



# Credit Guarantee

## **Guarantee to banks and financial institutions for loans, credit facilities and guarantees to participants on the electricity and gas market**

*General terms and conditions, December 2022*

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## Introductory definitions

### **Business Day:**

A day (other than a Saturday or a Sunday) on which banks are generally open for business in Denmark excluding the working days in each year between Christmas and New Year.

### **CCP:**

A central counterparty (in Danish: *central modpart*) as defined in section 3(1)(11) of the Danish Capital Markets Act (Act no. 2014 of 1 November 2021, as amended) (in Danish: *kapitalmarkedsloven*).

### **Clearing Broker:**

**A member of a CCP or client or indirect client of a member of a CCP etc. that provides clearing services in respect of Electricity Derivatives or Gas Derivatives.**

### **Company Declaration:**

**A declaration in which the Debtor confirms to EKF that (i) no distribution of dividends or any other distribution of money or assets by way of share-buy-back programmes, capital reductions or otherwise will be made to the Debtor's shareholders, and no payment of bonuses or other variable remuneration will be made to the management of the Debtor outside the ordinary course of business, (ii) anti-bribery measures etc., (iii) the Credit Facility will only be used for the purpose of the Company's reasonably expected margin call requirements for a period of 12 months in respect of providing collateral under non-speculative Electricity Derivatives and non-speculative Gas Derivatives that are subject to clearing with a CCP or indirectly via a Clearing Broker etc. and is not covered by a COVID-19 measure, and (iv) the Guarantee Beneficiary and EKF may exchange and process all relevant information regarding the Debtor etc.**

### **Credit Agreement:**

**The contractual basis between the Debtor and the Guarantee Beneficiary regarding the Credit Facility.**

### **Credit Facility:**

Loans, credit facilities and/or guarantees established for the purpose of payment or delivery by the Debtor to a CCP or a Clearing Broker of collateral as a response to margin calls under non-speculative Electricity Derivatives and non-speculative Gas Derivatives guaranteed under the Credit Guarantee.

### **Credit Guarantee:**

The Danish state guarantee administered by EKF under these General Terms and Conditions and the Policy.

### **Debtor:**

A company listed in section 2 of the Executive Order, being the borrower and/or guarantee applicant under the Credit Facility.

### **DKK:**

The official currency in Denmark.

**EKF:**

EKF Denmark's Export Credit Agency acting as administrator in accordance with the Executive Order.

**Electricity Derivatives:**

Electricity derivatives as defined in point 14 of article 2 of Directive 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU, as amended.

**Executive Order:**

Executive order no. 1442 dated 16 November 2022, as amended or replaced from time to time.

**Facility Agent:**

If the Guarantee Beneficiary consists of more than one financial institution, one of them shall be elected as administrative facility agent and representative towards EKF in relation to the Credit Facility in accordance with section 18(1) of the Danish Capital Markets Act (Act no. 2014 of 1 November 2021, as amended), cf. section 1(2) of the Act.

**Gas Derivatives:**

Gas derivatives as defined in point 35 of article 2 of Directive 2009/73 of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, as amended.

**Guarantee Beneficiary:**

A financial institution listed in section 3(1) of the Executive Order, being a lender and/or guarantee issuer under the Credit Facility.

**Policy:**

The policy setting out specific terms of the Credit Guarantee.

**Underlying Guarantees:**

Guarantees for the Debtor's third-party liabilities issued by the Guarantee Beneficiary under the Credit Facility.

**Rate of Exchange:**

The average rate of exchange quoted by Danmarks Nationalbank for the relevant currency.

**Terms and Conditions:**

These general terms and conditions for Credit Guarantees for participants on the electricity and gas market, in force as from November 2022.

Headings have no independent significance in regard to the interpretation of these Terms and Conditions.



