
DMM SYSTEM

DISPOSAL OF DONGE MELUN METZ OIL PIPELINE AND RELATED FACILITIES

REQUIREMENTS SPECIFICATION

VERSION OF 7 SEPTEMBER 2020



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PREAMBLE

- (A) The French State has announced its intention to proceed with the disposal of the Donges Melun Metz oil pipeline and its related facilities (the “**DMM System**”)

To this end, the State has published the notice provided in Article R. 3211-4 of the General Code of Ownership of Public Entities (code général de la propriété des personnes publiques) in the following publications:

- Website of the General Directorate for Energy and Climate (Direction Générale de l’Energie et du Climat);
- Website of the Directorate of State Property (Direction de l’Immobilier de l’Etat);
- Notices posted in the prefecture offices of the departments concerned;
- Notices posted in the offices of the departmental or regional directorates of public finances concerned;
- Various press organs.

This requirements specification (the “**Requirements Specification**”) has been posted on the websites of the General Directorate for Energy and Climate and the Directorate of State Property.

A translation of the Requirements Specification in English is available free of charge on these websites, for information purposes only. Only the French language version is authentic.

- (B) In adherence to the Franco-American agreements, the DMM System was constructed between 1953 and 1959 by the company TRAPIL, which was charged with its operation until 1995. By a decree of 24 February 1995, the State conferred the operation to the Société Française Donges Metz (the “**SFDM**”) for a period of 25 years under the terms and conditions set out in an agreement appended to this decree, itself accompanied by a requirements specification (the “**SFDM Agreement**”)¹

Being of particular importance to French national defence, the State decided to maintain its ownership, and the assets were incorporated into the public domain. Henceforth, the State proposes to declassify these assets from the public domain and to transfer its ownership of the DMM System within the framework of this invitation to tender (the “**Invitation to Tender**”)

- (C) The State desires that this disposal does not affect the social, legal, operational and commercial continuity of the DMM System’s operation. To this end, it has taken the following measures.

¹The decree of 24 February 1995 was published in the French Official State Gazette (Journal officiel de la République française) of 26 February 1995, page 3070. The electronic version of the decree on the site Légifrance does not include Article 41.3 of the requirements specification, which instead appears in the paper version of the Official State Gazette. Furthermore, the decree of 24 February 1995 and the SFDM Agreement were supplemented by a decree of 9 April 1999 published in the Official State Gazette of 17 April 1999, p. 5708.

The State firstly desires that the winner of the Invitation to Tender (the “**Purchaser**”) undertakes to acquire the entirety of the SFDM shares (the “**Shares**”), which are currently held by Bolloré Energy (the “**Majority Shareholder**”) and its affiliates as well as the Grand Port Maritime de Nantes Saint-Nazaire (the “**Minority Shareholder**” or the “**GPM**”) (together, the “**Shareholders**”).

For this purpose, a memorandum of understanding was concluded between the State, the Majority Shareholder and the SFDM (the “**Memorandum**”), whereby the Majority Shareholder undertakes to transfer (and to ensure that its affiliates transfer) the entirety of their Shares to the Purchaser and whereby the State agreed to the purchase of the Shares by the Purchaser (the “**SFDM Disposal**”).

By an act of accession of 23 March 2020, the GPM acceded to the Memorandum, thereby approving in principle the SFDM Disposal (in addition to the terms and conditions contained in the Memorandum) and undertook to respect all of the Memorandum’s stipulations under the same conditions as if the GPM had been party to the Memorandum by its signature.

The State will transfer ownership of the DMM System (the “**DMM Disposal**”) in favour of the SFDM at the same time as the SFDM Disposal (the “**Transaction**”). The SFDM Disposal and the DMM Disposal will therefore take place on the same date (the “**Completion Date**”).

Moreover, the SFDM Agreement was originally scheduled to end on 29 February 2020. Decree no. 2020-123 of 14 February approved an amendment to the SFDM Agreement which extended the duration until 28 February 2022. The same decree specified that the SFDM Disposal would nevertheless automatically cause the termination of the SFDM Agreement (if the Completion Date occurred before 28 February 2022).

By virtue of decree no. 2020-124 of 14 February 2020, a right to pursue the exploitation of the DMM System (the “**Exploitation Authorisation**”) shall be granted to SFDM under the conditions provided by Article R. 555-27 of the French Environmental Code and specified by this decree². The Exploitation Authorisation will enter into force on the Completion Date.

- (D) The purpose of the Requirements Specification is to set out the general framework of the Invitation to Tender and the completion of the Transaction.

The Invitation to Tender is also governed by the General Code of Ownership of Public Entities.

The Memorandum contains several provisions in order to guarantee that the Invitation to Tender is conducted in a transparent and non-discriminatory manner, under conditions that ensure equality of treatment of the interested parties to the Transaction and the confidentiality of Bids, even if all or some of the Shareholders participate in it, directly or indirectly.

- (E) Unless they have been defined in the Requirements Specification, the terms and expressions defined below will have, when they appear with an initial capital letter, the following definition:

²Article 1 of the decree no. 2020-124 of 14 February 2020 states more specifically: “*in the event of the State’s disposal of the Donges-Melun-Metz oil pipeline, the transfer of right mentioned in Article R. 555-27 of the French Environmental Code operates under the conditions specified by this article pursuant to the following provisions. / The transfer application is presented by the sole transferee. / The commitments mentioned in the second paragraph of Article R. 555-27 are those subscribed to by the previous operator authorised by the abovementioned decree of 24 February 1995. / The authorisation is addressed to the sole transferee.*”

“**Appendix**” means an appendix of the Requirements Specification;

“**Article**” means an article in the body of the Requirements Specification;

“**Day**” means any day of the week;

“**Working Day**” means any day other than a Saturday, a Sunday, or a public holiday in France;

“**Bid**” means, together, the Indicative Bids (as the term is defined in Article 5.2), the Firm Bids (as the term is defined in Article 6.4) and the Final Bids (as the term is defined in Article 6.6).

1. PRESENTATION OF THE TRANSACTION

1.1 Overview

Persons interested in the Transaction (the “**Applicants**”) may obtain an overview (teaser) of the SFDM and the operation of the DMM System by contacting BNP Paribas, advising bank to the State (the “**State's Advisory Bank**”), at the following e-mail addresses:

frederic.guiraudios@bnpparibas.com

alexandre.greco@bnpparibas.com

1.2 Purpose of the Transaction

On the Completion Date, the following operations will be completed at the same time:

- (a) the acquisition by the Acquisition Vehicle (as the term is defined in Article 3.2) of the entirety of the Shares under the terms and conditions provided in the share disposal contract to be concluded between the Acquisition Vehicle and the Shareholders in the presence of the State (the “**SFDM Disposal Contract**”);
- (b) the acquisition of the DMM System by the SFDM under the terms and conditions provided by a notarised deed of sale to be concluded between the State and the SFDM (the “**DMM Deed of Sale**”);
- (c) the conclusion of a promise of sale by the State and the acquisition by the SFDM of the storage tank farm known as “Ferté-Alais C” under the terms and conditions specified in Article 1.5.

1.3 SFDM Disposal

The SFDM Disposal will cover the entirety of the Shares.

The SFDM's share capital is currently distributed as follows:

Shareholders	Number of Shares	Percentage
Bolloré Energy	9,500	95.00
Bolloré SE	1	0.01
Naphtex	1	0.01
Sofiprom	1	0.01
Financière de Cezembre	1	0.01

Financière de l'Odet	1	0.01
GPM de Nantes Saint-Nazaire	495	4.95
Total	10 000	100
Nominal Share Value: 15.25 euros		

Operations to reclassify the Shares shall be completed between the Majority Shareholder and its affiliates by the Completion Date at the latest so that the SFDM's share capital is distributed as follows:

Shareholders	Number of Shares	Percentage
Bolloré Energy	9,505	95.05
GPM de Nantes Saint-Nazaire	495	4.95
Total	10 000	100
Nominal Share Value: 15.25 euros		

The Share disposal price (the “**SFDM Disposal Price**”) will be paid directly by the Acquisition Vehicle to the Shareholders (based on the proportions of their holdings of the SFDM's share capital) under the terms and conditions provided by the SFDM Disposal Contract.

The draft SFDM Disposal Contract will be made available to the Applicants.

1.4 DMM Disposal

The DMM Disposal will cover the entirety of the immovable and movable assets belonging to the State and currently exploited by the SFDM under the SFDM Agreement, whether the assets have been provided to it by the State at the date of the entry into force of the SFDM Agreement or they have been made or acquired by the SFDM on behalf of the State since that date, or are likely to be up until the normal or expected term of the SFDM Agreement.

All these assets are the property of the State³. None of them are governed by Article 41.3 of the SFDM Agreement. They would therefore normally have to be returned to the State pursuant to Article 41.2 of the SFDM Agreement. They shall be transferred to the SFDM in accordance with the DMM Deed of Sale.

An inventory of assets comprising the DMM System will be made available to the Applicants. It will be updated, as and when required during the course of the Invitation to Tender and later as needed for the conclusion of the DMM Deed of Sale.

Prior to the conclusion of the DMM Deed of Sale, the assets will be delisted by means of an act specifying their declassification from the public estate (the “**Act of Declassification**”) and a ministerial order will authorise their disposal pursuant to Article R. 3211-6 of the General Code of Ownership of Public Entities (the “**Disposal Authorisation**”)

The DMM Deed of Sale will be drawn up by Maître Michèle Raunet, associate notary at the Cheuvreux law firm in Paris. The draft DMM Deed of Sale will be made available to the Applicants.

³For a plan of State property specific to the site of the Grand Port Maritime de Nantes Saint-Nazaire, see Article 2.5.

As it is indicated in the Spreadsheet (as the term is defined in Article 1.6), all costs pertaining to the conclusion of the DMM Deed of Sale, such as the contribution to estate security, taxes and duties and the lump-sum fees of the Cheuvreux law firm (the “**DMM Transaction Costs**”) shall be settled by the SFDM. The DMM Transaction Costs will be deducted from the Adjusted Business Value (as the term is defined in Article 1.6) to calculate the DMM Net Disposal Price (as the term is defined in Article 1.6) (see Article 1.6).

The Applicants who want to be assisted by another notary shall afford the costs involved which shall be settled by the SFDM without being deducted from the Adjusted Business Value to calculate the DMM Net Disposal Price.

1.5 Disposal of La Ferté-Alais C storage tank farm

Independently from the SFDM Agreement, the SFDM currently oversees the operation, maintenance and remote monitoring of the “La Ferté-Alais C” and “Donges C” storage tank farms under a public contract with the State, represented by the French Armed Forces Fuel Service (Service des Essences des Armées).

The DMM Disposal covers the storage tank farm known as “La Ferté-Alais C” (the “**LAF C Farm**”), whose ownership will be transferred to the SFDM at the same time as the DMM System. An inventory of assets comprising the LAF C Farm will be made available to the Applicants. It will be updated, as and when necessary during the course of the Invitation to Tender

The LAF C Farm will be the subject of a promise of sale by the State and acquisition by the SFDM (the “**LAF C Promise**”) the draft of which will be incorporated into the DMM Deed of Sale. The LAF C Promise will include, with regard to the condition of the LAF C Farm, the same type of guarantees as those provided for the DMM System in the DMM Deed of Sale (see Article 2.1).

The LAF C Promise will be subject to various conditions precedent and will fix in advance the LAF C Farm’s purchase price by the SFDM (the “**LAF C Price**”) on the basis of an estimate from the National Directorate of State Intervention (Direction nationale des interventions domaniales) (note that this disclosure of the asset price is exceptional, in view of the atypical nature of the Transaction, as the State does not in principle disclose the value of its property estimates during competitive bidding procedures). This price cannot be amended by the Applicants.

Once the conditions precedent provided in the LAF C Promise have been satisfied, the sale will be formalised by notarised deed drawn up by Maître Michèle Raunet (the “**LAF C Sale**”). The SFDM will then pay the LAF C Price and will settle the corresponding taxes and costs (the “**LAF C Transaction Costs**”), which are similar to those mentioned in Article 1.4).

The LAF C Promise will contain a penalty clause by which the SFDM will pay an amount equal to 10% of the LAF C Price if it does not conclude the LAF C Sale while the conditions precedent are satisfied. The payment of this amount will be covered by an autonomous first demand guarantee (garantie autonome à première demande or GAPD) that the Purchaser must arrange or have arranged, the template for which will be provided to the Applicants (the “**LAF C GAPD**”).

