JOINT PARLIAMENTARY MEMORANDUM

BY THE

MINISTER OF SANITATION AND WATER RESOURCES

AND

MINISTER FOR FINANCE

FOR THE

IMPLEMENTATION OF A RURAL COMMUNITIES AND SMALL TOWNS WATER SUPPLY PROJECT IN THE REPUBLIC OF GHANA

FOR AN AMOUNT OF €30 MILLION EUROS FINANCED FROM UK EXPORT FINANCE AND HSBC BANK

27th MAY, 2019
1.0 PARLIAMENTARY REQUEST

1.1. Parliament is respectfully invited to consider and approve:

a. The Supply Contract (attached herein) in an amount of EUR30,000,000.00 (Thirty Million Euros) between the Government of the Republic of Ghana, acting through the Ministry for Sanitation and Water Resources (MSWR) and Aqua Africa Limited for the implementation of the Rural Communities and Small Towns Water Supply Project to serve 282,000 people in four regions namely Ashanti, Eastern, Volta and Greater Accra in Ghana.

b. United Kingdom Export Finance (UKEF) Facility Agreement (attached herein) in the amount of up to EUR31,500,000.00 (Thirty-one million, five hundred thousand Euros) between the Republic of Ghana represented by the Ministry of Finance and HSBC Bank Plc (as the Facility Agent and Arranger) to finance the implementation of the Rural Communities and Small Towns Water Supply Project.

c. A tied Commercial Facility Agreement (attached herein) in the amount of up to EUR4,500,000.00 (Four Million, Five Hundred Thousand Euros) between the Republic of Ghana represented by the Ministry of Finance and HSBC Bank Plc (as the Facility Agent, Arranger and Lender) to finance the implementation of the Rural Communities and Small Towns Water Supply Project.

2.0 BACKGROUND INFORMATION

MSWR and the Community Water & Sanitation Agency (CWSA) in conjunction with a UK private sector entity, Aqua Africa Limited (AA) have been working together on a market-based approach to provide sustainable safe drinking water to rural communities and small towns in four regions in Ghana.

This solution reflects the policy direction of the Ministry and falls in line with the strategic direction of CWSA in the provision of safe water to rural communities and small towns.

MSWR and CWSA is embarking on a strategy to enhance the delivery of WASH facilities to about 38% of the unserved rural population towards the attainment of the Sustainable Development Goal (SDG) 6.

The concept of this transformation is to consider innovative technology and financing methods to generate revenue to take care of maintenance and future expansion programmes and improve mechanisms to hold all actors to their roles and responsibilities in the WASH sector.
3.0 PROJECT DESCRIPTION

Aqua Africa will work in partnership with CWSA to provide water systems to Rural Communities and Small Towns and secure revenue from water sales using smart metering or cashless payment systems. The project will use advanced Nano-technology filtration or other technologies (as appropriate) to treat unsafe water sources, as well as providing solar-powered pumping mechanisms. The treated water will be piped either directly to households or community standpipes.

The purpose of this project is to support the MSWR and CWSA to install and maintain point and piped water systems in rural communities and small towns, in line with the new policy direction of CWSA and the 'Water for All' Agenda of Government of Ghana.

The implementation will be structured in two main phases: Phase (1) 3-month design, resourcing and procurement planning; Phase (2) 18-month project implementation and delivery. The project has additional 6-month contingency period for unforeseen circumstances.

4.0 PROJECT SCOPE

The project shall have four main components, namely:

I. **Point Source Nano-Filtration Systems (€3 Million) - 10% Of Project Value**
   This component will provide point source Nano-filtration systems to 150 communities in areas where the water source is contaminated. The systems will comprise photo-voltaic power supplies and solar pumps, Nano-filters in anti-bacterial tanks, and a revenue capture system (either through mobile money or smartcards) at the source.

   Each system costs approximately €20,000, or €33.33 per capita, and will provide safe water to 600 people on average, resulting in safe water provision for 90,000 people.