## 1. Coverage under the Credit Guarantee

### 1.1. Commencement of the Credit Guarantee

- 1.1.1. The Credit Guarantee takes effect on the date specified in the Policy, provided that the Credit Guarantee will not take effect until EKF has received the Company Declaration, duly filled in and signed.
- 1.1.2. The Guarantee Beneficiary is under no obligation to independently verify that the Debtor fulfils the requirements and/or obligations set out in the Company Declaration.

### 1.2. Risks covered by the Credit Guarantee

- 1.2.1. The Credit Guarantee is a payment default guarantee and covers the risk at the percentage of coverage (at 80% of the Credit Facility) specified in the Policy upon the Debtor's default on payments under the Credit Facility.
- 1.2.2. The Credit Guarantee is proportionally reduced as and when the Credit Facility is repaid/prepaid or cancelled.

### 1.3. General conditions for coverage

- 1.3.1. The Guarantee Beneficiary shall use reasonable efforts to validate that the Credit Agreement has been validly executed and that this may be documented by means of an enforceable and final judgment or another enforceable and final judicial decision. If Underlying Guarantees or other separately documented utilisations have been issued or made under the Credit Facility, the Guarantee Beneficiary must also use reasonable efforts to validate that each individual Underlying Guarantee and other separately documented utilisations constitute validly executed and enforceable obligations of the Debtor.
- 1.3.2. At the date of commencement of the Credit Guarantee, the Credit Facility must be separate from the Debtor's other facilities with the Guarantee Beneficiary, and it must be managed in one or more accounts with the Guarantee Beneficiary.
- 1.3.3. The Guarantee Beneficiary must use reasonable efforts to ensure that the financial information submitted to EKF is correct and based on the most recent financial information available to the Guarantee Beneficiary and that the Debtor has fulfilled the requirement to submit any annual report. Furthermore, the Guarantee Beneficiary must ensure that the financial information takes into consideration the Guarantee Beneficiary's own internal guidelines for the credit assessment of the relevant Debtor, including its group structure and consolidated liabilities.
- 1.3.4. The Credit Guarantee is provided in DKK.



- 1.3.5. The Credit Guarantee may cover multiple Credit Facilities granted to the Debtor on one or more occasions provided that EKF has been duly notified of such Credit Facilities.

#### 1.4. Special conditions for coverage related to the Credit Facility

- 1.4.1. Subject to clause 1.4.2, the Debtor shall ensure that the Credit Facility is only used for the purpose of the Debtor's reasonably expected margin call requirements for a period of 12 months in respect of providing collateral under non-speculative Electricity Derivatives and non-speculative Gas Derivatives that are subject to clearing with a CCP or indirectly via a Clearing Broker etc. and not for any other purposes, including, without limitation, any repayment or prepayment of debt, release of guarantees or similar.
- 1.4.2. The Guarantee Beneficiary must classify the Debtor as creditworthy for the Credit Facility supported by the Credit Guarantee in accordance with the Guarantee Beneficiary's internal rules and guidelines for assessing creditworthiness.
- 1.4.3. Notwithstanding clause 1.4.1, the Credit Facility may be used to refinance loans, credit facilities and guarantees which have been established or utilised on or after 1 January 2022 for the purpose set out in clause 1.4.1.

## 2. Upfront fee and guarantee commission

### 2.1. Upfront fee and guarantee commission

- 2.1.1. As payment for the Credit Guarantee, EKF will charge an upfront fee (in Danish: *stiftelsesprovision*) and a guarantee **commission** (in Danish: *garantiprovision*). The upfront fee is to be paid no later than on the date of the establishment of the Credit Guarantee. The upfront fee and the guarantee **commission** is to be paid by the Guarantee Beneficiary within five Business Days after interest, guarantee commission and/or commitment fee (as the case may be) is paid under the Credit Facility by the Debtor to the Guarantee Beneficiary. If the Guarantee Beneficiary consists of more than one financial institution, the upfront fee and the guarantee **commission** is to be settled by the Facility Agent on behalf of the Debtor.
- 2.1.2. The upfront fee and the guarantee **commission** are calculated by EKF on an arm's length basis in accordance with the European Commission's conditions for market conformity, see the Commission Notice of 20 June 2008 on the application of articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (2008/C 155/02), as amended.
- 2.1.3. EKF may not increase the upfront fee and the guarantee premium after the issuance of the Policy, unless such increase becomes relevant or necessary in connection with an amendment or waiver in accordance with clause 3.1.7.



