

In the Trenches: Constructing Renewable Energy Debt Agreements from the Inside Out

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Introduction

- + Time to draft your Financing Agreement? You'll be dealing with someone like me!
- + How the sausage is made
 - Deal counsel vs. others
 - What takes the longest time ("long lead-time items")

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Where to start?

- + No one size fits all
- + Applicable precedent
- + Course of dealing among parties
- + Jurisdiction of the project
- + Type of project

Article I: Defined Terms

- + At the beginning of the document or at the end
- + Do not ignore! Important information is often included in the defined terms that may not appear anywhere else in the Financing Agreement

ANNEX A
TO FINANCING AGREEMENT

DEFINITIONS

"Additional Project Documents" means any contracts or agreements entered into or assigned to Borrower, as applicable, subsequent to the Closing Date that (a) replace or substitute for any Material Project Document, (b) have a term greater than three (3) years or (c) obligate any party thereto to make payments in an aggregate amount exceeding Two Million Dollars (\$2,000,000) in any calendar year.

"Administrative Agent" means Administrative Agent Inc., in its capacity as administrative agent for the Lenders under the Financing Agreement, or its successor in such capacity appointed pursuant to the terms of the Financing Agreement.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" of a specified Person means any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified, or who holds or beneficially owns twenty five percent (25%) or more of the equity interest in the Person specified or twenty five percent (25%) or more of any class of voting securities of the Person specified.

"Agents" means Administrative Agent and Collateral Agent, and "Agent" means any of the Agents, as applicable.

"Agreement" shall have the meaning given in the preamble of the Financing Agreement.

"Amortization Schedule" means the amortization schedule set forth as Exhibit K to the Financing Agreement, as the same may be amended or replaced pursuant to the Financing Agreement.

"Annual Debt Service Coverage Ratio" means, as of any Repayment Date the ratio of (a) Operating Cash Available for Debt Service to (b) Debt Service, for the twelve (12) month period ending on such Repayment Date.

"Annual Operating Budget" shall have the meaning given in Section 5.13(c) of the Financing Agreement.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrower Entities or their respective subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, and the rules and regulations promulgated thereunder, and any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Article II: Credit Facilities

- + First article (or second after the defined terms) contains the business terms of the debt
- + Business teams should review this article very closely, especially dollar amounts
 - "I was told there would be no math"

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