key parties involved in the Project (such as sub-contractors, key subsidiaries, sponsors and shareholders).

<sup>6</sup> EPFIs may need to consider extending this representation to cover other key parties involved in the Project (such as sub-contractors, key subsidiaries, sponsors and shareholders).

<sup>7</sup> The "will continue" language could be used, here and in the following section, in instances where this is a repeating representation or where representations and covenants are combined in the same section.

<sup>8</sup> EPFIs may need to consider extending this representation to cover other key parties involved in the Project (such as sub-contractors, key subsidiaries, sponsors and shareholders).



## **6.6 Environmental and Social Management Plan and Environmental and Social Management System**

The Project is in compliance with the [Environmental and Social Management Plan] and the [Environmental and Social Management System].

## **6.7 Independent Environmental and Social Consultant Appointment<sup>9</sup>**

The Client has appointed an [Independent Environmental and Social Consultant], in accordance with agreed terms and acceptable to the Lenders, who will provide to the Lenders relevant monitoring reports satisfactory to the Agent on the implementation of the [Environmental and Social Management Plan] and [Equator Principles Action Plan] (where applicable).

## **7. CONDITIONS PRECEDENT**

### **7.1 Conditions Precedent to Initial Disbursement**

#### **7.1.1 Permits**

- (a) Certified copies of all government or administrative approvals required for the Project and all [Environmental and Social Permits].<sup>10</sup>
- (b) Opinion, issued by counsel and acceptable to the Agent, that the Project has obtained all permits and approvals necessary for ownership, construction and operation of the Project or, for any permits and approvals not obtained, that there is no reason to believe that such permits or approvals will not be obtained in the ordinary course prior to the time when required.

#### **7.1.2 Environmental and Social Assessment Documentation**

- (a) A certified copy of:

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<sup>9</sup> Appointment of the [Independent Environmental and Social Consultant] is often included as a Condition Precedent (see Section 7.1.3 (Independent Environmental and Social Consultant Review)) upon which the EPFIs can review and sign off, as opposed to a representation given by the Client as to the status of the appointment.

<sup>10</sup> There may be circumstances in which, due to the status of the Project, specific Environmental and Social Permits either cannot be obtained or are not required at Financial Close (in which case appropriate carve-outs should be included for the purposes of this Condition Precedent).

- (i) an [Environmental and Social Impact Assessment] <sup>11</sup> report;
  - (ii) documentation of assessment of Human Rights risks and impacts;
  - (iii) documentation of Climate Change risks assessment; and
  - (iv) Stakeholder Engagement process documentation.
- (b) A report from the [Independent Environmental and Social Consultant] evaluating and confirming that:
- (i) the [Environmental and Social Management Plan] for the construction phase of the Project is operational and complies with all [Environmental and Social Requirements]; and
  - (ii) to the extent any aspect of the [Environmental and Social Management System] for the construction phase of the Project is to be implemented at a later date, all arrangements necessary for such timely implementation have been made through the [Equator Principles Action Plan].<sup>12</sup>
- (c) An [Equator Principles Action Plan] responding to or addressing arrangements and recommendations of the Project's or Lenders' consultants to the extent necessary to achieve compliance with [Environmental and Social Requirements].
- (d) Delivery from the Client of a completeness status for the actions referenced in the [Equator Principles Action Plan] that should have been carried out prior to Financial Close.
- (e) Required reports of the Technical Consultant, the [Independent Environmental and Social Consultant] and the Insurance Consultant have been received, and

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<sup>11</sup> When the Environmental and Social Impact Assessment does not meet international standards, taking into account all relevant issues identified in the IFC Performance Standards on Environmental and Social Sustainability, it should be supplemented by additional studies to meet international standards.

<sup>12</sup> For an example of an Equator Principles Action Plan, please refer to the ['Guidance for Consultants on the Contents of a Report for an Independent Environmental and Social Due Diligence Review' \(2020\)](#). It is not a requirement to include the Equator Principles Action Plan as an Annex in the Loan Agreement. If an Equator Principles Action Plan has been agreed, the Loan Agreement should, as a minimum, contain a reference to this plan, and/or Conditions Precedent/subsequent, in order to have the Clients' commitment to comply with the plan.

recommendations implemented to the extent necessary to achieve compliance with all [Environmental and Social Requirements].

- (f) A reliance certificate from the Technical Consultant, [Independent Environmental and Social Consultant] and Insurance Consultant entitling the Agent and the Lenders to rely on the reports and plans prepared by these consultants.