II. **Piped Water to Households and Public Standpipes (€21 Million) - 70% of Project Value**

   This component will provide both piped water to households and public standpipes in 12 small towns. Each system will comprise photo-voltaic power for the pumping system, which will take water from water sources and anti-bacterial storage tanks. Pipes will transport water from the central system either to smart meters at each household or to the public standpipe locations, where water will be sold either through mobile money or through a smartcard revenue capture system.
Each system costs approximately €1.75 million for each location, including revenue capture and/or smart metering and operational and maintenance planning at €109 per capita, and will serve a small-town with an average population of 16,000. In total 192,000 people in twelve small towns will be served under this component.

iii. Environmental, Social Safeguards and Community Engagement (€1.3 Million) – 4.33% Of Project Value

This component will cover environmental and social safeguards interventions, selection of communities, community engagement and sensitisation, and training of Water System Management Staff.

iv. Project Management (€4.5 Million) – 15% Of Project Value

This component refers to the fees for the overall planning, management and oversight of the project design development, data research review, logistics, distribution, implementation and maintenance on behalf of the Government of Ghana by CWSA's internal project team and Aqua Africa's external team.

The fee structure will be used to cover the cost of implementing the project based on the following sharing formula:
- CWSA Internal Project Management: 3% (€900,000)
- Aqua Africa External Project Management: 12% (€3.6 million)

The Project Management Teams will operate between CWSA Head Office and Aqua Africa's Accra Office.

5.0 PROJECT OBJECTIVES AND BENEFITS

Water is key to prosperity and a major contributor to a healthy population of all communities. This project is intended to improve the health status of Ghanaians.

The project solution meets the new policy direction of the Ministry of Finance and incorporates all the tenets of the National Water Policy of the Ministry of Sanitation and Water Resources, whilst meeting the “Water for All” Agenda of Ghana Government. The project will also improve the living conditions of the Ghanaian people as well as help to achieve the goal of MSWR’s Water Sector Strategic Development Plan, which is “Sustainable Water and Basic Sanitation for all by the Year 2025”.

Benefits expected to accrue for the Government from the project include:
Maximisation of social and health benefits such as safe, affordable and reliable water supply, improvement in school attendance and reduction in water borne diseases.

- Improved level of service by increasing coverage in the beneficiary communities.
- Growth in productivity of the inhabitants leading to economic development and poverty reduction – approximately 600 direct and indirect jobs will be created.
- Boost to business and trade, mainly within the SME, Manufacturing and Rural Enterprise sectors as espoused in the One-District-One-Factory industrial policy of Government.

6.0 FUNDING STRUCTURE

The project cost of EUR30,000,000.00 is financed by Her Britannic Majesty’s Secretary of State acting through the Export Credits Guarantee Department (operating as UK Export Finance) and HSBC Bank plc under an export credit financing structure.

UK Export Finance is providing a direct lending to GOG finance up to 85% of the contract value and the entire guarantee premium. HSBC Bank plc on the other hand is lending to Government up to 15% of the contract value to finance government’s contribution towards to the project. The financial package provides a 100% financial solution.

The project financing was included on the list of projects approved for non-concessional borrowing in 2018 under the International Monetary Fund’s programme.

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<tr>
<th>Terms and condition</th>
<th>UKEF Direct Facility</th>
<th>HSBC Bank Tied Commercial Facility</th>
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<tr>
<td>Facility Amount</td>
<td>€31,500,000 (o/w €25,500,000 is for project and €6,000,000 is for the UKEF premium).</td>
<td>€4,500,000</td>
</tr>
<tr>
<td>Grace period</td>
<td>1.5 years</td>
<td>1 year</td>
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<tr>
<td>Repayment period</td>
<td>15 years</td>
<td>4 years</td>
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<tr>
<td>Tenor (Door to Door)</td>
<td>16.5</td>
<td>5 years</td>
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### Interest Rate

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<th>CIRR (current pricing 1.74% p.a.)</th>
<th>EURIBOR + 4.80% p.a.</th>
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<tr>
<td>Commitment fee</td>
<td>0.46% p.a.</td>
<td>1.00% p.a.</td>
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<tr>
<td>Structuring fee</td>
<td>1.25% flat</td>
<td>1.25% flat</td>
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<tr>
<td>Administration fee</td>
<td>€ 150,000</td>
<td>€ 30,000</td>
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#### 7.0 REVENUE GENERATION FOR REPAYMENT OF LOAN

The project is structured to generate revenue and will introduce a cashless tariff payment system, through a top up card, token, voucher, and scratch card schemes. MSWR will introduce a tariff scheme which will be used in all the beneficiary communities. The potential revenue to GoG from introducing a tariff scheme will enable the government to recover part of the revenue into the debt recovery account and also maintain the project infrastructure.