The LAF C GAPD will be issued by a credit institution or a finance company mentioned in Article L. 511.1 of the Monetary and Financial Code or an insurance company rated at least A3 by Moody's or A- by Standard & Poors or Fitch or with at least an equivalent rating (an "**Eligible Institution**") This rating requirement may be reviewed according to changes in these agencies' ratings.

1.6 Calculation of the SFDM Disposal Price and the DMM Net Disposal Price

As part of their Bids, the Applicants must set a value for the whole business constituted by the SFDM, the DMM System and the LAF C Farm whose ownership the SFDM will assume on the Completion Date, supposing that the SFDM is free of debt and treasury costs ("debt-free/cash free") (the "**Proposed Business Value**").

The Proposed Business Value will serve as a basis for the calculation of the price that shall be paid by the SFDM in consideration for the transfer of ownership of the DMM System provided by the DMM Deed of Sale (the "**DMM Net Disposal Price**") It will not vary irrespective of changes to the Completion Date.

The calculation of the transition from the Proposed Business Value to the DMM Net Transfer Price will be carried out using a file provided by the State, in which the Applicants will only fill in the Proposed Business Value (the "**Spreadsheet**").

For the purposes of comparing Bids, the Spreadsheet will contain various assumptions that will be imposed on the Applicants and on the basis of which, starting from the Business Value Proposed by the Applicants, a theoretical adjustment of the Proposed Business Value (the "**Adjusted Business Value**") will be calculated, then a theoretical calculation of the SFDM Disposal Price and the DMM Transaction Costs, in order to deduct from it the theoretical amount of the DMM Net Transfer Price.

It should be noted here that:

- (a) The SFDM Disposal Price will be determined according to the terms and conditions contained in Appendix 6, which restates the stipulations in the Memorandum: these terms and conditions are binding on the Applicants and cannot be amended by them;
- (b) the DMM Net Disposal Price shall be equal to the Adjusted Business Value less the SFDM Disposal Price, the Completion Indemnity, the NBV (VNC) Indemnity, the DMM Transaction Costs, the LAF C Price and the LAF C Transaction Costs.

Appendix 6 specifies that the SFDM Disposal Price shall include, in particular, the amount that the Shareholders would have received if the SFDM had been liquidated on the Completion Date (the "**SFDM Net Asset Value**") The calculation method of the SFDM Net Asset Value, established by KPMG (audit firm appointed by SFDM with no objection from the State) and agreed by the parties to the Memorandum, will be communicated to the Applicants at the Indicative Bid stage.

Prior to the Completion Date, the assumptions contained in the Spreadsheet will be updated according to the terms and conditions provided in Appendix 6, on the basis of financial and accounting data provided at the time of the update, to arrive at a new Adjusted Business Value and the amounts effectively paid to the Shareholders on the Completion Date as per the

Estimated SFDM Disposal Price (as the term is defined in Appendix 6) and to the State as per the DMM Net Disposal Price. The Purchaser's Proposed Business Price will however remain unchanged.

In the DMM Deed of Sale, the Net DMM Disposal Price thus determined will be broken down between the price of the real estate assets and, for the balance, the price of the movable assets making up the DMM System. The price of the real estate assets will have been fixed in advance in the draft DMM Deed of sale issued to the Applicants, on the basis of an estimate from the National Directorate of State Intervention (Direction nationale des interventions domaniales) (note that this disclosure of the asset price is exceptional, in view of the atypical nature of the Transaction, as the State does not in principle disclose the value of its property estimates during competitive bidding procedures). This price cannot be amended by the Applicants.

Subsequent to the Completion Date, the Estimated SFDM Disposal Price will be calculated definitively in accordance with the conditions set out in Appendix 6, on the basis of the accounting and financial data at the Completion Date ("closing accounts").

Any difference between the SFDM Disposal Price and the Estimated SFDM Disposal Price will be paid by (i) the Shareholders (in the same proportions as their shareholding in SFDM) to the Acquisition Vehicle formed by the Purchaser if the Estimated SFDM Disposal Price is higher than the SFDM Disposal Price or (ii) the Acquisition Vehicle formed by the Purchaser to the Shareholders (in the same proportions as their shareholding in SFDM) in the opposite case.

The DMM Net Disposal Price will itself be automatically adjusted accordingly, thanks to the Spreadsheet, always in accordance with the Purchaser's Proposed Business Value.

This adjustment will be provided in the DMM Deed of Sale, on the basis of which the SFDM will make an additional payment to the State in respect of the share of the DMM Net Disposal Price allocated to the movable assets making up the DMM System (in the event that the Estimated SFDM Disposal Price is greater than the SFDM Disposal Price) or, conversely, the State will refund the overpayment in this respect (in the event that the Estimated SFDM Disposal Price is less than the SFDM Disposal Price).

It will be followed by a supplementary deed to the DMM Deed of Sale to be notarised by the notary who drafted the DMM Deed of Sale, with the purpose of setting out (i) the definitive DMM Net Disposal Price, (ii) the payment of the additional amount to the DMM Net Disposal Price by the SFDM or the refund of a portion of this payment by the State and (iii) the receipt for the payment thereby made.

In the event of decrease of the DMM Net Disposal Price, it will be up to the tax administration to decide whether or not a part of the DMM Transaction Costs collected may be subject to a refund, which will be the sole responsibility of the Purchaser. Furthermore, in the event of an increase to the DMM Net Disposal Price, the DMM Transaction Costs will be adjusted accordingly to take into account the change in the basis of their calculation and the SFDM will pay a supplement to the DMM Transaction Costs at the time of signing the supplementary deed.

Moreover, in the event that the LAF C Promise cannot be completed due to the non-satisfaction of the conditions precedent provided in it, the LAF C Transaction Costs deducted from the

Adjusted Business Value to calculate the DMM Net Disposal Price shall give rise to earn out payment to the benefit of the State, for the same amount as the LAF C Transaction Costs. This earn out payment will be formalised in a supplementary deed to the DMM Deed of Sale. The Purchaser shall bear all costs and fees relating to this supplementary deed. The payment of this amount will be covered the LAF C GAPD.

2. OPERATIONAL ASPECTS

2.1 State of the DMM System

The DMM Disposal and the LAF C Sale will be agreed without any other guarantee than those arising from the draft DMM Deed of Sale and the LAF C Promise made available to the Applicants.

All applicants undertake implicitly by making their Bid, if they become the Designated Purchaser, to not raise any claim regarding the nature, use, destination, consistency, state and quality of the DMM System.

The State does not guarantee the content of its plans, measurements, analyses and studies contained in the Data Room, which are published under the sole liability of their authors.

2.2 Operation Authorisation

The occurrence of the Completion Date will automatically give rise to the termination of the SFDM Agreement. In accordance with decree no. 2020-123 of 14 February 2020, this termination will result in, to the benefit of SFDM, a right to receive the Termination Indemnity and the NBV Indemnity (as these terms are defined in Appendix 6), whose methods of calculation are binding on the Applicants.

Firstly, the State will issue the SFDM with an Exploitation Authorisation, which will enter into force on the Completion Date. In accordance with decree no. 2020-124 of 14 February 2020, the Operation Authorisation application file will be set up by the SFDM. It will be, as and when necessary, completed when the identity of the Purchaser is known.

From the date of termination of the SFDM Agreement and the entry into force of the Operation Authorisation, the operation of the hydrocarbon transmission pipelines will be exclusively governed by articles L. 555-1 to L. 555-30 and R. 555-2 to R. 555-36 of the French Environmental Code, as supplemented by decree no. 2020-124 of 14 February 2020⁴.

Pursuant to the regulations applicable to all operators of hydrocarbon transmission pipelines, the SFDM will be further subject to Article 6 of decree no. 2012-615 of 2 May 2012. The Applicants' attention is drawn in this regard to item V of this Article, which specifies that any changes in the tariffs to access pipelines must give rise to a declaration giving reasons to the minister responsible for energy at least one month before their entry into force and, that during this period, the minister may object to the proposed measures.

⁴For the maintenance of pipeline easements on private property, see Article R. 555-30 of the Environmental Code in its version amended by Article 2 of the decree; for the maintenance of installation rights of pipelines on facilities in the public domain, see Article 3 of the decree.

2.3 Regime for the storage tank farm

Independently from the Operation Authorisation, the storage tank farms of the DMM System and the LAF C Farm are governed by the regulations regarding facilities classified for the protection of the environment and are subject to environmental authorisation.

Currently, the competent administrative authorities for these storage tank farms report to the ministry of the Armed Forces: The Directorate of Heritage, Memory and Archives (Direction du Patrimoine, de la Mémoire et des Archives) (DPMA) for the delivery of environmental authorisations and the General Army Control (Contrôle Général des Armées) (CGA) for the inspection and control of their compliance. From the Completion Date, the competence for inspection and control will be transferred to the civil authorities, i.e. the Regional Directorates for the Environment, Planning and Housing (Directions Régionales de l'Environnement, de l'Aménagement et du Logement, DREAL) territorially competent which are attached to the ministry for the Ecological Transition. This transfer of competence will have no impact on the maintenance of current environmental authorisations.

Moreover, three storage tank farms of the DMM System have single wall underground tanks and single shell underground pipework. These tanks are located in the farms called "Vatry C", "Vatry D" and "Saint-Baussant B".

The CGA and the General Directorate of Risk Prevention (Direction Générale de la Prévention des Risques, DGPR) have established specific requirements for this type of tank, which will result in an amendment to the current environmental authorisations before 31 December 2020 and whose implementation will require the SFDM to carry out various works on it. These requirements will be transmitted to the Applicants through the Data Room. A study and costing of the work to be carried out will be included in the DMM Reports.

The Applicants should note that in accordance with common law and in particular Article L. 181-14 of the Environmental Code, if it appeared that these requirements were not sufficient to guarantee the interests mentioned in Article L. 511-1 of this code, the competent authority may have cause to impose any additional requirements that may prove necessary. In particular, depending on the results of inspections and feedback, the competent authority may request a more ambitious renewal plan for underground pipelines to replace them with double lined pipelines, or with overhead or gutter pipelines.

2.4 Public contracts with the Armed Forces ministry

As was stated above, the SFDM currently oversees the operation, maintenance and remote monitoring of the storage tank farms known as "La Ferté-Alais C" and "Donges C" under a public contract with the French State, represented by the Armed Forces Fuel Service (Service des Essences des Armées). This contract entered into force on 17 January 2017 for a period of one year renewable three times. It will therefore expire on 16 January 2021.

The DMM Disposal will not cover the storage tank farm called "Donges C", for which the State will retain ownership. However, no later than 16 January 2021, the State and SFDM will conclude a new contract entrusting SFDM with the operation, maintenance and remote monitoring of this farm for an additional year, renewable three times on the basis of Article R. 2122-3 of the Public Procurement Code (code de la commande publique) (the "**SEA Contract**") The draft SEA Contract will be made available to the Applicants.

Furthermore, the State will cease to operate the LAF C Farm on the expiry of the abovementioned contract of 17 January 2017, that is on 16 January 2021. For the period between 17 January 2021 and the date of the LAF C Sale, the maintenance and remote surveillance of the LAF C Farm will be carried out by SFDM under a contract concluded with the State, also on the basis of Article R. 2122-3 of the Public Procurement Code. From the date of the LAF C Sale, the SFDM will be able to exploit the farm under conditions it may freely define.

2.5 Facilities of the Grand Port Maritime de Nantes Saint-Nazaire

For the needs of its activity, the SFDM occupies various real estate facilities in the public domain located within the GPM site, on which are located various movable assets that form part of the DMM System. Pursuant to law no. 2008-660 of 4 July 2008, the transfer of ownership of these State facilities to the GPM have been formalised by a notarised deed of 16 January 2020.

The occupation of these facilities will give rise to the conclusion, between the GPM and the SFDM, of a terminal services agreement set out pursuant to Article L. 5312-14-1 of the Transport Code in its version resulting from the law no. 2019-1428 of 24 December 2019 (the "**Terminal Services Agreement**"). The Terminal Services Agreement will enter into force on the Completion Date for a period of 30 years. The draft Terminal Services Agreement will be made available to the Applicants.

3. ORGANISATION OF THE APPLICANTS

3.1 Identity of the Applicants

3.1.1 The Applicants may either be:

- (a) an entity acting alone (a "**Sole Applicant**")
- (b) a group of entities ("**Participants**") acting in concert within the meaning of Article L. 233-10 of the Commercial Code (a "**Consortium**").

3.1.2 Participants in a Consortium shall appoint one of their number as their duly authorised agent to represent them and to act in the name and on behalf of all Participants throughout the Invitation to Tender, including the submission of Bids (the "**Agent**").