- 2.1.4. The calculation of the guarantee **commission** follows the day count convention *Actual/360*, in which the guarantee **commission** period is inclusive of the first and last dates of the period of the Credit Guarantee.

## 2.2. Guarantee period and termination

- 2.2.1. The guarantee period is specified in the Policy. The guarantee period cannot be shorter than 14 days and cannot exceed five years.
- 2.2.2. The Guarantee Beneficiary may terminate the Credit Guarantee by giving no less than 14 days prior written notice to the next due date for guarantee **commission**.
- 2.2.3. EKF may terminate the Credit Guarantee only in accordance with clause 3.2.1.

## 2.3. No refund

- 2.3.1. EKF is under no obligation to repay any already paid fee, commission or any other payment, unless such payment to EKF has been made in error.

# 3. Obligations of the Guarantee Beneficiary

## 3.1. Duty to take care and duty of notification

- 3.1.1. Regardless of whether the Credit Facility has been drawn down in full, EKF must always be notified immediately in writing if the Guarantee Beneficiary becomes aware of matters that are likely to have a material adverse effect on EKF's risk and/or rights under the Credit Guarantee and of which EKF was not informed in writing already at the time of application.

The Guarantee Beneficiary shall immediately notify EKF in writing at any time if the Guarantee Beneficiary becomes aware that one or more of the following circumstances apply:

1. The Debtor defaults on the Credit Agreement;
2. The Credit Facility is terminated/cancelled;
3. The Debtor becomes subject to restructuring proceedings;
4. The Debtor becomes subject to bankruptcy proceedings;
5. The Debtor suspends its payments;
6. The Debtor becomes subject to a moratorium of any indebtedness, winding-up, dissolution, administration, liquidation, or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise), or composition or compromise involving one or more creditors; or
7. Any demand for payment is made in respect of any Underlying Guarantees issued under the Credit Facility.

- 3.1.2. The Debtor may not utilise the Credit Facility if one or more of the circumstances listed in clause 3.1.1 apply and the Guarantee Beneficiary



knows about the circumstance(s). For the avoidance of doubt, the immediately foregoing will not restrict the Guarantee Beneficiary from meeting a demand for payment made in respect of any Underlying Guarantees issued prior to Guarantee Beneficiary becoming aware of one or more of the circumstances listed in clause 3.1.1.