### **7.1.3 Independent Environmental and Social Consultant Review**

- (a) The [Environmental and Social Assessment Documentation] has been reviewed by the [Independent Environmental and Social Consultant]<sup>13</sup>; and
- (b) Delivery of appointment letters, including, without limitation, agreed scope of work, in relation to the Technical Consultant, the [Independent Environmental and Social Consultant] and the Insurance Consultant, for the purposes of identification only initialed for and on behalf of the Client and the Agent<sup>14</sup>.

### **7.1.4 Monitoring**

- (a) The Client and Lenders have agreed on the form and substance of the Terms of Reference for the [Independent Monitoring Consultant], including the form of any reports required to be produced on or before such date pursuant to such Terms of Reference;
- (b) The Client has appointed the [Independent Monitoring Consultant], such [Independent Monitoring Consultant] satisfactory to the Lenders; and
- (c) The [Independent Monitoring Consultant] has commenced its work in accordance with the Terms of Reference applicable to it.

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<sup>13</sup> For detailed information on Independent Review please refer to the ['Guidance for Consultants on the Contents of a Report for an Independent Environmental and Social Due Diligence Review' \(2020\)](#).

<sup>14</sup> In some circumstances (for example, if the financial advisors have already structured the due diligence and entered into the appointment letters with the Independent Environmental and Social Consultant), EPFIs joining the deal at a later stage but prior to Financial Close may include this Condition Precedent in order to ensure that they benefit from the terms of the appointment letter (and in particular to ensure that the Independent Environmental and Social Consultant owes them a duty of care).

### **7.1.5 Public Reporting**

The Client will ensure that, at a minimum, a summary of the Environmental and Social Impact Assessment is accessible in a format and language(s) acceptable to the Lenders, available online, and includes a summary of Human Rights and Climate Change risks and impacts (where relevant<sup>15</sup>).

## **7.2 Conditions Precedent to All Disbursements<sup>16</sup>**

### **7.2.1 Environmental and Social Management Plan and Equator Principles Action Plan**

- (a) Delivery of a certificate from the Client, certifying that the [Environmental and Social Management Plan] for the Project is operational and complies with all [Environmental and Social Requirements].
- (b) Delivery from the Client of a completeness status for the actions referenced in the [Equator Principles Action Plan] that should have been carried out as of the date of the disbursement.<sup>17</sup>

### **7.2.2 Representations, Covenants, Events of Default and Absence of Threat**

- (a) The Client shall have certified that it has no reason to believe that any [Environmental and Social Permits] could reasonably be expected to be revoked.
- (b) No environmental or social risks or events shall have occurred that would result in an Event of Default or potential Event of Default.

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<sup>15</sup> See Section 3.1 (Basis for Categorization of Projects) as to the relevance of the summary of Human Rights and Climate Change risks and impacts (which depends on the risk-based categorization of the Project).

<sup>16</sup> The list of Conditions Precedent to all disbursements will depend on the sensitivity of the Project. For example, in certain high risk Projects, it may be necessary to obtain additional certifications and confirmation letters from the Independent Environmental and Social Consultant prior to each drawdown.

<sup>17</sup> The Independent Environmental and Social Consultant is responsible for delivering regular monitoring reports to the EPFIs covering the status of the actions under the Equator Principles Action Plan (please refer to Sections 9.2 (Progress Reports (During Construction of the Project)) and 9.3 (Operational Reports (During Operation of the Project))). In some circumstances, on export credit agency-backed financings, the relevant export credit agency may request further evidence by way of a Client's certification in order to align the completion of the Equator Principles Action Plan with the disbursement schedule.

- (c) The Client is in compliance with all applicable covenants.<sup>18</sup>
- (d) The applicable representations and warranties to be made or repeated are true and correct by reference to the facts and circumstances then existing.<sup>19</sup>

## **8. COVENANTS**

### **8.1 Positive Covenants**

#### **8.1.1 Environmental and Social Requirements**

Compliance with all relevant [Environmental and Social Requirements] in all material respects.

#### **8.1.2 Environmental and Social Permits**

Compliance with all relevant [Environmental and Social Permits].

#### **8.1.3 Development Plan**

Carry out the Project in accordance with the agreed [Development Plan] subject to any modifications that have been agreed to in writing by the Lenders (in consultation with the [Independent Environmental and Social Consultant]).