The Participants will be held jointly and severally liable for all the commitments made by the Consortium in the context of the Invitation to Tender including through the Agent.

3.1.3 It is understood that:

- (a) "**Manager**": means a company which has effective responsibility for the management, directly or by delegation, of the investments and disinvestments made by an Investment Vehicle, whether such management is carried out pursuant to the law, the Investment Structure instruments of incorporation or a contract;

- (b) **"Investment Structure"**: means an existing legal entity, with or without legal personality, whose purpose is the investment by a Manager of capital entrusted by one or several investors.

If an Application intends that the purchase of Shares will be carried out (through the Acquisition Vehicle) for the benefit of one or more Investment Structures, then its Manager shall be regarded as the Sole Applicant or the Participant in the Consortium concerned, whichever is applicable. In this case the Investment Structure(s) concerned shall hold directly or indirectly all or part of (depending on whether the Manager is a Sole Applicant or a Participant in the Consortium), the capital, the shares or the rights representing the Acquisition Vehicle's investment.

In the case of an Investment Structure that a Manager intends to establish, for the purposes of the Transaction, on behalf of identified investors (the **"Identified Investors"**), this Investment Structure (the **"Dedicated Investment Structure"**) must be governed by the law of a member state of the European Union or the European Economic Area and have a tax representative in France. Moreover, if the Manager is a Sole Applicant and if the Dedicated Investment Structure is the Acquisition Vehicle, it must have legal personality, pursuant to Article 3.2.

3.1.4 It is specified that:

- (a) an entity cannot be at the same time a Sole Applicant and a Participant in a Consortium;
- (b) an entity cannot act as a Participant in several Consortiums;
- (c) an entity cannot act as an identified investor for several Applicants;
- (d) entities belonging to the same group within the meaning of Article L. 233-3 of the Commercial Code (the **"Related Companies"**) may not participate in Applications or competing Bids as a Sole Applicant, Participant in a Consortium or Identified Investor;
- (e) an entity may not at the same time (i) be a Sole Applicant, a Participant in a Consortium or an Identified Investor and (ii) participate in an Application or a competing Bid in any other capacity, in particular as an investor in an Investment Structure (other than a Dedicated Investment Structure), advisor, service provider or potential lender.

3.1.5 It is also specified that:

- (a) if a Related Company to a Sole Applicant, a Participant in a Consortium or an Identified Investor participates in an Application or a competing Bid in any other capacity, in particular as an investor in an Investment Structure (other than a Dedicated Investment Structure), advisor, service provider or potential lender, or
- (b) if two Related Companies participate in an Application or a competing Bid in any other capacity than as a Sole Applicant, Participant in a Consortium or an Identified Investor, in particular as an investor in an Investment Structure (other than a Dedicated Investment Structure), advisor, service provider or potential lender,

then all appropriate arrangements satisfactory to the State must have been put in place by the entities in question, under the responsibility of the Applicants concerned, to prevent, throughout

the Invitation to Tender, any practice of collusion or exchange of information relating to the Invitation to Tender or the Transaction.

3.2 Constitution of an Acquisition Vehicle

To carry out the Transaction, the Purchaser must constitute an Acquisition Vehicle, who shall be the signatory to the SFDM Disposal Contract.

“**Acquisition Vehicle**” is understood to mean any legal entity with legal personality, governed by the law of a member country of the European Union or the European Economic Area, having a fiscal representative in France and whose entire capital, shares or rights representing the investment will be exclusively held, directly or indirectly, by, as the case may be, the Sole Applicant, or the Participants in the Consortium designated as Purchaser.

If an Applicant's acquisition scheme provides for legal entities to be interposed between (i) the Sole Applicant or the Participants in a Consortium and (ii) the Acquisition Vehicle, these entities must have the same characteristics as the Acquisition Vehicle, with the possible exception of the need for them to have legal personality, but including the obligation that the entire capital, shares or rights representing the investment of these entities be exclusively held, directly or indirectly, by, as the case may be, the Sole Applicant or the Participants in the Consortium designated as Purchaser.

The attention of the Applicants is drawn to the fact that from the Completion Date, any change to the direct or indirect control of the SFDM will be governed by item II of Article 6 of decree no. 2012-615 of 2 May 2012.

4. APPLICATIONS

4.1 Content of Applications

The Applicants must submit a file comprising all the items mentioned in Appendix 2 (the “**Application**”).

This file must in particular contain a letter of confidentiality conforming to the template included in Appendix 1, with nothing deleted nor added, in which each page is initialled and the last page dated and signed by the representative of the Sole Applicant or by each Participant, being duly authorised for that purpose.

Unless otherwise specified in Appendix 2, all documents comprising the Application must be entirely written in French.

4.2 Submission of Applications

The Applicants must submit their Application at the latest by **12 October 2020, at 12:00 pm (Paris time)** to the address and in the manner specified in Article 9.2.

Bids received after this date and time will not be accepted and will be returned to their authors unopened.

4.3 Determination of Eligible Applicants

To be eligible the Applicants must satisfy the conditions stipulated in Articles 1.2, 3, 4.1 and 4.2, and have the following financial means (the “**Financial Means**”):

- (a) in the case of a Sole Applicant or a Participant in a Consortium that is not a Manager: it must have at least 100 million euros (or the equivalent in the currency of the home country of the Single Applicant or Participant concerned) of consolidated equity at the date of submission of the Application, or
- (b) in the case of a Sole Applicant or a Participant in a Consortium that is a Manager: it has at least 500 million euros (or the equivalent in the currency of the home country of the Single Applicant or Participant concerned) of consolidated equity at the date of submission of the Application.

It is specified that:

- (a) In the case of a Consortium, it is not required that each Participant has the Financial Means, but that at least one Participant meets the requirement;
- (b) a Sole Applicant or Participant in a Consortium may avail themselves of the Financial Means of a Related Company.

The State will notify all the Applicants whose Application fulfils the eligibility conditions, that they have been accepted to submit an Indicative Bid (the “**Eligible Applicants**”) This notification will be sent to all of them on the same Day by registered letter with acknowledgment of receipt, of which a copy will be sent by electronic means.

The provisional date of this notification is 26 October 2020.

The Applicants who are not authorised to submit an Indicative Bid will be informed by registered letter with acknowledgment of receipt, of which a copy will also be sent to them by electronic means.

4.4 Changes to Applications

The composition of an Applicant may, from the date it was designated an Eligible Applicant, be changed under the terms and conditions provided in Appendix 3.

5. INDICATIVE BIDS

5.1 Initial Documentation

The notification provided in Article 4.3 will specify to Eligible Applicants the date from which they will be able to access an electronic information room (the “**Data Room**”) containing at least the following documents (the “**Initial Documentation**”):

- (a) a memorandum of information regarding the Transaction;
- (b) a commercial audit report of the DMM System and the LAF C Farm (the “**Strategic Report**”), certain parts of which will remain confidential;
- (c) the SFDM's current statutes;

- (d) the SFDM's audited annual financial statements for 2017, 2018 and 2019 and its financial statements (if so, not audited) for the first quarter of 2020;
- (e) the inventory of assets making up the DMM System and the LAF C Farm;
- (f) a presentation note concerning decrees no. 2020-123 and no. 2020-124 of 14 February 2020;
- (g) the draft Operation Authorisation application file prepared by the SFDM;
- (h) draft Operation Authorisation;
- (i) draft DMM Deed of Sale (including the draft LAF C Promise);
- (j) draft Terminal Services Agreement;
- (k) draft SFDM Disposal Contract;
- (l) calculation method for the Net Asset Value of SFDM;
- (m) the Spreadsheet.

To gain access to the Data Room, Eligible Applicants must apply to the State's Advisory Bank and return to it a copy of the Data Room Regulations (the "**Data Room Regulations**") with no deletions or additions, initialled, dated and signed by the representative of the Sole Applicant or the Agent (as the case may be), duly authorised for this purpose.

The Eligible Applicants may pose a maximum of 10 questions (in French) relating to the Initial Documentation, before a date and in the forms specified in the Data Room Regulations. The answers, anonymised and, if appropriate, summarised, will be communicated simultaneously to all the Eligible Applicants.

5.2 Content of the Indicative Bids

Each Eligible Applicant wishing to complete the Transaction will be required to submit a single bid including all the elements mentioned in Appendix 4 (the "**Indicative Bid**").

The Indicative Bid may not include any request for a guarantee of assets or liabilities.

The Indicative Bid must specify a payment in cash and euros of the full SFDM Disposal Price, the DMM Net Disposal Price and the LAF C Price.

Unless otherwise specified in the Appendix 4, all documents comprising the Indicative Bids must be entirely written in French.

5.3 Submission of the Indicative Bids

The Eligible Applicants must submit their Indicative Bids at the latest by **7 December 2020, at 12:00pm (Paris time)** to the address and in the manner specified in Article 9.2.

Bids received after this date and time will not be accepted and will be returned to their authors unopened.

5.4 Selection of Possible Purchasers

To be eligible the Indicative Bids must satisfy the conditions stipulated in Articles 1.2, 3, 5.2 and 5.3.

In the light of all the Indicative Bids, the State will decide on the best way to proceed with the Invitation to Tender. In respect of the criteria stipulated in Article 8, it may in particular proceed to a selection of Eligible Applicants invited to submit a Firm Bid.

The State will notify the Eligible Applicants, if any, after having made its selection, that they are invited to submit a Firm Bid (the “**Possible Purchasers**”). This notification will be sent to all of them on the same Day by registered letter with acknowledgment of receipt, of which a copy will be sent by electronic means.

The provisional date of this notification is 4 January 2021.

The eliminated Eligible Applicants will be informed by registered letter with acknowledgment of receipt, of which a copy will also be sent to them by electronic means.

6. FIRM BIDS

6.1 Additional Documentation

The notification provided in Article 5.4 will specify to the Possible Purchasers the date from which the Data Room will give them minimum access to the following documents (the “**Additional Documentation**”):

- (a) a financial audit report, an insurance audit report and a fiscal, legal and social audit report relating to the SFDM (the “**SFDM Reports**”);
- (b) A technical audit report and an environmental audit report relating to the DMM System and the LAF C Farm (the “**DMM Reports**”);
- (c) a full version of the Strategic Report;
- (d) The main documents used to support the production of the SFDM Reports, the DMM Reports and the Strategic Report;
- (e) the SFDM’s annual financial statements for 2020 (if so, not audited);
- (f) a possible updated version of the inventory of assets making up the DMM System and the LAF C Farm;
- (g) a report produced by the company AECOM, dated 18 October 2019, regarding the rehabilitation work specified in Article 41.2 of the SFDM Agreement;
- (h) a possible new version of the draft Operation Authorisation application file;
- (i) a possible new version of the draft Operation Authorisation;

- (j) A presentation of future requirements specific to the single wall underground tanks set out by the CGA and the DGPR;
- (k) a possible new version of the draft DMM Deed of Sale (including a possible new version of the draft LAF C Promise);
- (l) the LAF C GAPD template;
- (m) a possible new version of the Terminal Services Agreement;
- (n) the draft SEA Contract;
- (o) a possible new version of the Spreadsheet.

The Possible Purchasers may pose their questions (in French) on the Additional Documentation according to the procedures specified in the Data Room Regulations. The answers, anonymised and, if appropriate, summarised, will be communicated simultaneously to all the Possible Purchasers.

Access to the Data Room will be closed at the deadline date and time for the submission of Firm Bids.

6.2 Access to Sensitive Information

Part of the Data Room will be reserved for the consultation of commercially sensitive information within the meaning of competition law ("**Sensitive Information**").

Sensitive Information will include as a minimum the main contracts concluded between the SFDM and its customers and suppliers.

The State's Advisory Bank will send to the Possible Purchasers the conditions for access to Sensitive Information (the "**Clean Team Agreement**"). This access will be reserved for the Possible Purchaser's legal counsel (lawyers) (the "**Members of the Clean Team**").

To access the Sensitive Information, Possible Purchasers must have returned to the State's Advisory Bank a copy of the Clean Team Agreement not containing any deletions or additions, initialled, dated and signed by the representative of the Sole Applicant or the Agent (as the case may be), duly authorised for this purpose, as well as by each Member of the Clean Team.