- 3.1.3. The Guarantee Beneficiary shall when administering the rights under the Credit Facility act in the best interest of EKF and itself, taking only its interest under the Credit Facility into account, and shall take all reasonable and appropriate measures in order to avoid or minimise losses under the Credit Facility.
- 3.1.4. The Guarantee Beneficiary must ensure that a right of termination is included in the Credit Agreement with the Debtor in case the Debtor has submitted materially incorrect or misleading information to EKF or the Guarantee Beneficiary. If the Debtor has submitted materially incorrect or misleading information, the Guarantee Beneficiary must terminate the Credit Agreement on EKF's written instructions.
- 3.1.5. The Guarantee Beneficiary shall obtain and provide relevant reports, financial information and any other information that EKF may reasonably request regarding the Guarantee Beneficiary itself or, on a best-efforts basis, the Debtor, provided that the Guarantee Beneficiary shall not be obliged to disclose information to EKF to the extent that such disclosure would not be permitted by Danish law.
- 3.1.6. Changes to a pledge, guarantee or any other collateral provided to secure the Credit Facility may not be accepted by the Guarantee Beneficiary or Facility Agent (as the case may be) without the prior written consent of EKF. If the Guarantee Beneficiary or Facility Agent (as the case may be) accepts that such collateral is changed without the prior written consent of EKF and if EKF finds that such change to the collateral implies a substantial increased risk on the Credit Facility, EKF may, at its own discretion (acting reasonably), reduce the Credit Guarantee on a DKK for DKK basis equivalent to the increased risk under the Credit Guarantee. Such reduction will be effective from the time when the changes to the collateral were made. The same applies if the Guarantee Beneficiary has not used reasonable efforts to ensure that guarantee or other collateral has been validly established, including if relevant acts of perfection have not been undertaken to the usual extent and with the usual qualifications and assumptions in legal declarations/opinions.
- 3.1.7. The Guarantee Beneficiary may not without the prior written consent of EKF agree to amend or waive any right relating to pricing, term or commitment size or any other fundamental provisions of the Credit Agreement.
- 3.1.8. If a pledge, guarantee or any other collateral has been provided as collateral for the Credit Facility by a third party, the Guarantee Beneficiary shall use reasonable efforts to ensure that a wording is included in the Credit Agreement and/or the guarantee or collateral document to the effect that





payments to the Guarantee Beneficiary under the Credit Guarantee will not reduce the obligations of such third party.

### **3.2. Cessation of the Credit Guarantee**

- 3.2.1. EKF's obligations and liability under the Credit Guarantee will cease to apply with effect from the time when the relevant matter occurred unless such matter may be remedied within 10 Business Days from the earlier of (i) the point in time for EKF's notice to the Guarantee Beneficiary and (ii) the point in time when the Guarantee Beneficiary becomes aware of the relevant matter if:
1. the Guarantee Beneficiary has not fulfilled its obligations under clause 1.3.1, 1.3.2 and/or 1.3.3;
  2. the Guarantee Beneficiary misrepresents by providing information relevant to EKF's position under the Credit Guarantee which is materially incorrect or misleading regarding the Guarantee Beneficiary's own matters;
  3. the Guarantee Beneficiary materially fails to comply with its other obligations under the Policy or these Terms and Conditions; or
  4. the Company Declaration has not been signed by a person authorised to enter into binding contracts on behalf of the Debtor, and the Guarantee Beneficiary knew this or should, subject to a gross negligence standard, have known this.
- 3.2.2. If the Credit Guarantee is issued for the benefit of more than one Guarantee Beneficiary, the Credit Guarantee will cease to apply only with respect to such Guarantee Beneficiary or Guarantee Beneficiaries which have caused the Credit Guarantee to cease to apply in accordance with clause 3.2.1.
- 3.2.3. If the Credit Guarantee ceases to apply with effect from a point in time before EKF has made a compensation payment under the Credit Guarantee, then the amount of such payment must be repaid with addition of any costs and interest at an annual rate as provided for by section 5 of the Danish Interest Act, calculated from the date of payment of the compensation until the date of repayment.

## **4. Payment under the Credit Guarantee**

### **4.1. Demand for payment**

- 4.1.1. The Guarantee Beneficiary's written notice and demand to EKF claiming payment of compensation under the Credit Guarantee may be issued only when the Debtor has defaulted on the Credit Agreement by failing to make timely payments under the Credit Facility.
- 4.1.2. The notice and demand must specify the amount claimed in accordance with clause 4.3 and provide documentation to prove that the Guarantee Beneficiary has demanded that the Credit Facility be



prepaid/cancelled/repaid in full. The Guarantee Beneficiary is only entitled to submit a notice up to an amount equal to the guaranteed percentage of the amount utilised on the Credit Facility.

- 4.1.3. Any notice claiming payment of compensation must be received by EKF within 12 months from the date on which claims for compensation under the Credit Guarantee may be pursued under the Credit Guarantee.