#### **8.1.4 Environmental and Social Management Plan**

Compliance with the [Environmental and Social Management Plan,] [Environmental and Social Management System] and [Equator Principles Action Plan] (where the Project has an Equator Principles Action Plan) during the construction and operation of the Project, subject to any modifications that have been agreed to by the Lenders (in consultation with the [Independent Environmental and Social Consultant]).

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<sup>18</sup> The general reference to “covenants” must include all environmental and social covenants as required by the Equator Principles (see Sections 8 (COVENANTS) and 9 (REPORTING REQUIREMENTS)). Instead of itemizing this Condition Precedent specifically in the documentation, it may be sufficient to rely on the general ‘no Default’ Condition Precedent (which is confirmed in writing by the Client in the Utilization Request).

<sup>19</sup> The ‘repeating representations’ will automatically be repeated by the Client at key points throughout the life of the Loan (such as dates on which interest is payable and utilizations are requested and made). Instead of itemizing this Condition Precedent specifically in the documentation, it may be sufficient to rely on the general Condition Precedent as to repetition of representations (which is confirmed in writing by the Client in the Utilization Request).

### **8.1.5 Progress Reports**

Delivery of progress reports<sup>20</sup>, (a) prepared by the Client's in-house staff or third party experts, during the construction phase and operations phase post-[Physical Completion Date], and (b) prepared by the [Independent Environmental and Social Consultant] during the construction phase and during the operations phase (including on-site visits to the Project), in each case that:

- (i) document compliance with the [Environmental and Social Management Plan,] [Environmental and Social Management System] and the [Equator Principles Action Plan], where applicable; and
- (ii) certify material Project compliance with all [Environmental and Social Requirements].

### **8.1.6 Operation, Maintenance and Repair**

Operate, maintain and repair, or ensure that the operation, maintenance and repair of the Project facilities are in accordance with good industry practice for Projects of this type.

### **8.1.7 Access Rights**

Right of the Lenders, or their representatives, to access and inspect property and books and records, as appropriate, including right of direct access to the [Independent Environmental and Social Consultant].

### **8.1.8 Environmental or Social Incidents**

- (a) Respond to any [Environmental or Social Incident] and other non-compliances with Environmental and Social Laws as required by [Environmental and Social Requirements] through a [Corrective Action Plan] (as applicable).
- (b) Respond to releases of [Environmental Contaminants] and other non-compliances with Environmental and Social Laws as required by

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<sup>20</sup> Requirements as to progress reports will often be set out under the 'information covenants' section of the Loan Agreement (please refer to Sections 9.2 (Progress Reports (During Construction of the Project)) and 9.3 (Operational Reports (During Operation of the Project))).

[Environmental and Social Requirements] through a [Corrective Action Plan] (as applicable).

- (c) Respond to any protests or challenges to the Project or its construction, permitting or operation [in accordance with the Environmental and Social Management Plan, Environmental and Social Management System and Environmental and Social Requirements].

### **8.1.9 Decommissioning**

Decommissioning of the facilities, where applicable and appropriate, in accordance with applicable local, state and national regulations and an agreed [Decommissioning Plan], to be reviewed by the [Independent Environmental and Social Consultant] and satisfactory to the Agent.

## **8.2 Negative Covenants**

- (a) Limitations on modification or termination of the major Project Documents; and
- (b) Limitations on material modification of the [Development Plan], the [Environmental and Social Management Plan], the [Environmental and Social Management System], the [Equator Principles Action Plan] (where relevant) and/or the nature and scope of the Project.

## **9. REPORTING REQUIREMENTS**

The Client shall provide (where relevant):

### **9.1 Reports Delivered as a Condition Precedent (Prior to Financial Close)**

- (a) A report, dated no earlier than the date falling [30] days before Financial Close, from the [Independent Environmental and Social Consultant], assessing the Project's compliance with the applicable [Environmental and Social Requirements] along with a customary reliance certificate entitling the Agent and Lenders to rely upon the report.