6.3 Technical exchanges

As soon as possible after receipt of the notification provided for in Article 5.4, the State or the State's Advisory Bank shall inform the Possible Purchasers of the procedures (the "**Technical Exchanges**") by which each of them may:

- (a) access the industrial tool of the DMM System (as well as the LAF C Farm), in particular by means of site visits;
- (b) benefit from one or more interviews, on specific subjects of expertise, with the following SFDM staff members: (i) the head of the operations/optimisation department, (ii) the head of the dispatch/programmes department, (iii) the head of the administration/finance

department, (iv) the head of the QHSE department, (v) the head of the technical/automation and IT department and (vi) the head of the HR management department;

- (c) benefit from one or more interviews, on specific subjects of expertise, with the authors of the SFDM Reports, the DMM Reports and the Strategic Report.

6.4 Content and scope of Firm Bids

Each Possible Purchaser wishing to complete the Transaction will be required to submit a single bid including all the elements mentioned in Appendix 5 (the "**Firm Bid**").

The Firm Bid may not include any request for a guarantee of assets or liabilities.

The Firm Bid must specify a payment in cash and euros of the full SFDM Disposal Price, the DMM Net Disposal Price and the LAF C Price.

Unless otherwise specified in Appendix 5, all documents comprising the Indicative Bids must be entirely written in French.

Without prejudice to the Conditions Precedent (as this term is defined in Article 7.1), the Firm Bid shall constitute an irrevocable commitment to complete the Transaction until the date falling four (4) months from the date mentioned in Article 6.5 (the "**Validity Period of the Firm Bid**").

The submission of the Firm Bid will also serve to inform the Minister in charge of energy of a change in the control of the SFDM within the meaning of item II of Article 6 of Decree no. 2012-615 of 2 May, 2012.

6.5 Submission of Firm Bids

The Possible Purchasers must submit their Firm Bids at the latest by **1 March 2021, at 12:00pm (Paris time)** to the address and in the manner specified in Article 9.2.

Bids received after this date and time will not be accepted and will be returned to their authors unopened.

6.6 Selection of Purchaser

- 6.6.1 To be eligible the Firm Bids must satisfy the conditions stipulated in Articles 1.2, 3, 6.4 and 6.5.

In the light of all the Firm Bids, the State will decide on the best way to proceed with the Invitation to Tender.

In particular, the State reserves the right, if it deems it useful before the designation of the Purchaser, to invite the highest ranked Possible Purchasers, in terms of the criteria set out in Article 8(the "**Prospective Purchasers**"), to submit a last bid (the "Final Bid"). The terms and conditions of the Final Bids will then be specified in an invitation letter sent to the Prospective Purchasers.

- 6.6.2 On the basis of the criteria stipulated in Article 8, the State will designate the purchaser of the Shareholding as regards the Firm Bids or the Final Bids if it has availed itself of the

abovementioned option (the **Designated Purchaser**). It will notify it of its decision (the **Notification**).

Without prejudice to the possible need to obtain the Foreign Investment Authorisation (IEF) and/or the Merger Authorisation (as these terms are defined in Article 7.1), the Notification will serve to inform the Minister in charge of energy of the compatibility of the change in control of the SFDM resulting from the Transaction with the Operation Authorisation, within the meaning of item II of Article 6 of Decree no. 2012-615 of 2 May 2012.

The other Possible Purchasers, whether invited or not to submit a Final Bid, will be informed of the decision by registered letter with acknowledgment of receipt, of which a copy will be sent to them by electronic means. Up until the expiry of the Validity Period of the Firm Bid, the Possible Purchasers, whether invited or not to deposit a Final Bid, will remain bound by their irrevocable commitment to complete the Transaction.

The Prospective Purchasers shall only be released from it if they submit a Final Bid in accordance with the requirements stipulated in the letter mentioned in Article 6.6.1. Without prejudice to the Conditions Precedent, their Final Bid will then constitute an irrevocable commitment to complete the Transaction for a period of four (4) months from the date of submission of the Final Bids mentioned in this letter (the **Validity Period of the Final Bid**).

7. COMPLETION OF THE TRANSACTION

7.1 Conditions Precedent

Without prejudice to Article 9.8, the completion of the Transaction, the signing of the SFDM Disposal Contract and the signing of the DMM Deed of Sale shall be dependent on the satisfaction of the following conditions only (the Conditions Precedent):

- (a) information-consultation by the SFDM of its Social and Economic Committee pursuant to Article L. 2312-8 of the French Labour Code;
- (b) if the Designated Purchaser is subject to such requirement, it must obtain the authorisation from the Minister responsible for the economy, pursuant to Article L. 151-3 of the French Monetary and Financial Code concerning the control of foreign investments in France (the **IEF Authorisation**);
- (c) if the Designated Purchaser is subject to such requirement, it must obtain all necessary authorisations relating to the control of mergers (the **Merger Authorisation**);
- (d) adoption by the GPM Supervisory Board of a resolution authorising the signing of the SFDM Disposal Contract;
- (e) publication by the State of the Operation Authorisation in the Official State Gazette (Journal officiel de la République française);
- (f) publication by the State of an act of declassification in the Official State Gazette;
- (g) publication by the State of a Disposal Authorisation in the Official State Gazette;

- (h) for the purposes of the conclusion of the DMM Deed of Sale, the waiver by interested third parties of their legal rights of pre-emption or preference and/or the purging of any applicable rights to information.

As far as possible, the Operation Authorisation, the Act of Declassification and the Disposal Authorisation will be published simultaneously, once the Conditions Precedent referred to in (a) and (d) are satisfied.

The Completion Date will take place at the earliest on the day following this publication.

7.2 Merger Authorisation

The Designated Purchaser undertakes to cooperate with the State in the procedure for obtaining the Merger Authorisation, if required, and to take the necessary steps to ensure that it is granted as soon as possible after the Notification.

The Designated Purchaser in particular undertakes:

- (a) to make any pre-notification no later than ten (10) Working Days from the date of the Notification;
- (b) to transmit to the representatives and/or legal counsel of the State, in both confidential and non-confidential versions (with due respect for business secrecy and any confidential information it may contain), any draft notification, declaration, reply or other correspondence that it intends to send to the competition authorities concerned, in sufficient time to enable them to review and comment on it, with the Designated Purchaser undertaking to take such comments into account;
- (c) to invite representatives and/or legal counsel of the State to participate in any meeting with the competition authorities concerned;
- (d) to keep the State's representatives and/or legal counsel regularly informed about the processing of the pre-notification and formal notification, and in particular to inform them as soon as it becomes aware of any matter which may compromise or delay the obtaining of the Merger Authorisation;
- (e) To communicate the Merger Authorisation to the State's representatives and/or legal counsel on the first Working Day following the date it was obtained.

7.3 Completion Date

The Completion date will take place on a date proposed by the State and falling before the expiry of the Validity Period of the Firm Bid or the Validity Period of the Final Bid (as the case may be) potentially extended pursuant to Article 7.5. If, no later than ten (10) Working Days before this deadline, the State, the Shareholders, the SFDM and the Designated Purchaser have not reached an agreement on the Completion Date, the Completion Date may be set unilaterally by the State within the same deadline.

On the Completion Date, the following operations shall be deemed to have been carried out in the order set out below:

- (a) the SFDM Agreement will be automatically terminated (or will expire if the Completion Date falls on 28 February 2022), which will (i) result in the return to the State of the assets comprising the DMM System and (ii) make payable the SFDM's claim against the State in respect of the Termination Indemnity and the NBV Indemnity;
- (b) the Acquisition Vehicle constituted by the Designated Purchaser will sign the SFDM Disposal Contract and, subject only to the delivery of the appropriate documents permitting the transfer of the Shares, will pay to the Shareholders (in cash, in euros, by transfer to the account indicated in the SFDM Disposal Contract) the Estimated SFDM Disposal Price, which will have been previously calculated and notified under the terms set out in Appendix 6;
- (c) through the Acquisition Vehicle, the Purchaser will ensure that the SFDM has the financial resources (in debt or equity) to enable it to pay the Net DMM Disposal Price, the DMM Transaction Costs, the LAF C Price and the LAF C Transaction Costs;
- (d) The SFDM will submit to the State the LAF C GAPD issued by an Eligible Body;
- (e) the State and the SFDM will enter into the DMM Deed of Sale (including the LAF C Promise), which will make the State's debt claim with the SFDM for the Net DMM Disposal Price payable, in cash, in euros, by transfer to the account indicated in the DMM Deed of Sale;
- (f) At the same time as the payment of the DMM Net Disposal Price, the SFDM will settle the DMM Transaction Costs;
- (g) the Operation Authorisation and the Terminal Services Agreement will enter into force.

It is recalled that, subsequent to the Completion Date, if the amount of the SFDM Disposal Price definitively calculated in accordance with Appendix 6 is not equal to the amount of the Estimated SFDM Disposal Price, then (i) the difference between these two amounts will be paid by the Acquisition Vehicle to the Shareholders, or conversely, under the terms and conditions set forth in the SFDM Disposal Contract and (ii) the Net DMM Disposal Price will be adjusted accordingly, with the proceeds of this adjustment being paid by SFDM to the State, or conversely, under the terms and conditions set forth in the DMM Deed of Sale.

It is also recalled that, after the Completion Date, once the conditions precedent provided for in the LAF C Promise have been satisfied, the sale of the LAF C Farm will be regularised by notarised deed. The LAF C Price will then be paid in cash by the SFDM to the State, in euros, by transfer to the account that will have been indicated in this notarised deed.

7.4 Failure to complete the Transaction

If it considers at any point from the Notification, that the Designated Purchaser will not be in a position to complete the Transaction before the expiry of either the Validity Period of the Firm Bid or the Validity Period of the Final Bid, the State reserves the right to invite (as the case may be) the next Possible Purchaser or the next Prospective Purchaser in accordance with the criteria set out in Article 8.

The State may in particular make use of this option:

- (a) if the Designated Purchaser has not been sufficiently diligent in taking the necessary steps to obtain the IEF Authorisation and/or the Merger Authorisation, although required to obtain these authorisations, or
- (b) if the applications for these authorisations have been rejected by the competent authorities or if it becomes obvious that they will be rejected.

The new invited Possible Purchaser or Prospective Purchaser will then become the Designated Purchaser with a view to proceeding to the completion of the Transaction.

The initial Designated Purchaser will be informed of the decision by registered letter with acknowledgment of receipt, of which a copy will be sent to them by electronic means.

7.5 Extension of the Validity Period of the Bids

- 7.5.1 In General terms, the Validity Period of the Firm Bid and the Validity Period of the Final Bid, even if expired, may be extended or renewed at the invitation of the State by the issue of a letter signed by the representative of the Sole Applicant or the Agent of a Consortium, duly authorised for the purpose. In the absence of a positive response within the period specified in the invitation, the Firm Bid or the Final Bid of the Applicant concerned shall be eliminated in order to allow the Invitation to Tender to be continued.
- 7.5.2 The Validity Period of the Firm Bid or the Validity Period of the Final Bid shall be automatically extended, no later than ten (10) Working Days before its expiry, if the Designated Purchaser has not obtained the IEF Authorisation and/or the Merger Authorisation, although required to obtain these authorisations. The Validity Period of the Firm Bid or the Validity Period of the Final Bid of the Designated Purchaser will then run until a date falling ten (10) Working Days after the date on which the last of these two authorisations will have been obtained.
- 7.5.3 Each Possible Purchaser consents in advance that if the State makes use of the option provided in Article 7.4, the new Designated Purchaser may extend the Validity Period of the Firm Bid or the Validity Period of the Final Bid that it submitted, without the State applying Article 7.5.1.

8. ASSESSMENT CRITERIA FOR BIDS

In accordance with Article R. 3211-5 of the General Code of Ownership of Public Entities, the Bids will be assessed with regard to the Proposed Business Value (which, as a reminder, will serve as the basis for the calculation of the DMM Net Transfer Price by means of the Spreadsheet), taking into account:

- (a) solvency guarantees resulting from the robustness and certainty of the financing plan they propose for the payment of the SFDM Disposal Price, the DMM Net Disposal Price, the DMM Transaction Costs, the LAF C Price and the LAF C Transaction Costs, and
- (b) performance guarantees arising from the comprehensive and optimised nature of the Transaction timetable they provide for.

Besides the Proposed Business Value thus assessed, the State may take into account the industrial, environmental and social aspects of the Bids, with regard to the commitments, if any, made by the Applicants on their own initiative towards these aspects.

9. GENERAL PROVISIONS

9.1 Assumptions of the Applicants

The assumptions, forecasts, information, studies and analyses contained in the Applications and Bids, or on which they are based, are the sole responsibility of the Applicants and shall not be binding in any way on or enforceable against the State, the GPM or the Shareholders (or their affiliates), including the Completion Date selected by them.