## **4.2. Payment of compensation under the Credit Guarantee**

- 4.2.1. Compensation must be paid within 20 Business Days from receipt of the written default notice from the Guarantee Beneficiary, see clause 4.1.1. EKF reserves the right to choose whether compensation is to be paid in DKK or in the currency in which the Credit Facility or Underlying Guarantee has been issued. If compensation for the Credit Facility or Underlying Guarantee issued in a currency other than Danish kroner is paid in DKK, the amount of compensation will be converted into DKK at the Rate of Exchange prevailing on the date of the claim for compensation.
- 4.2.2. EKF shall pay on-account compensation for the claims made in accordance with clause 4.1 as and when the individual payments on the Credit Facility fall due in accordance with the terms and conditions of the Credit Facility, including any amount of principal falling due as a consequence of acceleration and/or prepayment under the Credit Facility, regardless of whether the Guarantee Beneficiary has initiated or taken legal steps to recover debts from the Debtor. EKF may, at its own discretion, make such payment regardless of whether the total Credit Facility is due for payment.
- 4.2.3. If the Guarantee Beneficiary consists of more than one financial institution, EKF will pay compensation to the Facility Agent in full discharge in relation to the other financial institutions.

## **4.3. Provisional calculation of the loss**

- 4.3.1. EKF shall make on-account payments for the claims made in accordance with clause 4.1 even if the final loss has not yet been calculated. A claim is determined as the overdue outstanding payment under the Credit Facility within the maximum guaranteed percentage stated in the Policy. Underlying Guarantees may only be included in the provisional calculation of the loss if an amount under the relevant Underlying Guarantee(s) has been paid out.
- 4.3.2. Interest and costs are only covered within the limit of the Credit Guarantee. Only ordinary interest (not default interest) is covered under the Credit Agreement up to the date of a bankruptcy order, if issued, but not for more than 90 days from the due date of the Credit Facility in question.



## 5. Final loss statement, loss coverage and collection

### 5.1. Final loss statement and loss coverage

5.1.1. The guaranteed 80% of the final loss on the Credit Facility, as set out in the Policy, constitutes EKF's total liability under the Credit Guarantee.

5.1.1.1. *Terms specific for Underlying Guarantees in currencies other than DKK – maximum liability:*

For the purpose of determining EKF's maximum liability under the Credit Guarantee, any exposure under the Credit Facility (including any Underlying Guarantees) not denominated in DKK will be converted into DKK at the Rate of Exchange prevailing on the date of the utilisation of the relevant instrument under the Credit Facility.

5.1.1.2. *Terms specific for Underlying Guarantees in currencies other than DKK – maximum payment:*

For the purpose of determining the amount EKF shall pay the Guarantee Beneficiary under the Credit Guarantee in case of a loss, any exposure under the Credit Facility (including any Underlying Guarantees) not denominated in DKK will be converted into DKK at the Rate of Exchange prevailing on the date of EKF's payment of compensation.

5.1.2. After payment of the amount of compensation referred to in clause 4.2, EKF's claim for indemnity or re-course against the Debtor includes the amount of paid compensation together with interest at an annual rate corresponding to the interest rate specified in the Credit Agreement.

5.1.3. Unless otherwise requested by EKF, the Guarantee Beneficiary undertakes to pursue EKF's claim for indemnity or re-course, including its obligation to prove the claim against the Debtor's estate in bankruptcy. The Guarantee Beneficiary agrees to transfer to EKF any dividend attributable to the risk covered by the Credit Guarantee, declared and paid within 10 Business Days from receipt of such dividend.