#### 8.0 INTER-MINISTERIAL CONSULTATION:

The following MDAs were consulted during the project formulation:

- Ministry of Finance
- Community Water and Sanitation Agency
- Ghana Water Company Limited

#### 9.0 CONCLUSION

Considering the immense socio-economic benefits to be derived from this project, Parliament is kindly invited to consider and approve the supply contract and facility agreements details in Paragraph 1.0 above.

HON. CECILIA ABENA DAPAHAH  
MINISTER OF SANITATION & WATER RESOURCES

HON. KEN OFORI-ATTA  
MINISTER FOR FINANCE

27th MAY, 2019
Cabinet at its Fifty-first meeting held on Wednesday, 27th March, 2019 considered a report of the joint meeting of the Cabinet Committees on Infrastructure and Social Services, as well as inputs from the Cabinet Committee on Economic Matters on the above Memorandum submitted jointly by the Ministers for Sanitation and Water Resources, and Finance.

2. The Memorandum requested Cabinet to consider and recommend to Parliament for consideration and approval:

(i) The Supply Contract in an amount of Thirty million Euros (EUR30,000,000.00) between the Government of the Republic of Ghana, acting through the Ministry of Sanitation and Water Resources, and Aqua Africa Limited for the delivery and implementation of Peri-urban and Rural Water Supply Projects in 450 locations in Ghana;

(ii) United Kingdom Export Finance (UKEF) Facility Agreement in the amount of up to Thirty-one million, five hundred thousand Euros (EUR31,500,000.00) between the Republic of Ghana, represented by the Ministry of Finance, and HSBC Bank Inc. (as the Facility Agent and Arranger) to finance the delivery and implementation of Peri-urban and Rural Water Supply Projects in 450 locations in Ghana; and

(iii) A tied Commercial Facility Agreement in the amount of up to Four million, five hundred thousand Euros (EUR4,500,000.00) between the Republic of Ghana, represented by the Ministry of Finance, and HSBC Bank Plc (as the Facility Agent, Arranger and Lender) to finance the delivery and implementation of Peri-urban and Rural Water Supply Projects in 450 locations in Ghana.
3. Cabinet approved the Memorandum and directed the Minister for Sanitation and Water Resources to submit the list of beneficiary communities to the Chief of Staff by **Wednesday, 3rd April, 2019.**

4. I should be grateful if you could take requisite action on the decision by Cabinet.

[Signature]

MERCY DEBRAH-KARIKARI
SECRETARY TO THE CABINET

THE HON. MINISTER FOR SANITATION AND WATER RESOURCES

THE HON. MINISTER FOR FINANCE

cc: Chief of Staff
    Secretary to the President
    Secretary to the Vice President
    Chairperson, Cabinet Committee on Economic matters
    Chairperson, Cabinet Committee on Infrastructure
    Chairperson, Cabinet Committee on Social Services
IMPLEMENTATION OF A RURAL COMMUNITIES AND SMALL TOWNS WATER SUPPLY PROJECT IN THE REPUBLIC OF GHANA

ANNEX 1
UK Export Financed Direct Lending Facility

ANNEX 2
EUR term loan Facility Agreement

ANNEX 3
Supply Contract
ANNEX 1

UK Export Financed Direct Lending Facility
DATED [*]

THE GOVERNMENT OF THE REPUBLIC OF GHANA, ACTING THROUGH THE MINISTRY OF FINANCE

as Borrower

UK EXPORT FINANCE

as Lender

HSBC BANK PLC

as Agent

and

HSBC BANK PLC

as Arranger

FACILITY AGREEMENT NO. [*]

Facility relating to delivery of water filtration systems across Ghana by Aqua Africa Limited
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THIS AGREEMENT is dated [*] and made between:

PARTIES

(1) The Government of the Republic of Ghana, acting through the Ministry of Finance of PO Box M40, Accra, Republic of Ghana as borrower (the "Borrower");

(2) Her Britannic Majesty's Secretary of State acting through the Export Credits Guarantee Department (operating as UK Export Finance) (the "Lender");

(3) HSBC Bank plc as the agent of the Lender (the "Agent");

(4) HSBC Bank plc as arranger (the "Arranger").