## 9.2 Progress Reports (During Construction of the Project)

- (a) Prior to the [Physical Completion Date], provide at least [annually]<sup>21</sup> a progress report prepared by the Client, in form and substance satisfactory to the Lenders, that shall contain:
- (i) Details of compliance (or any non-compliance) with [Environmental and Social Requirements] applicable to the Client or the Project, and implementation of and compliance with the [Environmental and Social Management Plan] and [Equator Principles Action Plan] (where relevant) during the period to which the report relates; and
  - (ii) Details of the actions, including the timeframe for completion, which the Client has taken or intends to take in order to rectify non-compliance, if any, during the period to which the report relates, as presented in a [Corrective Action Plan].
- (b) Prior to the [Physical Completion Date], provide at least [annually/semi-annually/quarterly]<sup>22</sup> a report prepared by the [Independent Environmental and Social Consultant], reviewing the information listed above and assessing compliance with applicable [Environmental and Social Requirements] along with a customary reliance certificate entitling the Agent and Lenders to rely upon the report.

## 9.3 Operational Reports (During Operation of the Project)

- (a) After the [Physical Completion Date]<sup>23</sup>, provide at least [annually/semi-annually/quarterly]<sup>24</sup> an Operational Report that shall contain:

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<sup>21</sup> The frequency of reporting may be increased depending upon the nature, impacts and sensitivity of the Project. A frequency of semi-annual or quarterly reporting is common during construction of the Project.

<sup>22</sup> As for the construction phase reports (see Section 9.3 (Operational Reports (During Operation of the Project))), the frequency of the Operational Phase may be increased depending upon the nature, impacts and sensitivity of the Project. A frequency of semi-annual or quarterly reporting is common during operation of the Project.

<sup>23</sup> Reporting requirements can also be triggered prior to the Physical Completion Date if appropriate, e.g., if the Project commences operation prior to final completion.

<sup>24</sup> The frequency of reporting may be increased depending upon the nature, impacts and sensitivity of the Project. The frequency of semi-annual or quarterly reporting can be applied during the first few years of operation of the Project and changing to annually thereafter. However, the frequency of reporting should be agreed between the Lenders and the Client.



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- (i) Details of compliance (or any non-compliance) with [Environmental and Social Requirements] applicable to the Client or the Project, and implementation of and compliance with the [Environmental and Social Management Plan] and [Equator Principles Action Plan] (where relevant) during the period to which the report relates; and
  - (ii) Details of the actions, including the timeframe for completion of such actions, which the Client has taken or intends to take in order to rectify non-compliance, if any, during the period to which the report relates, as presented in a [Corrective Action Plan].
- (b) After the [Physical Completion Date] provide at least [annually] a report prepared by the [Independent Environmental and Social Consultant], reviewing the information listed above and assessing compliance with applicable [Environmental and Social Requirements] along with a customary reliance certificate entitling the Agent and Lenders to rely upon the report.
- (c) After the [Physical Completion Date] provide ad hoc reports prepared by the [Independent Environmental and Social Consultant], reviewing the reports and [Corrective Action Plan] prepared by the Client as per Section 9.4 (Environmental or Social Claims).

#### **9.4 Environmental or Social Claims**

- (a) After becoming aware of the same, promptly provide to the Agent details of any [Environmental or Social Claim] which:
  - (i) is likely to result in a liability exceeding USD[xxx] (other than a claim for workers' compensation);
  - (ii) is likely to result in a material delay to the Project Completion Date, or material impairment of the operation of the Project;
  - (iii) has or, if adversely determined, is likely to have a material impact on the implementation or operation of the Project in accordance with the [Environmental and Social Requirements]; or

- (iv) is likely to result in the Client being legally required to publicly report the Environmental or Social Claim.
- (b) The Client will subsequently present a report satisfactory to the Agent specifying the outcome of the Client's investigation into such Environmental or Social Claim, and, if requested by the Agent, including a [Corrective Action Plan].

## **9.5 Environmental or Social Incidents<sup>25</sup>**

- (a) After becoming aware of the same, promptly provide to the Agent details of any [Environmental or Social Incident].<sup>26</sup>
- (b) The Client will subsequently present a report satisfactory to the Agent, within [14 days] of notifying the Agent of the event, specifying the outcome of the Client's investigation into such event, and, if requested by the Agent, including a [Corrective Action Plan].
- (c) After becoming aware of the same, promptly notify the Agent of any event resulting in the material release of an [Environmental Contaminant].
- (d) The Client will subsequently present a report satisfactory to the Agent, within [14 days] of notifying the Agent of the event, specifying the outcome of the Client's investigation into such event, and, if requested by the Agent, including a [Corrective Action Plan].
- (e) After becoming aware of the same, promptly notify the Agent of any event resulting in death or multiple injuries.
- (f) The Client will subsequently present a report satisfactory to the Agent, within [14 days] of notifying the Agent of the event, specifying the outcome of the Client's investigation into such event, and, if requested by the Agent, including a [Corrective Action Plan].