5.1.4. The final loss incurred by the Guarantee Beneficiary is calculated as follows:

5.1.4.1. *The Debtor has been declared bankrupt*

If, at the time of the final loss statement, a bankruptcy order has been issued against the Debtor, the final loss incurred by the Guarantee Beneficiary under the Credit Facility will be calculated as follows:

The amount of any claim filed by the Guarantee Beneficiary and admitted by the Debtor's estate in bankruptcy with the addition or after the deduction of the following amounts (to



the extent not already taken into account when determining the claim proved and admitted):

1. only the amount of interest applied in accordance with clause 4.3.2 will be added;
2. the proceeds of collateral will be deducted;
3. proceeds resulting from other guarantees etc. will be deducted;
4. proceeds in the form of principal payments by joint debtors will be deducted;
5. any dividend from a Bankruptcy Estate on the Guarantee Beneficiary's claim will be deducted; and
6. the amount of any claim against the Debtor which the Guarantee Beneficiary has set off or netted out against any right under the Credit Facility will be deducted.

If, in exceptional circumstances, EKF itself has filed its claim under the Credit Facility against the Debtor, any dividend on EKF's claim will be deducted, while the amount of compensation paid by EKF to the Guarantee Beneficiary will be added to the calculated loss.

If the collateral provided to secure the Debtor's Credit Facilities cannot or should not be realised, an estimated value of such collateral must be calculated. If the Guarantee Beneficiary and EKF disagree on the estimated value, EKF may demand that the value be determined by an independent third party. After the determination of the value, the Guarantee Beneficiary shall take over the collateral at the determined value unless EKF or the Guarantee Beneficiary requests that the final loss shall not be finally calculated and settled before the collateral in question has been realised.

#### 5.1.4.2. *Debtor has not been declared bankrupt*

If bankruptcy proceedings have not been instituted against the Debtor at the time of the final loss statement, the final loss incurred by the Guarantee Beneficiary under the Credit Facility will be calculated as follows:

The overdue principal on the Credit Facility without the addition of interest at the date when the Guarantee Beneficiary presented EKF with its claim for payment of compensation with the addition or after the deduction of the following amounts (to the extent not already taken into account when determining the claim):



1. only the amount of interest applied in accordance with clause 4.3.2 will be added;
2. the proceeds of collateral will be deducted;
3. proceeds resulting from other guarantees etc. will be deducted;
4. proceeds in the form of payment of principal by joint debtors will be deducted;
5. all principal payments on the Credit Facility which the Guarantee Beneficiary has received from the Debtor after the date on which the Guarantee Beneficiary presented EKF with its claim for payment of compensation will be deducted; and
6. the amount of any claim against the Debtor which the Guarantee Beneficiary has set off or netted out against any right under the Credit Facility will be deducted.

If, in exceptional circumstances, EKF itself pursues its claim under the Credit Facility against the Debtor, all principal payments on the Credit Facility which EKF has received from the Debtor after the date on which the Guarantee Beneficiary presented EKF with its claim for payment of compensation will be deducted.

If the collateral provided to secure the Debtor's facilities cannot or should not be realised, an estimated value of such collateral must be calculated. If the Guarantee Beneficiary and EKF disagree on the estimated value, EKF may demand that the value be determined by an independent third party. After the determination of the value, the Guarantee Beneficiary shall take over the collateral at the determined value unless EKF or the Guarantee Beneficiary requests that the final loss shall not be finally calculated and settled before the collateral in question has been realised.

- 5.1.5. When the loss has been finally calculated, the Guarantee Beneficiary is obliged to submit a statement of the loss incurred and to repay any overpaid amount of compensation under the Credit Guarantee with the addition of interest at an annual rate as provided for by section 5 of the Danish Interest Act, calculated from the date of payment of the compensation by EKF in accordance with clause 4.2 or, if later, from the date the Guarantee Beneficiary receives an amount which reduces its loss in accordance with clauses 5.1.4.1 or 5.1.4.2 (as applicable) in respect of such amounts.