Whereas:

(A) The Government of the Republic of Ghana acting through the Ministry of Sanitation and Water Resources, of P.O. Box [ ], Accra, Republic of Ghana ("Buyer") has entered into a contract dated [*] with Aqua Africa Limited, a company incorporated under English law and, having its registered office at Apt 14, 34 Bromells Road, London SW4 0BG, United Kingdom (the "Exporter") for the [delivery of water filtration systems across Ghana] (the "Export Contract"); and

(B) the Lender has agreed, on the terms and conditions of this Agreement, to advance to the Borrower up to the sum of EUR[31,500,000 [€25,500,000 + €6,000,000] (100% UKEF Support Fee)] to assist the financing of the Export Contract.

1 UKEF Support Fee subject to confirmation by UKEF
IT IS AGREED as follows:

SECTION 1
INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Accounting Principles" means generally accepted accounting principles in Ghana, including IFRS;

"Accountant's Supporting Opinion" means a written opinion from an independent firm of chartered or certified accountants in the UK nominated by the Agent stating that the payment set out in the Exporter's Termination Statement [has been properly calculated in accordance with the Export Contract] [is reasonable taking into account in all of the circumstances];

"Applicable Law" means:

(a) any law, statute, decree, constitution, regulation, rule, by-law, order, authorisation, judgment, injunction or other directive of any Government Entity or otherwise which is applicable in Ghana;
(b) any treaty, pact or other binding agreement to which any Government Entity is a signatory or party; or
(c) any judicial or administrative interpretation with binding characteristics or application of those described in paragraphs (a) or (b) above,

and in each case, which is applicable to an Obligor, an Obligor's assets or the Finance Documents;

"Authorisation" means an authorisation, consent, permit, approval, resolution, licence, exemption, filing, notarisation or registration;

"Availability Period" means the period from and including the date of this Agreement to and including the earlier of:

(a) [18 months in line with the Export Contract]; and
(b) the date on which the Facility has been fully utilised or cancelled;

"Available Commitment" means a Lender's Commitment minus:

(a) the amount of its participation in any outstanding Loans; and
(b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date;

"Available Facility" means the aggregate for the time being of the Available Commitment;
"Borrower's Signatory" means the person(s) authorised to sign on behalf of the Borrower regarding whom evidence has been provided to the Agent in respect of the Borrower in accordance with paragraph 1(a) of Schedule 1 (Conditions Precedent to Initial Utilisation), or, subject to the prior written approval of the Agent, such other person whose name and specimens of whose signature have been supplied to the Agent and certified by a director or officer of the Borrower in a form acceptable to the Agent;

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general interbank business in London [Accra] and in relation to a payment or rate fixing in euros, a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer payment system (TARGET) is operating.

"Buyer’s Signatory" means the person(s) authorised to sign on behalf of the Buyer regarding whom evidence has been provided by the Borrower to the Agent further to paragraph 1(g) of Schedule 1 (Conditions Precedent to Initial Utilisation), or, subject to the prior written approval of the Agent, such other person whose name and specimens of whose signature have been supplied to the Agent and certified by a director or officer of the Buyer in a form acceptable to the Agent;

"Calculation Rate" means, in relation to a prepayment, the CIRR Calculation Rate applicable on the Business Day which is [•] ([•]) Business Days prior to the date that the prepayment is due to occur for a repayment period equal to the applicable repayment term;

"Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

(a) Government Department;
(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
(c) Non-Ministerial Department; or
(d) Executive Agency;

"CIRR" means [*] per cent. [(□%)];

"CIRR Break Costs" means an amount equal to any costs and losses that will be or has been (directly or indirectly) suffered by the Lender as a result of, or in connection with, any prepayment as determined in accordance with Clause 7.5 (CIRR Break Costs);