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<sup>25</sup> EPFIs should note that the Client's reporting obligations extend throughout the life of the Loan and are not solely triggered by the occurrence of discrete events such as Environmental or Social Claims or Environmental or Social Incidents. Depending on the nature of the Project, it may be appropriate to include a broader obligation capturing different types of Environmental or Social Incident, or to itemize these by incident type (e.g., environmental contamination, occupational health and safety and significant social grievances or protests).

<sup>26</sup> EPFIs should note that the IFC Performance Standards on Environmental and Social Sustainability specify further documentation and reporting requirements in connection with Environmental and Social Incidents.

- (g) After becoming aware of the same, promptly notify the Agent, within [two working days] of any significant community or worker-related protest directed to the Project which can potentially have a material impact on the Project or can potentially result in national or international media attention.
- (h) The Client will subsequently present a report satisfactory to the Agent, within [14 days] of notifying the Agent of the event, specifying the outcome of the Client's investigation into such event, and, if requested by the Agent, including a [Corrective Action Plan].

## **9.6 Other**

The Client shall, upon the request of the Agent acting reasonably, provide such other information on any measures or monitoring undertaken by the Client or on behalf of the Client in compliance with [Environmental and Social Requirements].

## **10. EVENTS OF DEFAULT**

### **10.1 Environmental or Social Claims**

- (a) An [Environmental or Social Claim] is brought against the Client which individually or in the aggregate could reasonably be expected to result in a material impact on the implementation or operation of the Project in accordance with the [Environmental and Social Requirements]<sup>27</sup>.

### **10.2 Environmental or Social Incidents and Corrective Action Plans**

- (a) An [Environmental or Social Incident] occurs and the Lenders (having consulted with the [Independent Environmental and Social Consultant]) deem such [Environmental Incident] as incapable of remedy.<sup>28</sup>

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<sup>27</sup> This Event of Default needs to cover breach of the Environmental and Social Standards as well as Environmental and Social Laws. This can be achieved by referring to the Environmental and Social Requirements. Alternatively, it may be sufficient to rely on the general Events of Default as to repetition of representations (including the representation as to Environmental and Social Requirements – please see Section 6.3 (Environmental and Social Requirements)) and no breaches of other obligations (including covenants as to compliance with the Environmental and Social Requirements – please see Section 8.1.1 (Environmental and Social Requirements)).

<sup>28</sup> EPFIs may decide to pre-agree a list of specific Environmental or Social Incidents which are incapable of remedy, or set out a clear methodology as to how this is ascertained on a case-by-case basis.

- (b) An [Environmental or Social Incident] for which the Client has provided a [Corrective Action Plan] occurs and either: (i) the Lenders (having consulted with the [Independent Environmental and Social Consultant]) reject such [Corrective Action Plan]; or (ii) the Client does not comply with the actions set out in such [Corrective Action Plan] within the timeframes set out therein.

### **10.3 Representations and Covenants**

- (a) Non-compliance with or breach of any environmental or social covenants of the Client in the Loan Agreement.<sup>29</sup>
- (b) Any of the environmental or social representations and warranties made by or on behalf of the Client is, or proves to have been, incorrect or misleading in any material respect when made or deemed to be made.<sup>30</sup>

## **11. CONDITIONS PRECEDENT TO THE PROJECT COMPLETION DATE**

A report from the [Independent Environmental and Social Consultant] confirming:

- (a) that the [Completion Test] has evaluated and confirmed compliance of the Project with [Environmental and Social Requirements], including full implementation of the [Environmental and Social Management Plan] and [Equator Principles Action Plan] (where relevant);
- (b) that the [Environmental and Social Management Plan] updated for the operation phase of the Project is operational and complies with all [Environmental and Social Requirements] and, to the extent any aspect of the [Environmental and Social Management System] for the operation phase of the Project is to be implemented at a later date, all arrangements necessary for such timely implementation have been made through the [Equator Principles Action Plan]; and

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<sup>29</sup> This Event of Default may contain a general reference to “covenants” or a list of specific covenants. Irrespective of which formulation is used, it is important to ensure that this Event of Default captures all the environmental and social covenants as required under the Equator Principles (see Sections 8 (COVENANTS) and 9 (REPORTING REQUIREMENTS)).