The final loss statement must be received by EKF within 12 months from the default notice claiming coverage under the Guarantee unless the Debtor is subject to bankruptcy proceedings. If the Debtor is subject to bankruptcy proceedings, the final loss statement must be received by EKF within 12 months from the date when the estate in bankruptcy has been wound up. Irrespective hereof, if EKF or the Guarantee Beneficiary pursuant to clause 5.1.4.1 or 5.1.4.2 (as applicable) has decided that the final loss



shall not be finally calculated and settled before all collateral (if any) has been realised, the final loss statement must be received by EKF within three months from the realisation of the collateral.

If EKF does not receive the final loss statement within the time limit set out above, the Credit Guarantee will cease to apply in accordance with clause 3.2.

- 5.1.6. Any guarantee, security or other collateral provided as security for the Debtor's other facilities which has also been provided as collateral for the Credit Facility with the Guarantee Beneficiary must be deducted when calculating the final loss in advance to the extent such collateral covers the Credit Facility, see clause 5.1.4. Any additional proceeds of such collateral shall be deducted when calculating the final loss under the Credit Facility. Furthermore, any collateral provided by or on behalf of the Debtor for any other existing or new facilities with the Guarantee Beneficiary after the date of this Credit Guarantee and where such facilities are not related to or part of the Credit Facility shall not be deemed or required to be provided as collateral for the Credit Facility, unless otherwise agreed at the time of establishing the Credit Facility, provided always that the Guarantee Beneficiary may in no event have a more favourable risk position under the Credit Facility than that of EKF by directly or indirectly having general guarantees or other collateral or any other type of risk mitigation in relation to the Credit Facility.

The Guarantee Beneficiary shall furthermore be entitled to release any collateral provided by the Debtor for any other existing or new facilities with the Guarantee Beneficiary without the prior consent from or consultation with EKF, if

1. the collateral in question is not provided by the Debtor as collateral for the Credit Facility, or
2. outside circumstances where an event of default has occurred and is continuing under the Credit Facility, the Credit Facility is only benefitting from such collateral on the basis of an all monies clause or similar (in Danish: *alskyldserklæring eller lignende*) agreed with the Debtor; provided always, in each case, that the Guarantee Beneficiary may in no event have a more favourable risk position under the Credit Facility than that of EKF by directly or indirectly having general guarantees or other collateral or any other type of risk mitigation in relation to the Credit Facility and that if the Credit Facility is benefitting from such collateral on the basis of an all monies clause or similar with the Debtor, it will be in the same position on a pari passu basis with any other existing or new facility between the Debtor and the Guarantor Beneficiary, which is also only benefitting from such collateral on the basis of an all monies clause or similar agreed with the Debtor.



- 5.1.7. If, in exceptional circumstances, EKF itself wishes to collect claims under the Credit Facility, the Guarantee Beneficiary must assign any claim which the Guarantee Beneficiary has under the Credit Facility to EKF to the extent that EKF has paid compensation to the Guarantee Beneficiary for this amount. Such assignment must also include any collateral (or proportional part thereof) held by the Guarantee Beneficiary as collateral for the claim.
- 5.1.8. If the Guarantee Beneficiary may make a claim directly against a beneficiary of an Underlying Guarantee that has been utilised, the Guarantee Beneficiary is obliged to follow EKF's instructions in connection with the collection of the claim against the beneficiary unless the claim has been assigned to EKF in accordance with clause 5.1.7. Any costs incurred in connection with the collection will be shared between the Guarantee Beneficiary and EKF in the same proportion as the Credit Guarantee covers the Guarantee Beneficiary's loss on the Credit Facility.