"CIRR Calculation Rate" means the “Commercial Interest Reference Rate” relating to euros published by Organisation for Economic Co-operation and Development on its website at http://www.oecd.org/tad/xcred/cirrs.pdf from time to time, or, to the extent that such reference rate is not ascertainable pursuant to the foregoing, the rate would be determined and calculated by the Lender on the same basis as the OECD, that

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2 The CIRR is the fixed interest rate to be selected by the Borrower and agreed by UKEF. Under the conditions of the Direct Lending Facility, this is the higher of the relevant Commercial Interest Reference Rate and the National Loans Fund Rate. For illustration purposes only, the CIRR for the period between 15 March 2018 to 14 April 2018 was 1.74%p.a.
being the euro bond yields calculated as stipulated by the OECD plus one hundred (100) basis points;

"Code" means the US Internal Revenue Code of 1986;

"Commitment" means the Total Commitment to the extent not cancelled, reduced or transferred by it under this Agreement;

"Confidential Information" means all information relating to any Obligor, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

(a) the Borrower or any of its advisers; or

(b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from the Borrower or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

(i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 29 (Confidential Information); or

(ii) is identified in writing at the time of delivery as non-confidential by any Obligor or any of its advisers; or

(iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with any Obligor which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;

"CP Satisfaction Notice" has the meaning given in paragraph (a)(iii) of Clause 4.1 (Initial conditions precedent);

"Default" means an Event of Default or any event or circumstance specified in Clause 17 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default;

"Default Interest Rate" means the rate of interest payable by the Borrower in accordance with paragraph (a) of Clause 8.3 (Default interest);

"Disruption Event" means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

(i) from performing its payment obligations under the Finance Documents, or

(ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted;

"Environmental Information Regulations" mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in the UK in relation to such regulations;

"Event of Default" means any event or circumstance specified as such in Clause 17 (Events of Default);

"Expire Date" means the date that the Loans are repaid in full;

"Export Contract" has the meaning given in Recital (A);

"Exporter" has the meaning given in Recital (A);

"Exporter Arbitration Award Request" means a notice substantially in the form set out in Part C (Exporter Arbitration Award Request) of Schedule 2 (Utilisation Requests);

"Exporter Payment Request" means a notice substantially in the form set out in Part B (Exporter Payment Request) of Schedule 2 (Utilisation Requests);

"Exporter Receipt" means the document defined as the "Exporter Receipt in a Reimbursement Request;"

"Exporter's Signatory" means the person(s) authorised to sign on behalf of the Exporter regarding whom evidence has been provided by the Borrower to the Agent in accordance with paragraph 1(f) of Schedule 1 (Conditions Precedent to Initial Utilisation), or, subject to the prior written approval of the Agent, such other person whose name and specimens of whose signature have been supplied to the Agent and certified by a director or officer of the Exporter in a form acceptable to the Agent;

"Exporter Termination Statement" means a written statement from the Exporter to the Agent in a form satisfactory to the Agent, duly completed to the Agent's satisfaction and signed by the Exporter's Signatory:

(a) warranting and representing that the Export Contract has terminated in accordance with its terms;

(b) stating that a payment is due from the Buyer to the Exporter in respect of such termination; [and]

(c) setting out the sum that is due from the Buyer; [and]

(d) [with a statement duly countersigned by the Buyer's Signatory that the Buyer agrees that the payment is due and payable];
"Exporter Termination Sums Request" means a notice substantially in the form set out in Part D (Exporter Termination Sums Request) of Schedule 2 (Utilisation Requests);

"Facility" means the term loan facility made available under this Agreement as described in Clause 2 (The Facility);

"Facility Currency" means euros;

"FATCA" means:

(a) sections 1471 to 1474 of the Code or any associated regulations;

(b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

(c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

"FATCA Application Date" means:

(a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

(b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2017; or

(c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017;

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement;

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA;

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction;

"Fee Document" means any document or documents:

(a) between the Arranger and the Borrower or the Agent and the Borrower;

(b) setting out any of the fees referred to in Clause 9 (Fees) and disclosed to UK Export Finance; and

(c) documented in a form which is acceptable to UK Export Finance.