<sup>30</sup> This Event of Default may contain a general reference to “representations” or a list of specific representations. Irrespective of which formulation is used, it is important to ensure that this Event of Default captures all the environmental and social representations as required under the Equator Principles (see Section 6 (REPRESENTATIONS AND WARRANTIES)).

- (c) whether in relation to the Project there are any:
- (i) past or existing adverse risks or impacts relating to [Environmental and Social Matters] that have not been addressed by one or more [Corrective Action Plans]; or
  - (ii) known or threatened [Environmental or Social Claims].

## **12. DISCLOSURE IN CONNECTION WITH THE EQUATOR PRINCIPLES**

### **12.1 Equator Principles Reporting by the EPFIs<sup>31</sup>**

The Lenders may disclose to the Equator Principles Association (or any successor thereof) the following information in connection with the Project: Project Name [x]<sup>32</sup>; calendar year of Financial Close; sector; and host country.

### **12.2 Public Reporting by the Client**

For a Project that emits over 100,000 tonnes of CO<sub>2</sub> equivalent annually:

The Client shall publicly report combined Scope 1 and Scope 2 Emissions during the operational phase on an annual basis. Quantification of the greenhouse gas emissions will be conducted by the Client in line with the GHG Protocol<sup>33</sup> and the reporting methodology shall be in accordance with host country regulatory requirements, or in accordance with internationally recognized methodologies [such as the Carbon Disclosure Project, Task Force on Climate-related Financial Disclosures, Sustainability Accounting Standards Board, or Global Reporting Initiative], in each case where such reporting includes emissions at the Project level and is reasonably acceptable to the Lenders.

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<sup>31</sup> The standard confidentiality provisions in the Loan Agreement can be updated to include this wording. Clients should refer to Equator Principle 10 in connection with this requirement.

<sup>32</sup> To encourage consistency of reporting between EPFIs, the Project Name can be pre-agreed and incorporated into the Loan Agreement.

<sup>33</sup> The GHG Protocol is based on a comprehensive globally standardized framework to measure and manage greenhouse gas (GHG) emissions from operations. Available from [ghgprotocol.org](http://ghgprotocol.org).

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### 13. GLOSSARY OF TERMS

This glossary has been prepared as a reference tool for many of the terms contained in this Guidance Note. EPFIs may utilize, or amend, such definitions as deemed appropriate, and incorporate such terms into Project-specific Loan Agreements.

Any capitalized terms in this Guidance Note that are not defined in this Glossary are defined in the Equator Principles or should be otherwise defined in the Loan Agreement.

“**Agent**” is an entity which acts on behalf of the Lenders. In some situations, an EPFI may be appointed as an “Environmental Agent” to ensure that all Equator Principles requirements are met.

“**Client**” may be described as the Project Company, ProjCo, the Company or the Borrower in the context of the Loan Agreement.

“**Completion Test**” means the milestone achieved by the Project marking the end of the design, development and construction phases of the Project Development Lifecycle, and the start of the operational phase. The test confirms the Project’s ability to perform as planned and generate the expected cash flows. For Projects requiring an Independent Environmental and Social Consultant, completion from an environmental and social perspective will only occur when the Independent Environmental and Social Consultant has deemed that the Project meets all the required performance criteria as defined by the Project-specific Environmental and Social Requirements.

“**Corrective Action Plan**” means a plan to correct and remedy all damage and adverse consequences caused by any failure by the Project to comply with any applicable Environmental and Social Requirements.

“**Decommissioning Plan**” means a plan to retire the physical facilities of the Project, including decontamination, dismantlement, rehabilitation, landscaping and monitoring.

“**Development Plan**” means the description of the physical facilities of the Project as described in the Environmental and Social Impact Assessment and engineering documents as the same may be amended from time to time in accordance herewith.

**“Environmental and Social Assessment Documentation”** means (as appropriate) (and may include non-technical summaries of the below):

- (a) the Environmental and Social Impact Assessment;
- (b) documentation of assessment of Human Rights risks and impacts;
- (c) documentation of Climate Change risks assessment;
- (d) the Environmental and Social Management Plan;
- (e) the Environmental and Social Management System;
- (f) Stakeholder Engagement process documentation;
- (g) the Equator Principles Action Plan; and
- (h) any other relevant documents such as audits, risk assessments, hazard assessments, and Project-specific Environmental and Social Permits.