9.2 Procedures for submission of Applications and Bids

9.2.1 The Applications and Bids shall be submitted to the following address:

Ministère de la Transition Ecologique
Direction Générale de l’Energie et du Climat
Direction de l’Energie
Sous-direction de la sécurité d’approvisionnement
et des nouveaux produits énergétiques (DGEC/DE/SD2-C)
Tour Séquoia
92055 Paris La Défense Cedex

The Applications and the Bids shall be:

- either sent by registered mail with acknowledgement of receipt by post (or any other means capable of giving a definite date of receipt);
- or deposited at the address above with receipt from an authorised agent of the General Directorate for Energy and Climate.

The Applicants’ attention is drawn to the fact that in the event of a deposit, this address is open to them from Monday to Friday (except public holidays in France) from 9:00am to 12:00pm and from 1:00 pm to 4:30 pm (Paris time). The Applicants shall advise of their arrival time at one of the following telephone numbers (same hours): 00 33 (0)1 40 81 95 27 or 00 33 (0)1 40 81 95 63 (secretariat of Madame Anne-Florie Coron).

The Applications and Bids must be submitted in a sealed envelope marked:

“Purchase of DMM System
Application/Indicative Bid/Firm Bid/Final Bid from: *[to be completed by the Applicant]*”

They shall be sent in two paper copies (one original and one copy) and a copy on a USB stick.

The Applications and the Bids will be sent at the sole expense and responsibility of the Applicants.

9.2.2 At the same time, a copy of the Applications and Bids will be sent by the representative of the Sole Applicant or the Agent of a Consortium to the State's Advisory Bank to the following e-mail addresses:

frederic.quiraudios@bnpparibas.com

alexandre.greco@bnpparibas.com

9.3 Requests for details

At any time, the State may request the Applicants to submit in writing any details pertinent to the analysis of the Applications or Bids. The Applicants' written responses shall be construed to form an integral part, as the case may be, of their Applications or Bids.

9.4 Hearing the Applicants

After the submission of the Indicative Bids, the Firm Bids and the possible Final Bids, the State reserves the right to organise hearings bearing on all aspects of the Bids concerned.

Individual hearings will take place according to a schedule and agenda that will be communicated to Applicants with at least five (5) Working Days' notice. Unless otherwise specified in the notice of hearings, they shall be held at the address indicated in Article 9.2.

If the Applicant is a Consortium, the State may demand the participation of at least one representative of each of the Participants. The participation of Applicants' advisors is authorised. Unless otherwise specified in the invitation, each Applicant may not be represented by more than twelve (12) persons at each hearing, including advisors.

At the end of these hearings, the State may ask the Applicants to confirm in writing certain verbal commitments or to clarify their Bids. The Applicants' written responses shall be construed to form an integral part of their Bids.

9.5 Responsibility

The State, the GPM and the Shareholders (or their affiliates) will not incur any liabilities arising from the Invitation to Tender.

In particular, no guarantee is given to Applicants as to the accuracy or completeness of the information concerning the SFDM, the DMM System and the LAF C Park (including the Initial Documentation, the Additional Documentation, the Sensitive Information and the content of the Technical Exchanges), communicated throughout the Invitation to Tender.

9.6 Amendments to the Requirements Specification

The State may make any necessary adjustments to the Requirements Specification, including to modify or postpone any deadlines or dates mentioned therein. These adjustments will be notified to all qualifying Applicants on the date on which they are decided and will be binding on them without the need to produce an initialled and signed copy of the Requirements Specification thus amended.

9.7 Interruption or termination of the Invitation to Tender or the completion of the Transaction

Until the Completion Date, the State reserves the option to interrupt or to terminate the Invitation to Tender or the completion of the Transaction.

9.8 Information, clarifications, additions

To obtain any information necessary for the preparation of their Applications and Bids, the Applicants shall submit, through the representative of the Sole Applicant or the Agent, duly authorised for that purpose, a written request, in French, to all the following e-mail addresses:

cession.dmm@developpement-durable.gouv.fr
antoine.ethevenot@developpement-durable.gouv.fr
nicolas.morin@developpement-durable.gouv.fr
frederic.guiraudios@bnpparibas.com
alexandre.greco@bnpparibas.com

The responses to the Applicants' requests, anonymised, and if appropriate, summarised, will be communicated electronically to all qualifying Applicants on the response date.

In general, the State reserves the right not to reply to Applicants' requests for information, in particular if the reply is such as to prejudice equality of treatment between Applicants, if the time remaining between its reply and the closing date for the submission of Applications or Bids is too short, or if such requests are submitted during the State's examination of the Applications or Bids.

In any event, questions relating to the Initial Documentation must be formulated under the conditions and within the limits provided in Article 5.1 and requests for information relating to the Additional Documentation must be formulated in accordance with the Data Room Regulations.

9.9 Governing Law

Any dispute relating to the Invitation to Tender, in particular the implementation of the Requirements Specification or any commitment made by the Applicants in the context of the Invitation to Tender, will be settled in accordance with French law. Unless contrary to public policy, jurisdiction is exclusively reserved to the Paris courts.

10. LIST OF APPENDICES

1. Template for confidentiality letter
2. Content of Applications
3. Changes to Applications
4. Content of Indicative Bids
5. Content of Firm Bids
6. Financial provisions

[NAME OF THE ENTITY]

In the capacity of [Sole Applicant] [Participant of a Consortium [*]]⁵

Name:
Job title:

⁵Signature preceded by the hand-written note: "*Valid for irrevocable and unconditional acceptance of the requirements specification*".

APPENDIX 1.
TEMPLATE FOR CONFIDENTIALITY LETTER

[Heading of Sole Applicant or Participant]

Ministère de la Transition Ecologique
Direction Générale de l'Energie et du Climat
Direction de l'Energie
Sous-direction de la sécurité d'approvisionnement
et des nouveaux produits énergétiques
(DGEC/DE/SD2-C)
Tour Séquoia
92055 Paris La Défense Cedex

In [•], on [•]

Strictly Confidential

Dear Sir/Madam,

- (1) We refer to the requirements specification relating to the State's disposal of the Donges Melun Metz oil pipeline and related facilities (the "**Requirements Specification**"). Unless otherwise specified, all capitalised terms and expressions below have the meanings given to them in the Requirements Specification.

In the context of the Invitation to Tender (and more generally of the Transaction), we will receive or have access to Confidential Information.

We undertake to guarantee the confidentiality of Confidential Information, under the terms and conditions specified below.

This undertaking is made by our company in its own name and on behalf of the companies and other entities that it controls, which control it or which are placed under the same control (the notion of control being understood within the meaning of Article L. 233-3 of the French Commercial Code, their directors, administrators, managers, employees, agents, potential industrial or financial partners (lenders or investors) or advisors to the entities or persons mentioned above (collectively "**Represented Persons**").

We further undertake to inform the Represented Persons of the confidential nature of the Confidential Information.

The Represented Persons shall accept to be bound by this confidentiality agreement prior to the communication or access to all or part of the Confidential Information. We will provide proof of this undertaking at the State's request.

- (2) For the purposes of this undertaking, "**Confidential Information**" will be taken to mean:

- (a) all information of whatever kind (in particular of a technical, commercial, financial, accounting, legal and administrative nature) pertaining to the DMM System, the LAF C Farm, the SFDM and the Transaction which will have been communicated, by whatever means, to our company or to the Represented Persons within the framework of the Invitation to Tender and the Transaction, including the Initial Documentation, the Additional Documentation and the Sensitive Information;
 - (b) all analyses, compilations, studies and other documents that our company or the Represented Persons may have prepared or had prepared and which incorporate, refer to or simply result from the information referred to in paragraph(2)(a) above;
 - (c) the existence, conduct or termination for whatever reason (including by our waiver or non-selection) of the negotiations or discussions in which our company or the Represented Persons are engaged in connection with the Invitation to Tender and the Transaction.
- (3) It is agreed however that the obligation entered into by our company by signing this undertaking will not cover information that:
- (a) is generally available and known to the public without our company or any of the Represented Persons being the source of their disclosure;
 - (b) has been communicated to our company or any of the Represented Persons on a non-confidential basis by a source other than the State, the SFDM, the GPM or their representatives, provided that such information has not been obtained from such a source in a manner which would not respect this or any other similar undertaking;
 - (c) has been obtained or developed independently of the Invitation to Tender and the Transaction in particular in a capacity other than that of Applicant.

We will only be able to avail ourselves of these exceptions to the extent that we can justify them.

- (4) In light of the above, and because of the Confidential Information that has been or will be communicated, we commit ourselves, vis-à-vis the State, the SFDM and the GPM, by signing the present undertaking, without any condition, limitation or restriction whatsoever, to:
- (a) use the Confidential Information exclusively for our own account and for the sole purposes of the Invitation to Tender and the Transaction;
 - (b) consider all Confidential Information as intended for this sole use without exception and to not disclose any of it to third parties;
 - (c) not reveal, to anybody other than the Represented Persons, the existence, conduct or termination for whatever reason (including by our waiver or non-selection) of the negotiations or discussions in which our company or the Represented Persons are engaged in connection with the Invitation to Tender and the Transaction;
 - (d) not copy or have copied all or part of the Confidential Information except for the needs of the Represented Persons in connection with the Invitation to Tender and the Transaction;

- (e) not reveal any element touched on as part of the negotiations or discussions in connection with the Invitation to Tender and the Transaction, except to the Represented Persons;
 - (f) not contact directly or indirectly any elected officials, officers, directors, agents, executives, employees, representatives, mandated attorneys or advisors of the State, the SFDM or the GPM with respect to the Invitation to Tender or the Transaction;
 - (g) take any measures necessary to ensure this undertaking is respected by the Represented Persons who may conceivably become aware of all or part of the Confidential Information;
 - (h) inform the State of any breach of the obligations imposed by the present undertaking of which our company or the Represented Persons may be aware, and provide all possible assistance to the State in order to minimise the effects of such a breach.
- (5) We further undertake, for a period of two years from the date hereof, in our name and on behalf of the Represented Persons, for whom we fully vouch, not to hire or solicit the hiring, without the express agreement of the SFDM, of one of the employees and/or corporate agents of the SFDM, with whom our company or any of the Represented Persons would have had contact during the Invitation to Tender or the Transaction. These provisions will not be applicable in the event of a break of the employment contract at the employer's initiative or the termination of a director's mandate at the initiative of the competent corporate body.
- (6) We acknowledge that the State, the SFDM, the GPM and their representatives do not provide any guarantees as to the accuracy and completeness of the Confidential Information communicated in good faith.
- (7) We undertake not to make any announcement or statement concerning the conduct of the Invitation to Tender or the Transaction, without the prior written consent of the State on the content of such an announcement or statement.
- (8) In the event that our legal or regulatory obligations, in particular following a request from a judicial, administrative or market authority, or by virtue of provisions imposed on companies whose securities are listed on a regulated market, required us to communicate on the Invitation to Tender or the Transaction, on all or part of our Application or Bids, or on any other agreement with the State, the SFDM or the GPM, we would be authorised to do so subject to (i) limiting ourselves to what is strictly necessary as a result of these obligations and (ii) consulting with the State as soon as possible regarding the content, terms and date(s) of such communication, it being specified that such consultation with the State must be accompanied by any supporting documents regarding the nature and extent of these obligations.
- (9) We undertake unreservedly to indemnify the State, the SFDM and the GPM for all damages resulting from the non-respect of any of our obligations under this commitment. Similarly, we accept to be held liable for any breach of this undertaking by any of the Represented Persons
- (10) In the event that the State, the SFDM or the GPM refrain from exercising any right resulting from the present agreement, it or they may under no circumstances be considered as having definitively waived their entitlements under any provisions of this commitment.

- (11) This commitment is subject to French law. Unless contrary to public policy, any dispute arising from the interpretation or implementation of this commitment is exclusively reserved to the Paris courts.

- (12) All of the obligations provided for in this undertaking shall terminate at the end of a period of three years following the date hereof, except if the Transaction is carried out for our benefit, in which case the confidentiality obligations relating to the Confidential Information as well as those relating to the prohibition on hiring employees and/or corporate agents of SFDM, and only these, shall terminate as of the Completion Date.

Yours sincerely,

[NAME OF THE ENTITY]

In the capacity of [Sole Applicant] [Participant of a Consortium [•]]

Name:

Job title:

APPENDIX 2. CONTENT OF APPLICATIONS

The Application shall take the form of a file containing all the items mentioned below.