"Finance Document" means this Agreement, each Fee Document and any other document designated as such by the Lender and the Borrower;
"Finance Party" means the Agent, the Arranger or a Lender;

"Financial Indebtedness" means [any indebtedness for or in respect of:

(a) moneys borrowed and debit balances at banks or other financial institutions;
(b) any acceptance under any acceptance credit facility or dematerialised equivalent;
(c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
(d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
(e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meeting any requirement for derecognition under the Accounting Principles);
(f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles;
(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that derivative transaction, that amount) shall be taken into account);
(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
(i) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Final Maturity Date or are otherwise classified as borrowings under the Accounting Principles;
(j) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than [sixty (60)] days after the date of supply;
(k) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; or
(l) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above;]

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in the UK in relation to such legislation;
"Government Entity" means:

(a) any national government or political subdivision of a national government;

(b) any banking or monetary authority of a national government or of a political subdivision of a national government;

(c) any local jurisdiction of a national government or of a political subdivision of a national government;

(d) the European Central Bank or the Council of Ministers of the European Union;

(e) any instrumentality, commission, board commission, authority, department, division, organ, court or agency of any of the foregoing, however constituted;

or

(f) any association, organisation or institution of which any of the entities listed in the preceding paragraphs is a member (including, without limitation, any European supranational body) or to whose jurisdiction any of them is subject or in whose activities any of them is a participant;

"IFRS" means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements;

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000;

"Information Legislation" means the FOIA, the Environmental Information Regulations and any other legislation from time to time governing the disclosure of information held by public bodies in the UK;

"Interest Payment Date" means the last day of an Interest Period;

"Interest Period" means in relation to a Loan, each period determined in accordance with Clause 8.5 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (Default interest);

"Loan" means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan;

"Material Adverse Effect" means a material adverse effect on:

(a) the economic and/or financial condition of any Obligor, which will or is reasonably likely to have an effect on the ability of an Obligor to perform its obligations under the Finance Documents;

(b) the political and economic situation of Ghana, which will or is reasonably likely to have an effect on the ability of an Obligor to perform its obligations under the Finance Documents; or

(c) the ability of an Obligor to perform and comply with its payment obligations under the Transaction Documents; or

(d) the validity or enforceability of the Finance Documents or the rights and remedies of any Finance Party under any of the Finance Documents;
"Material Export Contract Change" means any:

(a) assignment, novation or other disposal of any rights and/or obligations under the Export Contract; or

(b) amendment, acquiescence, departure from or waiver of the terms of the Export Contract, which:

(i) on its own, or when aggregated with any previous amendments, acquiescences, departures from or waivers, increases or decreases the amount payable by the Borrower under the Export Contract by more than ten per cent. (10%); or

(ii) involves a material change in nature of the supply made under the Export Contract;

"Obligor" means the Borrower or the Buyer;

"Participating Member State" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;

"Party" means a party to this Agreement;

"Protected Party" has the meaning given in paragraph (a) of Clause 10.1 (Tax Definitions);

"Recipient" has the meaning give in paragraph (b) of Clause 10.6 (VAT);

"Reimbursement Request" means a notice substantially in the form set out in Part A (Reimbursement Request) of Schedule 2 (Utilisation Requests);

"Relevant Jurisdiction" means Ghana;

"Relevant Market" means [the European interbank market]/[the London interbank market];

"Relevant Party" has the meaning given in paragraph (b) of Clause 10.6 (VAT);

"Repayment Date" means [•] and [•] in each year;

"Repeating Representations" means each of the representations set out in Clauses 14.1 (Status) to Error! Reference source not found. (Error! Reference source not found.);

"Required Documents" means:

(a) in the case of a Reimbursement Request the documents described in paragraph [10] of Part A (Reimbursement Request) of Schedule 2 (Utilisation Requests);

(b) in the case of an Exporter Payment Request the documents described in paragraph [7] of Part B (Exporter Payment Request) of Schedule 2 (Utilisation Requests);
(c) in the case of an Exporter Arbitration Award Request the documents described in paragraph [7] of Part C (Exporter Arbitration Award Request) of Schedule 2 (Utilisation Requests);

(d) in the case of an Exporter Termination Sums Request the documents described in paragraph [7] of Part D (Exporter Termination Sums Request) of Schedule 2 (Utilisation Requests);

"Sanctions Authority" means:

(a) the United States of America;

(b) the United Nations Security Council;

(c) the European Union;