**“Environmental and Social Impact Assessment”** or **“ESIA”** means the environmental and social impact assessment prepared by [xxx] dated [xxx] that is in accordance with the Equator Principles.

**“Environmental and Social Law”** means any host-country governmental law, rule, regulation, order, writ, judgment, injunction or decree relating to pollution or protection of the environment, all local laws and regulations related to Environmental and Social Matters, and any specific agreements entered into with any competent authorities which include commitments related to Environmental and Social Matters.

**“Environmental and Social Management Plan”** means the environmental and social management plan of the Client dated [xxx], a copy of which is attached hereto as Schedule [X] and that is in accordance with the Equator Principles (*Environmental and Social Management Plan*), as amended from time to time.<sup>34</sup>

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<sup>34</sup> An Environmental and Social Management Plan generally is prepared to address and mitigate risks and impacts raised in the assessment process, whereas an Equator Principles Action Plan (or Environmental and Social Action Plan) is prepared when the EPFI identifies deviations from applicable standards in its due diligence process and lists commitments by the Client to bring the Project in line with Environmental and Social Requirements. Please refer to the relevant definitions and explanations in the Equator Principles and associated guidance documents.

**“Environmental and Social Management System”** means the overarching environmental, social, health and safety management system (which term may refer to the system for the construction phase of the Project or the system for the operational phase of the Project, or to both systems collectively, as the context may require) as described in system manuals and related source documents, including policies, management programs and plans, procedures, grievance mechanisms, requirements, performance indicators, responsibilities, training and periodic audits and inspections with respect to Environmental and Social Matters designed to identify, assess and manage risk in respect to the Project on an ongoing basis.

**“Environmental and Social Matter”** means those environmental and/or social aspects identified in the Environmental and Social Impact Assessment, Independent Environmental and Social Consultant’s review, or Equator Principles Action Plan which are considered relevant to the Project components.

**“Environmental and Social Permits”** means any permit, approval, identification number, license or other authorization required under any Environmental or Social Law.

**“Environmental and Social Requirements”** means, collectively:

- (a) Environmental and Social Law; and
- (b) the applicable Environmental and Social Standards.

**“Environmental and Social Standards”** includes the IFC Performance Standards on Environmental and Social Sustainability and the Project-relevant World Bank Group Environmental, Health and Safety (EHS) Guidelines in force at the time of the agreement<sup>35</sup>.

**“Environmental Contaminant”** means any substance (whether a solid, liquid, gas and whether or not combined with any one or more other substances), activity or other phenomenon that is capable of causing harm to man or any other living organism supported by the environment, or damaging the environment or public health.

**“Environmental or Social Claim”** means any claim, liability, action, inquiry, investigation, litigation, arbitral proceedings or administrative proceedings relating to:

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<sup>35</sup> Environmental and Social Standards are described further in Section 3 (RISK ASSESSMENT-BASED APPLICABILITY OF EQUATOR PRINCIPLES REQUIREMENTS). Depending on the location of the Project, the applicable environmental and social standards include the [IFC Performance Standards on Environmental and Social Sustainability](#) and [World Bank Group EHS Guidelines](#).



- (a) any applicable Environmental and Social Requirements; or
- (b) any authorization relating to applicable Environmental and Social Requirements.

**“Environmental or Social Incident”** will be defined on a case-by-case basis depending on the nature of the Project, and will include:

- (a) the release of any hazardous substance on or from any property of the Client;
- (b) any unanticipated incident, accident or circumstance in connection with the Project which has resulted in or is likely to result in significant, severe or irreversible damage to or impact on the environment, or damage, impact or harm to the lives, livelihood, quality of life, health, safety, security or property of any person; or
- (c) an incident or accident relating to the Client or the Project which has had the following direct or indirect impact in any of the categories specified:
  - (i) on health: death, major disability or serious health damage;
  - (ii) on society: destruction of a site or object of cultural or religious significance, permanent, serious damage or destruction of community assets or infrastructure, or any significant and sustained community or worker-related grievance, protest, action or challenge to the Project; or
  - (iii) material damage to the [Environment]<sup>36</sup> (including through the release of any Environmental Contaminant).

**“Equator Principles”** or **“Equator Principles 4”** means those principles so entitled and described in [“The Equator Principles 4 – July 2020”](https://equator-principles.com/wp-content/uploads/2020/01/The-Equator-Principles-July-2020.pdf): A financial industry benchmark for determining, assessing and managing environmental and social risk in projects,” and available at <https://equator-principles.com/wp-content/uploads/2020/01/The-Equator-Principles-July-2020.pdf>, as adopted in such form by certain financial institutions.