The sworn declarations contained in the file will be deemed to be reiterated by each Applicant on the dates of submission of its Indicative Bid, its Firm Bid and its possible Final Bid, as well as on the Completion Date.

1. GENERAL INFORMATION

The first part of the file shall contain:

- 1.1. a general presentation of the Applicant, which will include, in particular, for the Sole Applicant and for each of the Participants in a Consortium, a description:
 - of the activities carried out;
 - the markets in which it operates;
 - its French and foreign competitors;
 - its main investments made in the European Union in the last five years.
- 1.2. an overview of its main commercial relations since 1 January 2016 between (i) the Sole Applicant, any Participant in the Consortium, any Identified Investor or their Related Companies and (ii) the SFDM;
- 1.3. the identity, roles and contact details (postal address, e-mail address and fixed and mobile telephone numbers) of the principal duly authorised representative and of two additional equally duly authorised representatives of (i) the Sole Applicant or the Agent (whose principal representative will be the State's priority point of contact in connection with the Invitation to Tender) and (ii) each other Participant in a Consortium;
- 1.4. if they have been appointed, the identity and contact details (postal address, e-mail address and fixed and mobile telephone numbers) of the legal and financial advisors (specifying for each one (i) in the case of a Consortium, whether it is the advisor of the Consortium as a whole or the advisor of a Participant, or (ii) if it is the advisor of some or all of the potential lenders);
- 1.5. A sworn declaration dated and signed by a duly authorised representative of the Sole Applicant or an Agent of the Consortium vouching that all information contained in the Application is accurate.

2. PARTICULAR INFORMATION

The second part of the file shall contain:

- 2.1. the specific identification of the Sole Applicant or of each Participant in a Consortium, including any Manager: corporate name, registered office, nationality, legal form, amount of share capital, stock exchange listing, if any, main shareholdings;

- 2.2. an organisation chart making it possible to identify the entities or natural persons making up the chain of control of the Sole Applicant or of each Participant in a Consortium, including any Manager, down to the entity or entities or natural persons who ultimately control it, within the meaning of Article L. 233-3 of the French Commercial Code;
- 2.3. the identity of each entity making up this chain of control of the Sole Applicant or of each Participant in a Consortium, including any Manager: corporate name, registered office, nationality, group to which it belongs (name and nationality);
- 2.4. regarding entities that have ultimate control over the Sole Applicant or over each Participant in a Consortium, including any Manager:
 - a list of the members of their administrative, supervisory and management boards or of any other body performing equivalent functions, together with their nationality and tax domicile;
 - the identity, the percentage of share capital and the share of voting rights held by each shareholder or member with a share of voting rights greater than 5%;
- 2.5. the mention, for the Sole Applicant or for each Participant in a Consortium, including the Manager as well as for each entity comprising the chain of control, of any significant connection in terms of capital or financial support from a State or public body outside the European Union during the last five years;
- 2.6. regarding Investment Structures (represented by a Manager), by definition already constituted by the Application submission date: name, nationality, registered address or equivalent, legal form, amount of share capital, or paid-up or not paid-up capital, any stock exchange listing, main shareholdings;
- 2.7. regarding Dedicated Investment Structures (represented by a Manager), whose constitution is already envisaged by the Application submission date:
 - the envisaged nationality and legal form of the Dedicated Investment Structure to be constituted, and
 - the identity of the Identified Investors: name, nationality, identity and percentage holding of any natural person or legal entity holding directly or indirectly more than 5% of the capital or voting rights (including in the case of a State or the subdivision of a State), group to which it belongs (name and nationality);
- 2.8. a sworn declaration dated and signed by a duly authorised representative of the Sole Applicant or an Agent of the Consortium:
 - attesting, pursuant to Article 3.1.4, to the absence of participation of the Sole Applicant, the Participants in the Consortium, an Identified Investor or their Related Companies to a competing Application;
 - presenting, if necessary, the mechanism put in place to prevent any practice of collusion or exchange of information relating to the Invitation to Tender or the Transaction in the cases provided for in Article 3.1.5.

3. FINANCIAL CAPACITY

The third part of the file shall contain a sworn declaration dated and signed by a duly authorised representative of the Sole Applicant or of each Participant concerned, attesting that the Applicant fulfils the minimum requirements set out in Article 4.3 to satisfy the Financial Capacity criteria.

This declaration shall be accompanied by any document (in French or English), information or explanation that is useful for proving its accuracy.

To this end, this third part shall contain in particular (in French or English):

- 3.1. in the case of a Sole Applicant or a Participant in a Consortium that is not a Manager: a copy of its latest audited consolidated annual financial accounts showing whether it has at least 100 million euros (or the equivalent in the currency of the home country of the Single Applicant or Participant concerned) of consolidated equity at the date of submission of the Application;
- 3.2. in the case of a Sole Applicant or a Participant in a Consortium that is a Manager: any document showing that it has at least 500 million euros (or the equivalent in the currency of the home country of the Sole Applicant or Participant concerned) of assets under management (taking into account any possible not paid-up shares) at the Application submission date.
- 3.3. the same information with regard to the Financial Capacity of the Related Company which the Sole Applicant or a Participant intends to use pursuant to Article 4.3.

4. INFORMATION ON GOOD REPUTE

The fourth part of the file shall contain:

- 4.1. for the Sole Applicant or each Participant in a Consortium, a sworn declaration dated and signed by a duly authorised representative confirming that (i) itself, (ii) the members of its administrative, supervisory and management bodies or of any other body performing equivalent functions, (iii) the physical or legal person(s) that ultimately control(s) it (except in the case of a State or a branch of a State) and (iv) any Identified Investor that it represents in its capacity as Manager:
 - do not find themselves in any of the situations referred to in Articles L. 2141-1 to L. 2141-5 of the French Public Procurement Code.
 - have not been convicted in the last five years of any offence referred to in Article R. 151-10 of the French Monetary and Financial Code (in its version that entered into force on 1 April 2020), or for an offence of the same nature in another State;
- 4.2. for any Manager (whether for a Sole Applicant or a Participant), a sworn declaration dated and signed by a duly authorised representative, in which the said Manager:
 - is able to identify all investors holding shares, units or rights representing the investment of the Investment Structure(s) it represents in the Transaction;
 - satisfies its obligations relating to the fight against money laundering, the financing of terrorist activities, prohibited lotteries, gambling and betting and tax fraud;

- is thereby able to warrant that the funds invested in the Investment Structure(s) and the Transaction do not originate from tax fraud nor participation in money laundering, nor the financing of terrorism nor prohibited lotteries, gambling and betting.

5. PROCEDURAL ASPECTS

The fifth part of the file shall contain (in the case of a Consortium, these documents can be produced in as many copies as there are Participants):

- 5.1. The Requirements Specification, with no deletions or additions, each page of which will have been initialled (including its Appendices) and the last page (excluding Appendices) dated and signed by the representative of the Sole Applicant or of each Participant, each duly authorised, each signature being preceded by the hand-written note "Valid for irrevocable and unconditional acceptance of the Requirements Specification";
- 5.2. a letter of confidentiality conforming to the template included in Appendix 1, with nothing deleted nor added, in which each page is initialled and the last page dated and signed by the representative of the Sole Applicant or by each Participant, being duly authorised;
- 5.3. in the case of a Consortium, any document dated and signed by the representative of each Participant, each duly authorised for this purpose, justifying (i) the authorisation given by each Participant to the Agent to represent them and to act in their name and on their behalf vis-à-vis the State throughout the Invitation to Tender, including the submission of Bids, and (ii) the acceptance by the Agent of its mission;
- 5.4. a note drawn up by a law firm confirming that each person (i) signatory on behalf of the Sole Applicant, an Agent or a Participant in the Consortium, of a document contained in the Application file or (ii) who is likely to sign on behalf of the Applicant a document contained in a Bid, is duly authorised for that purpose, this note including in appendix (x) the list of the persons concerned and (y) the list of the documents consulted to formulate such confirmation.

APPENDIX 3. CHANGES TO APPLICATIONS

Implementation of this Appendix will enable the State to ensure that a change in the composition of the Eligible Applicants (the "**Change**") does not jeopardise the initial examination of the Applications, in particular with regard to the guarantees presented by the Eligible Applicants in terms of Financial Capacity, and that it complies more generally with competition law as well as the rules applicable to the Invitation to Tender.

- (1) The intervention of the Acquisition Vehicle and the intervention of the legal entities interposed between (i) the Sole Applicant or the Participants in a Consortium and (ii) the Acquisition Vehicle, does not constitute the Changes.
- (2) Without prejudice to paragraph (3), a Change cannot include:
 - (a) the replacement of a Sole Applicant, except by a Related Company;
 - (b) the withdrawal or replacement of an Agent of a Consortium, except if replaced by a Related Company.

Consequently, the withdrawal of a Sole Applicant (unless it is replaced by a Related Company) and the withdrawal or change of a Consortium Agent (unless it is replaced by a Related Company) will result in the disqualification of the Eligible Applicants concerned.

- (3) Changes likely to be accepted by the State are:
 - (a) the replacement of a Sole Applicant or the Agent of a Consortium by a Related Company;
 - (b) the constitution of a Consortium between Eligible Applicants, provided that (i) the application is submitted before the submission of the Indicative Bids (and in compliance with the dates referred to in (a) and (b) paragraph (5)), (ii) if one of the Eligible Applicants concerned is a Consortium, all its members participate in the constitution of the new Consortium and (iii) the Agent of the new Consortium is a Sole Applicant or the Agent of a Consortium previously declared as an Eligible Applicant;
 - (c) the constitution of a Consortium between a Sole Applicant and a Participant in a Consortium (other than its Agent), provided that (i) the Agent of the Consortium from which that Participant comes has previously given notice of withdrawal from the Invitation to Tender, (ii) the other Participants in the Consortium from which the Agent has withdrawn do not join any other Eligible Applicant than, if applicable, the Sole Applicant and (iii) the Sole Applicant becomes Agent of the new Consortium thus constituted;
 - (d) the addition to a Consortium of a Participant in another Consortium (other than its Agent), provided that (i) the Agent of the Consortium from which that Participant comes has previously given notice of withdrawal from the Invitation to Tender, (ii) the other Participants in the Consortium from which the Agent has withdrawn do not join an Eligible Applicant other than, if applicable, the Consortium joined by this Participant and (iii) the Agent of the Consortium joined by this/these Participant(s) retains this status;

- (e) the constitution of a Consortium between a Sole Applicant and any entity that did not previously participate in the Invitation to Tender, including the Related Company, provided that the Sole Applicant becomes Agent of the Consortium;
 - (f) the withdrawal of a Participant in a Consortium other than the Agent;
 - (g) the replacement of a Participant in a Consortium other than the Agent by any entity that did not participate in the Invitation to Tender, including a Related Company;
 - (h) the addition to a Consortium of any entity that did not previously participate in the Invitation to Tender, including a Related Company;
 - (i) regarding a Manager that is a Sole Applicant or Participant in a Consortium:
 - the replacement of the Investment Structure that it represents by another Investment Structure that it represents;
 - the intervention of an additional Investment Structure that it represents;
 - the change (by withdrawal, replacement or addition) of the identity of the Identified Investors on whose behalf it will constitute a Dedicated Investment Structure.
- (4) The Eligible Applicant wishing to make a change shall present an approval request to the State made up of all the following documents:
- (a) in all the cases referred to in paragraph (3), a letter dated and signed by the representative of the Sole Applicant or of the Agent (or all the Sole Applicants and/or Agents concerned in the case referred to in (b) of paragraph (3)), duly authorised for this purpose:
 - presenting the proposed change, in particular by reference to one or several cases referred to in paragraph (3);
 - showing that the proposed Change is compliant with the terms and conditions set out in Article 3 and Article 4.3 of the Requirements Specification as well as paragraphs (2) and (3) of this Appendix;
 - attesting that all information contained in the approval request is accurate;
 - (b) in all the cases referred to in paragraph (3): in so far as is necessary, a new version of the Application file described in Appendix 2, completed with all the documents and modified (in a visible way) with all the elements and information that would have been required if the initial Application had been drawn up consistent with the proposed Change;
 - (c) in the cases referred to in (a) and (g) of paragraph (3): any document dated and signed by the representative of the replaced entity, duly authorised for that purpose, confirming their agreement to being permanently replaced by the replacing entity;
 - (d) in the cases referred to in (c) and (d) of paragraph (3): any document dated and signed by the representative of the Agent of the withdrawing Consortium confirming its

withdrawal from the Invitation to Tender and its acceptance of the disqualification of the Consortium it represented;

- (e) in the cases referred to in (f) of paragraph (3): any document dated and signed by the representative of the withdrawing entity, duly authorised for that purpose, confirming their agreement to withdraw definitively from the Consortium.
- (5) No approval request for a Change may be presented:
- (a) Between the Application submission date and the designation date of Eligible Applicants;
 - (b) between the date falling ten (10) Working Days before the Indicative Bid submission date and the designation date of Possible Purchasers;
 - (c) without prejudice to (d) below, in the ten (10) Working Days prior to the Firm Bid submission date;
 - (d) if the State calls for Final Bids, after a date that will be specified in the invitation letter mentioned in Article 6.6.1 of the Requirements Specification.
- (6) Any approval request for a Change shall be sent by electronic means to the addresses mentioned in Article 9.8 of the Requirements Specification.