## **5.2. Collection of outstanding claims**

- 5.2.1. After the loss has been finally calculated as referred to in clause 5.1, the Guarantee Beneficiary and EKF will be responsible for the separate collection of their respective outstanding claims against the Debtor.
- 5.2.2. If collateral has been provided as security for the Credit Facility, the Guarantee Beneficiary must realise such collateral with a view to reducing the loss on the Credit Facility as best as possible given the credit and collateral position (see clause 5.1.6) of the Credit Facility. To the extent that EKF pays compensation on an ongoing basis, see clause 4.2.2, the Guarantee Beneficiary must ensure to the extent of the Guarantee Beneficiary's control thereof that any collateral provided as security for the Credit Facility (i) continues to be provided as collateral for the Credit Facility until the collateral is realised and (ii) that the value of the collateral is not impaired until realised.

## **6. Other matters**

### **6.1. Guarantee Beneficiary's deductible**

- 6.1.1. The Guarantee Beneficiary is not entitled to transfer or take out any guarantee or insurance to or with a third-party provider for the percentage (20%) of the risk of loss not covered by the Credit Guarantee (the deductible) unless EKF has given its written consent thereto.

### **6.2. Assignment of the Credit Guarantee**

- 6.2.1. The right to receive compensation under the Credit Guarantee is not transferable without the written consent of EKF.
- 6.2.2. EKF is entitled to reinsure the Credit Guarantee in whole or in part without the consent of the Guarantee Beneficiary and the Debtor. In this



connection, EKF is entitled to disclose information about the Credit Guarantee to reinsurers provided that the reinsurers are bound by a duty of confidentiality at the same level as EKF.

### 6.3. Governing law and jurisdiction

- 6.3.1. Any dispute or disagreement arising out of or in connection with the Credit Guarantee must be settled by the City Court of Copenhagen in accordance with Danish law. Notwithstanding the above, EKF reserves the right to request that the case be referred to another competent court.

### 6.4. Translation of documents

- 6.4.1. The Guarantee Beneficiary undertakes to arrange for an authorised translation of documents at the request of EKF. If such a request is made in connection with the collection of claims relating to non-performing facilities, the cost of translation will be shared in the same proportion as the Guarantee covers the Guarantee Beneficiary's loss.

### 6.5. Right of audit

- 6.5.1. Without prejudice to on-account payments made in accordance with clause 4, EKF may require the Guarantee Beneficiary to present an auditor's opinion showing a high degree of assurance regarding the Guarantee Beneficiary's final loss under the Credit Agreement and/or the fulfilment of delivery of financial information and satisfaction of the Guarantee Beneficiary's economic obligations under these Terms and Conditions. The costs associated with these measures are payable by the Guarantee Beneficiary.
- 6.5.2. The Guarantee Beneficiary must allow EKF to arrange for the performance of an audit at the premises of the Guarantee Beneficiary, including allowing one or more auditors to review all relevant bookkeeping records and documentation (both in hard copy and electronic format) held by the Guarantee Beneficiary for the purpose of establishing whether the Terms and Conditions of the Credit Guarantee have been complied with. The costs associated with these measures are payable by EKF. EKF must notify the Guarantee Beneficiary at least 10 Business Days before the commencement date of the audit. The right of audit will cease to apply while a dispute between EKF and the Guarantee Beneficiary is pending before the competent court that has been chosen, see clause 6.3.1.
- 6.5.3. On written demand, the Guarantee Beneficiary undertakes to provide EKF with any reports, opinions and statements prepared by the Guarantee Beneficiary's internal or external auditors regarding matters associated with the Credit Guarantee, including, without limitation, **commission** and losses.





## **6.6. Disclosure**

- 6.6.1. EKF is entitled to disclose information on the utilisation and use of the Credit Guarantee, including, without limitation, information about the amounts of individual guarantees and the use in various sectors etc.
- 6.6.2. EKF will not disclose identifiable information on individual Guarantee Beneficiaries or Debtors without the prior consent of the relevant parties.

## **6.7. Correspondence**

- 6.7.1. Any general correspondence from EKF concerning Credit Guarantees must be addressed to the registered head office of the Guarantee Beneficiary. Any correspondence concerning the individual Credit Guarantee must be addressed to the Guarantee Beneficiary as stated in the application.