**“Equator Principles Action Plan”** or **“Environmental and Social Action Plan”** means the [Equator Principles Action Plan or Environmental and Social Action Plan] prepared by [xxx]

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<sup>36</sup> Definition of Environment to be agreed on a Project-by-Project basis.

dated [xxx], a copy of which is attached hereto as Schedule [X] and that is in accordance with the Equator Principles.<sup>37</sup>

“**Event of Default**” is a category of clauses described in further detail in Section 4 (Key Components of a Loan Agreement) and will usually be defined by cross-referring to the relevant clause(s) in the Loan Agreement.

“**Finance Documents**” refers to the documents entered into between the Client and the parties providing debt financing (as well as their Agents). For example, the Finance Documents include the Loan Agreement, any security documents, guarantees, agreements governing the relationships between the Lenders, equity or shareholder support related documentation, agreements setting out the Client’s account structure in relation to the Project and/or letters documenting fees payable to the Lenders (and their Agents).

“**Financial Close**” is the date on which the Agent notifies the Client that all the relevant Conditions Precedent to funding have been satisfied or waived. At this point, the Client can start requesting Loans from the Lenders under the Loan Agreement.

“**Independent Environmental and Social Consultant**” means [xyz firm], in respect of Environmental and Social Matters pursuant to the Mandate Letter agreed with the Lenders.

“**Independent Monitoring Consultant**” means [xyz firm], in respect of Environmental and Social Matters or such other person as may from time to time be appointed for, and on behalf of, the Lenders.

“**Lenders**” refers to the parties to the Loan Agreement providing debt financing to the Client by way of a bank loan (as opposed to other forms of debt financing, such as notes or bonds).

“**Loan**” refers to the loans made or to be made by the Lenders to the Client under the terms of the Loan Agreement.

“**Loan Agreement**” is described further in Section 1 (Introduction) and is likely to be referred to in the agreement itself as “this Agreement”.

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<sup>37</sup> As noted above in connection with the definition of “Environmental and Social Management Plan”, the Environmental and Social Management Plan generally is prepared to address and mitigate risks and impacts raised in the assessment process, whereas an Equator Principles Action Plan (or Environmental and Social Action Plan) is prepared when the EPFI identifies deviations from applicable standards in its due diligence process and lists commitments by the Client to bring the Project in line with Environmental and Social Requirements. Please refer to the relevant definitions and explanations in the Equator Principles and associated guidance documents.

**“Physical Completion Date”** is the date when the Project is physically functioning, but not yet fully generating cash flow.

**“Project”** is a development in any sector at an identified location (the location does not need to be contiguous — a Project may be located over one or more geographic areas). It includes an expansion or upgrade of an existing operation.

**“Project Completion Date”** occurs when a defined set of technical (including environmental and social) and financial tests have been met as stipulated in the Finance Documents. The concept of a Project Completion Date is commonly used for project finance transactions. The Project Completion Date is usually achieved after the Project has met a defined set of technical (including environmental and social) and financial tests and is ready to start operation. After the occurrence of the Project Completion Date, the Loan becomes non-recourse to the sponsors.

**“Project Development Lifecycle”** is the overall process of developing and executing a Project. It includes the design and planning, construction, production, closure, decommissioning and restoration of a Project site, as well as the procurement of supplies, permissions, permitting and licensing, and financing and repayment. Indicatively, the lifecycle can range from one year for simple Projects to 15 years (or longer) for larger Projects.

**“Project Documents”** are the key documents required in connection with the construction and operation of the Project. The full list will depend on the nature of the Project and will take into account concession agreements, key supply contracts, interface agreements, real estate related documentation, performance security under the major Project Documents offtake agreements and power purchase agreements (as applicable).

**“Scope 1 Emissions”** are direct greenhouse gas emissions from the facilities owned or controlled within the physical Project boundary.

**“Scope 2 Emissions”** are indirect greenhouse gas emissions associated with the off-site production of energy used by the Project.

**“Stakeholder Engagement”** refers to the provisions of the IFC Performance Standards on Environmental and Social Sustainability on external communication, environmental and social information disclosure, participation, informed consultation, and grievance mechanisms, including, to the extent relevant, Free, Prior and Informed Consent of Indigenous Peoples.