The original documents shall be submitted at the same time and in accordance with the procedures laid down in Article 9.2 in a sealed envelope marked:

“Purchase of DMM System
Change Request for the Application of: *[to be completed by the Applicant]*”

Within a period not exceeding two (2) Working Days from receipt of the approval request by electronic means, the State may ask the Applicant, by electronic means, for any missing details or additional details that it deems necessary for the examination of the request. Failing this, the approval request will be deemed to be complete.

The Applicant shall, unless it proves that they are unnecessary for the examination of the approval application or that they have already been submitted, provide the elements that may be requested by the State by electronic means to the addresses mentioned in Article 9.8 of the Requirements Specification within two (2) Working Days following receipt of the State's request (the original documents shall at the same time be submitted to the address and in accordance with the procedures provided for in Article 9.2 in a sealed envelope bearing the abovementioned mention.

Failing this, the approval request will be deemed to be complete.

- (7) The State shall notify the Applicant of its decision on the Change approval no later than four (4) Working Days after receipt of a complete or deemed complete application for approval, and its silence shall constitute acceptance of the Change.

APPENDIX 4.
CONTENT OF THE INDICATIVE BIDS

The Indicative Bids must contain seven (7) chapters containing the elements described below.

The Eligible Applicants shall take care that the paper and USB stick copies are prepared in such a way that these chapters (and the documents composing them) can be easily separated from each other.

1. ACQUISITION STRUCTURE

The Eligible Applicant shall present the acquisition structure that it proposes to put in place. This presentation shall in particular enable the State to verify whether the Indicative Bid is admissible with regard to Article 3 of the Requirements Specification.

The presentation shall in particular contain a detailed and annotated holdings scheme clearly showing:

- (a) the Acquisition Vehicle, specifying its intended nationality and legal form, as well as the distribution of shares, units or rights representing the investment of the Acquisition Vehicle;
- (b) any Dedicated Investment Structure (whether or not the Acquisition Vehicle) which a Manager intends to establish on behalf of Identified Investors, specifying the intended nationality and legal form of the Dedicated Investment Structure as well as the direct or indirect distribution of the shares, units or rights representing the investment of the Dedicated Investment Structure among these Identified Investors only.
- (c) the legal entities, if applicable, interposed between (i) the Sole Applicant or the Participants in a Consortium and (ii) the Acquisition Vehicle (the State shall attach particular importance to the reasons for their intervention, which shall be set out in detail);
- (d) taking into account the chain of control resulting from this scheme, the final holding of the entirety of the Shares by the Sole Applicant or by the single Participants in the Consortium (including the Investment Structure represented by a Manager), expressed as a percentage of Shares.

2. PROPOSED BUSINESS VALUE

The Eligible Applicant shall present:

- (a) the Proposed Business Value, expressed in euros, supposing the SFDM to be free of debt and treasury costs (“debt-free/cash free”);
- (b) the methods and assumptions used to determine the Proposed Business Value, described in detail to enable an assessment of their credibility.

The Eligible Applicant will attach a duly completed version of the Spreadsheet (in Excel or PDF format) to this presentation.

3. FINANCING PLAN

The Eligible Applicant shall present the financing structure that it proposes to put in place.

Its presentation shall in particular contain:

- (a) an as detailed as possible exposition of the financing plan for the SFDM Disposal Price, the DMM Net Disposal Price, the DMM Transaction Costs, the LAF C Price and the LAF C Transaction Costs;
- (b) a description of the sources of financing envisaged (equity, quasi-equity, external financing: for each, amount, form or type, tier, schedule of provision);
- (c) a table detailing the jobs and resources underpinning its Bid;
- (d) comfort letters (in French or English) from financial institutions likely to provide external financing (senior or subordinated loans);
- (e) confirmation that it has not entered into an exclusive agreement with these financial institutions in relation to the Invitation to Tender and the Transaction.

4. INDUSTRIAL AND ENVIRONMENTAL ASPECTS

The Eligible Applicant shall present its views on:

- (a) the SFDM's development strategy;
- (b) the means it intends to deploy to implement this strategy;

It will attach the main components of its business plan for the SFDM, including in particular the amount of annual investments envisaged over the next 20 years from 1 January 2021.

It will specify the way it intends SFDM to take into account the industrial and environmental consequences of its activity.

5. SOCIAL ASPECTS

The Eligible Applicant shall present its views on:

- (a) employment prospects within the SFDM, with regard to the industrial and profit objectives it envisages;
- (b) SFDM's employee salary, profit-sharing and incentive policy;
- (c) employee relations within the SFDM.

6. TRANSACTION TIMETABLE

- 6.1. The Eligible Applicant shall provide a provisional timetable for the completion of the Transaction from the Notification reception date to the Completion Date.

This timetable shall be compatible with the Validity Period of the Firm Bids and show:

- (a) all actions prior to the signature of the SFDM Disposal Contract, the DMM Deed of Sale (including the LAF C Promise) and the Terminal Services Agreement, in particular as regards the drafting, negotiation and signature of the financing documents for the Net DMM Disposal Price, the SFDM Disposal Price and the LAF C Price;
- (b) all internal and external authorisations or agreements (including from external financing providers) to be obtained for the completion of the Transaction, in particular in relation to obtaining the IEF Authorisation and the Merger Authorisation, detailing the various procedural steps to be taken to obtain them.

6.2. To prepare the timetable, the Eligible Applicant shall make the following assumptions:

- (a) the Designated Purchaser will receive the Notification no later than fifteen (15) Days after the Firm Bid submission date;
- (b) the calculations needed to determine the Estimated SFDM Disposal Price and the DMM Net Disposal Price provided in Appendix 6 will be completed on the last Day of the deadlines provided in this Appendix for their completion;
- (c) the information-consultation procedure of the SFDM's Social and Economic Committee pursuant to Article L. 2312-8 of the French Employment Code (code de travail) shall be completed no later than forty-five (45) Days after the Notification receipt date;
- (d) the resolution of the GPM Supervisory Board authorising the signing of the SFDM Disposal Contract will take place no later than the day before the Completion Date;
- (e) as far as possible, the Act of Declassification, the Disposal Authorisation and the Operation Authorisation will be published simultaneously in the Official State Gazette (*Journal officiel de la République française*), once all the Conditions Precedent have been satisfied;
- (f) the Completion Date will take place on the day following these publications.

6.3. To support the assumptions behind the timetable the Eligible Applicant shall attach the following documents:

- (a) IEF Authorisation: a note drafted by a law firm setting out in detail the reasons why the Eligible Applicant's investment relating to the Transaction would or would not be subject to an authorisation procedure under the control of foreign investments regulations in France;
- (b) Merger Authorisation: a note drafted by a law firm setting out in detail:
 - the reasons why the completion of the Transaction would or would not be subject to a notification requirement under the control of mergers regulations,
 - an analysis of the operation's impact on competition, highlighting the market shares of the parties and their main competitors in the markets concerned by the operation (horizontal, vertical and/or related), and

- an assessment of the difficulties envisaged in the light of such notification, in particular as regards:
 - the existence of public contracts affected by the operation,
 - the timeframe for obtaining the required authorisations (including the reasons why it may be thought that the operation should be subject to a so-called "phase 1" or "phase 2" control), and
 - possible injunctions, requirements or commitments that may be imposed by the competent competition authorities;
- (c) Advisors: an updated version of the list of legal and financial advisors referred to in paragraph 1.4 of Appendix 1;
- (d) Authorisations: an updated version of the note referred to in paragraph 4.4 of the Appendix 1, it being specified that this note will not have to refer to the authorisation of the representatives of the external financing providers to sign the documents included in the Indicative Bid.

7. OPERATION AUTHORISATION

Pursuant to decree no. 2020-124 of 14 February 2020, the SFDM must prepare an application file for an Operation Authorisation in accordance with the terms and conditions set out in Article R. 555-27 of the French Environmental Code. The Article provides that the application file must contain the documents specified under items 1 to 3 of Article R. 555-8 of the Code.

The SFDM will prepare this file. In order to complete the memorandum referred to in item 2 of Article R. 555-8 prepared by the SFDM, the Eligible Applicant will provide a draft summary note (around 3 to 5 pages) containing:

- (a) a presentation of the organisation envisaged to ensure that the SFDM's technical capacity to operate the DMM System is maintained;
- (b) as regards the economic and financial capacities of the SFDM:
 - a presentation of its historical profitability and its balance sheet structure over the last 3 years;
 - a description of the resources that the SFDM will have or that it will commit to put in place in order to finance the operational and maintenance costs of the DMM System without calling on its shareholders, taking into account, for example, its self-financing capacities, the envisaged dividend policy for shareholders and/or its capacity to raise external financing.

This draft summary note will be submitted to the department in charge of Operation Authorisation applications (General Directorate for Risk Prevention of the ministry for the Ecological Transition). If this department has any observations to make, they will be notified to the Eligible Applicant if it has been designated as the Possible Purchaser.

APPENDIX 5. CONTENT OF FIRM BIDS

The Firm Bids must contain a new version of all the documents comprising chapters 1 to 7 of the Indicative Bids described in Appendix 4, which will be updated taking into account (i) the characteristics of the Firm Bid and (ii) the details specified below.

The Firm Bids must also contain a chapter 8 containing the documents mentioned below.

1. UPDATING OF CHAPTERS 1 TO 7

1.1. Acquisition Structure

The detailed and annotated holding scheme:

- (a) must show the entire Investment Structures, the Dedicated Investment Structures, the Identified Investors and the legal entities, if any, interposed between (i) the Sole Applicant or the Participants in a Consortium and (ii) the Acquisition Vehicle;
- (b) must specify definitively the nationality and legal form of the Acquisition Vehicle of the Investment Structures, the Dedicated Investment Structures, the Identified Investors and the legal entities, if any, interposed between (i) the Sole Applicant or the Participants in a Consortium and (ii) the Acquisition Vehicle;

1.2. Proposed Business Value

The Possible Purchaser will provide a new version of the Spreadsheet showing the Proposed Business Value under its Firm Bid, on which it will be definitively committed. The methods and assumptions used for its calculation are the sole responsibility of the Possible Purchaser and shall not be binding in any way on or enforceable against the State, the GPM or the Shareholders (or their affiliates), including for the Completion Date.

It is recalled that the DMM Net Disposal Price will be determined on the basis of the Proposed Business Value under the conditions set out in Article 1.6 of the Requirements Specification and that the SFDM Disposal Price will be set under the conditions set out in Appendix 6.

1.3. Financing plan

In the event of an amendment to its financing plan compared to the one presented in its Indicative Bid, the Possible Purchaser shall provide an as detailed as possible exposition of the amended financing plan.

The Possible Purchaser must demonstrate that they have all the funds to finance with certainty the SFDM Disposal Price, the DMM Net Disposal Price, the DMM Transaction Costs, the LAF C Price and the LAF C Transaction Costs.

Instead of comfort letters from financial institutions likely to provide external financing, Chapter 3 of the Firm Bid must contain the following documents (drawn up in French or English) for an amount at least equal to 100% of the SFDM Disposal Price, the DMM Net Disposal Price, the DMM Transaction Costs, the LAF C Price and the LAF C Transaction Costs:

- (a) a firm and unconditional letter of commitment signed by the Sole Applicant or each of the Participants, with the final approval of the investment committees, covering all the equity and quasi-equity provided for in the Firm Bid;
- (b) a firm and unconditional letter of commitment from the mandated arrangers confirming the final agreement of the credit committees to the full amount of the external financing to be provided by them in the Firm Bid and that:
 - contains the identity and contact details of the agents of the mandated arrangers as well as each provider of private external finance;
 - stating the underwriting commitment of each mandated arranger;
 - to which are attached the financing documents approved by the relevant parties (equity, quasi-equity and external financing) or, failing that, the main terms and corresponding detailed conditions signed by the mandated arrangers including a certainty of funds clause.

The degree of advancement of this documentation (finalised financing documents or main terms and detailed conditions) will be taken into account when preparing the Transaction timetable contained in chapter 6 of the Firm Bid.

It is recalled that only the Conditions Precedent are enforceable against the State and the Shareholders. Any other condition precedent, contained, in particular in the commitment letters mentioned above (or any other document included in the Firm Bid), will not be enforceable against them, will be assumed by the Possible Purchaser entirely at their own risk and cannot vitiate the completion of the Transaction, including the possible implementation of Article 7.4.

All sources of financing for the SFDM Disposal Price, the DMM Net Disposal Price and the DMM Transaction Costs, including external financing, must remain available at least until the expiry date of the Validity Period of the Firm Bid or the Validity Period of the Final Bid (as the case may be), including if the Validity Period is extended in accordance with Article 7.5.

All sources of financing for the LAF C Price and LAF C Transaction Costs, including external financing, shall remain available until the later of (i) the date of expiry of the Validity Period of the Firm Bid or the Validity Period of the Final Bid (as the case may be), including if the Validity Period is extended in accordance with Article 7.5, and (ii) the date of expiry of the period of exercise of the conditions precedent provided in the LAF C Promise.

1.4. Operation Authorisation

The Firm Bid will contain an updated version, in so far as is necessary, of the summary note concerning the technical, economic and financial capacities of the SFDM which must complete the memorandum prepared by the SFDM required to accompany the Operation Authorisation application file pursuant to item 2 of Article R. 555-8 of the French Environmental Code. The Possible Purchaser will take into account possible observations on the draft summary note contained in the Initial Bid that the instructing department of this application (General Directorate of Risk Prevention) may formulate.

2. CHAPTER 8: TRANSACTION DOCUMENTATION

2.1. Contracts

The draft SFDM Disposal Contract, the draft DMM Deed of Sale (including the draft LAF C Promise) and the draft Terminal Services Agreement shall not be subject to any modification by the Potential Purchasers within the framework of Firm Bids.

In consequence, chapter 8 of the Firm Bid must include a copy of the following documents, without deletions or additions, each page of which (including its appendices) must be initialled and the last page (excluding appendices) must be dated and signed by the duly authorised representative of the Sole Applicant or the Agent of the Consortium, and completed only in the places indicated, if any, for this purpose:

- (a) draft SFDM Disposal Contract;
- (b) draft DMM Deed of Sale (including the draft LAF C Promise);
- (c) the LAF C GAPD template;
- (d) the draft Terminal Services Agreement completed only in the places indicated for this purpose, if any.

The signing of these documents, which will attest to the irrevocable commitment of the Possible Purchaser to complete the Transaction, will be preceded by the following hand-written note: *“Valid for irrevocable and unconditional acceptance of this draft contract, that the undersigned Possible Purchaser undertakes to have signed, if applicable, by the Acquisition Vehicle, the SFDM or the Eligible Entity.”*

2.2. Industrial, environmental and social aspects

If it so wishes, in addition to the file submitted at the Indicative Bid stage, the Possible Purchaser may submit a memorandum setting out the terms and conditions by which it would be prepared to commit itself to the State or any other stakeholder on the industrial, environmental and social aspects of its Bid.

In this case, the memorandum shall describe the various documents (contractual or otherwise) based on which, all things being equal, the Purchaser shall comply in good faith with the commitments it has thus voluntarily entered into.

APPENDIX 6. FINANCIAL PROVISIONS

1. TERMINATION INDEMNITY AND NBV INDEMNITY

Pursuant to decree no. 2020-123 of 14 February 2020, the occurrence of the Completion Date shall entitle the SFDM to receive the following indemnities.

- 1.1. If the Completion date takes place before 28 February 2022, the following indemnity will be due from the State to the SFDM by virtue of the stipulations, cited below, from item 1 of Article 40 of the SFDM Agreement in its version resulting from decree no. 2020-123 of 14 February 2020 (the “**Termination Indemnity**”):

“An indemnity relating to loss of earnings until the normal end of the agreement, equal to $X \times Y$, where:

“X” is equal to 95% of a twelfth of the average net profits achieved by the Société française Donges-Metz in respect of the financial years ended 31 December 2017 and 31 December 2018, i.e. a lump-sum and final amount of 1,000,000 (one million) euros;

“Y” is equal to the number of days left to run between the day following the completion date for the transfer of Société française Donges-Metz shares and 28 February 2022, divided by three hundred and sixty-five comma twenty-five and then multiplied by twelve”.

- 1.2. Irrespective of the date on which the Completion Date occurs the following indemnity will be due from the State to the SFDM by virtue of the stipulations, cited below, from item 1 of Article 40 of the SFDM Agreement in its version resulting from decree no. 2020-123 of 14 February 2020 (the “**NBV Indemnity**”):

“An indemnity equal to the net book value of the investments made by the holder from 1 March 2020 until the operation end date or for which the holder irrevocably incurred costs from 1 March 2020 until the exploitation end date. With the exception of investments made as a result of an insurable incident and investments made pursuant to Article 41.2, all the holder's depreciable investments shall be taken into account for the calculation of the indemnity provided that, for unit investments of an amount greater than €150,000, the State and the Government commissioners have been informed in advance by registered letter with acknowledgement of receipt and that the State has not, within a period of one month, issued by registered letter with acknowledgement of receipt, if necessary accompanied by an e-mail, a negative reasoned opinion on the realisation of the said investments.”

2. REHABILITATION WORKS

The Transaction does not impede the implementation of the rights and obligations of the parties under the SFDM Agreement and in particular the implementation of its Article 41.2.

In consequence, the SFDM undertakes to proceed with rehabilitation works pursuant to these stipulations such as they appear in a report produced at SFDM's request and with the State's agreement by the company AECOM, dated 18 October 2019, if they have still not been carried out by the Completion Date.

This rehabilitation work is currently estimated at five hundred and sixty-nine thousand (569,000) euros, the State having expressed the wish that two items should not be carried out: (i) the dismantling of the de-icing station in Park A at Saint-Baussant and (ii) the demolition of the guard post in Park D at Châlons-en-Champagne.

The list of rehabilitation works will be updated under the following conditions:

- (a) The State shall inform the SFDM of the Completion Date, in so far as it can be reasonably anticipated, with prior notice of at least one hundred and twenty (120) Days;
- (b) within a period of thirty (30) Days following this information, AECOM shall update its report in order to identify (i) the rehabilitation work referred to in its report dated 18 October 2019 that has not yet been carried out and (ii) the rehabilitation work, if any, required by the operation of the DMM System since 18 October 2019;
- (c) within a period of no more than thirty (30) days following the production of the updated AECOM report, the SFDM will provide the State with an estimate, based on quotes from qualified companies, of the cost of any potential rehabilitation work thus identified;
- (d) on the basis of this estimate, the State and the Majority Shareholder will agree on the amount of the rehabilitation works, if any, still to be carried out, which amount will be taken into account in the calculation of the SFDM Disposal Price in accordance with Article 3.1 of this Appendix and must be communicated to KPMG no later than twenty (20) Working Days before the Completion Date so that KPMG is able to meet the deadline provided in Article 3.2 of this Appendix for sending its notification of the Estimated SFDM Disposal Price;
- (e) in the event that the State and the Majority Shareholder do not reach an agreement on the amount of the rehabilitation works to be taken into account in the SFDM Disposal Price calculation within five (5) Working Days following the State's submission of the estimate referred to in (c) above, the State or the Majority Shareholder shall, without delay, refer the matter to the company Bureau Veritas (or any other reputable, expert and independent service provider) so that it can settle their disagreement within a period that allows KPMG to be informed of the amount of the rehabilitation works to be taken into account in the SFDM Disposal Price no later than twenty (20) Working Days before the Completion Date. The procedure to settle the disagreement will be adversarial (each party having the opportunity to be heard and each piece of information communicated to Bureau Veritas (or any other reputable, expert and independent service provider) must also be communicated to the other party).

The SFDM will make the necessary arrangements so that AECOM and Bureau Veritas (or any other reputable, expert and independent service provider) accept the mission assigned to them by this Article. The SFDM will assume the costs for their intervention.

3. SFDM DISPOSAL PRICE

3.1. The SFDM Disposal Price shall be equal to (A) + (B) + (C) + (D) - (E), where:

- (A) is equal to the amount due from the State to the SFDM for the Termination Indemnity;

- (B) is equal to the amount due from the State to the SFDM for the NBV Indemnity;
- (C) is equal to the SFDM's Net Asset Value;
- (D) is equal to the lump sum final amount of four million eight hundred and sixty-eight thousand (4,868,000) euros relating to a fraction of the residual value of the long-term contracts for the management of strategic stocks concluded by SFDM and still in force after 28 February 2022;
- (E) is equal to the amount of the remaining rehabilitation works, if any, to be carried out at the Completion Date pursuant to Article 41.2 of the SFDM Agreement, such as will have been agreed in accordance with Article 2 of this Appendix.

If this formula results in a negative amount, the Shareholders will make all necessary arrangements (transfer of liabilities, write-off of debts, recapitalisation of the SFDM, etc) so that the SFDM Disposal Price is equal to one (1) euro.

- 3.2. No later than fifteen (15) Working Days before the Completion Date such as may be reasonably anticipated by the State, which shall communicate it to the Majority Shareholder and KPMG within the notice period referred to in Article 2(a) of this Appendix, KPMG will (i) update the Spreadsheet on the basis of financial and accounting data provided at the time of the update, and in particular estimate the SFDM Disposal Price by applying the provisions of Article 3.1 of this Appendix and the method of calculating the SFDM Net Asset Value (the "**Estimated SFDM Disposal Price**") and (ii) notify the State and the Majority Shareholder of the Estimated SFDM Disposal Price, together with relevant documentation to enable verification of such calculation.

To this end, the parties to the Memorandum will communicate to KPMG the information and documents necessary to accomplish their mission, including the NBV Indemnity amount and the rehabilitation works amount, if any, remaining at the Completion Date pursuant to Article 41.2 of the SFDM Agreement, as per the amount that will already have been agreed in accordance with Article 2 of this Appendix.

The State and the Majority Shareholder will have five (5) Working Days following the KPMG notification to notify KPMG, with a copy to the Majority Shareholder or the State, as the case may be, of any comments and proposed changes to the calculation of the Estimated SFDM Disposal Price, together with any supporting material.

The parties to the Memorandum will make any necessary arrangements for KPMG to review in good faith the comments and proposals for changes made by the Government and the Majority Shareholder without, however, being required to make any changes to the Estimated SFDM Disposal Price, which KPMG shall then re-notify to the State and the Majority Shareholder no later than five (5) Working Days prior to the Completion Date.

On the Completion Date, the Estimated SFDM Disposal Price as notified by KPMG shall be paid directly by the Acquisition Vehicle constituted by the Purchaser to the Shareholders (in the same proportions as their share of SFDM's capital).

- 3.3. As soon as possible, and no later than thirty (30) Working Days following the Completion Date, KPMG will make a final calculation of the SFDM Disposal Price applying the stipulations of Article 3.1 of this Appendix and the method of calculation of the Net Asset Value of the SFDM.

To this end, the parties to the Memorandum and the Purchaser shall communicate to KPMG, no later than fifteen (15) Working Days following the Completion Date, the information and documents necessary to achieve their mission. The procedure to determine the final SFDM Disposal Price will be adversarial (each party, including the Purchaser, will have the opportunity to be heard (without KPMG being obliged to take their comments and remarks into account) and each piece of information communicated to KPMG must also be communicated to the other parties) and KPMG's conclusions will be binding on the State, the Shareholders and the Purchaser, unless manifestly in error, in which case the said parties and KPMG will agree the correction to be made in good faith.

No later than ten (10) Working Days following the final determination of the SFDM Disposal Price, the difference between the SFDM Disposal Price and the Estimated SFDM Disposal Price will be paid directly (x) by the Shareholders (in the same proportions as their shareholding in SFDM) to the Acquisition Vehicle formed by the Purchaser if the Estimated SFDM Disposal Price is higher than the SFDM Disposal Price or (y) by the Acquisition Vehicle formed by the Purchaser to the Shareholders (in the same proportions as their shareholding in the SFDM) in the opposite case.

- 3.4. The SFDM will make the necessary arrangements so that KPMG (or any other reputable, expert and independent service provider) accepts the mission assigned to them by Articles 3.2 and 3.3 of this Appendix. The SFDM will assume the costs for their intervention.