(d) any member state of the European Union; and

(e) the United Kingdom;

"Sanctions Laws and Regulations" means any economic, financial or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctions Authority from time to time;

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Semi-Annual Date" means [*] or [*] in each year;

"Specified Time" means a day or time determined in accordance with Schedule 3 (Timetables);

"Subsidiary" means, in relation to a company, any other company:

(a) which is controlled, directly or indirectly, by the first mentioned company;

(b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first mentioned company; or

(c) which is a Subsidiary of another Subsidiary of the first mentioned company;

"Supplier" has the meaning given in paragraph (b) of Clause 10.6 (VAT);

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

"Tax Credit" has the meaning given in paragraph (a) of Clause 10.1 (Tax Definitions);

"Tax Deduction" has the meaning given in paragraph (a) of Clause 10.1 (Tax Definitions);

"Tax Payment" has the meaning given in paragraph (a) of Clause 10.1 (Tax Definitions);

"Total Commitments" means the aggregate of the Commitments being [*] at the date of this Agreement;
"UK" means the United Kingdom of Great Britain and Northern Ireland;

"UKEF Application Form" means the application form relating to the Export Contract provided by the Exporter to the Lender dated [•], as amended from time to time;

"UKEF Support Fee" means the sum of [amount] ([*])

"Unpaid Sum" means any sum due and payable but unpaid by an Obligor under the Finance Documents;

"US" means the United States of America;

"US Tax Obligor" means the Borrower, if some or all of whose payments under the Finance Documents are from sources within the US for US federal income tax purposes;

"Utilisation" means a utilisation of the Facility;

"Utilisation Date" means the date of a Utilisation, being the date on which the relevant Loan is to be made;

"Utilisation Request" means:

(a) a Reimbursement Request;

(b) an Exporter Payment Request;

(c) an Exporter Arbitration Award Request; or

(d) an Exporter Termination Sums Request; and

"VAT" means:

(a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112), and

(b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

1.2 Construction

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

(i) the "Agent", the "Arranger", the "Borrower", any "Finance Party", any "Lender" or any "Party" shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;

(ii) "assets" includes present and future properties, revenues and rights of every description;

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1 Amount to be confirmed by UKEF
(iii) a "Finance Document" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

(iv) "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

(v) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

(vi) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(vii) a provision of law is a reference to that provision as amended or re-enacted;

(viii) a time of day is a reference to London time;

(ix) the singular includes the plural and vice versa;

(x) a gender includes the other gender and the neuter; and

(xi) the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation".

(b) The determination of the extent to which a rate is "for a period equal in length" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.

(c) Section, Clause and Schedule headings are for ease of reference only.

(d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

(e) A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.

1.3 Currency symbols and definitions

"€", "EUR" and "euro" denote the single currency of the Participating Member States.

1.4 Third party rights

A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
SECTION 2
THE FACILITY

2. THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Borrower a term loan facility in the Facility Currency in an aggregate amount equal to the Total Commitments (the "Facility").

2.2 Finance Parties' rights and obligations

(a) The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

(b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.

(c) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

2.3 Obligations of the Borrower

(a) The obligations of the Borrower under this Agreement shall constitute absolute, unconditional and irrevocable financial obligations to the Finance Parties. Such obligations are independent and separate obligations regardless of any matter affecting the Exporter or the Export Contract including the performance, non-performance, frustration or invalidity of the Export Contract, or the destruction, non-completion, or non-functioning of any of the goods and/or services to be supplied under the Export Contract or the liquidation or bankruptcy of the Exporter or any other person.

(b) Without prejudice to the generality of paragraph (a) above, the Borrower acknowledges that its liability to pay in full any sum payable by it under this Agreement on the due date for payment:

(i) is separate from the performance by the Exporter or any other person of their obligations under the Export Contract and any other agreement relating thereto; and

(ii) shall not be affected in any way by reason of any claim, dispute or defence which the Borrower or the Buyer may have or may consider that it has against any Exporter or any other person.
3. PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility towards one or more of the following:

(a) reimbursing the Buyer for payments already made by it to the Exporter pursuant to the Export Contract; or

(b) making payments to the Exporter in respect of the Buyer's obligations under the Export Contract; or

(c) making payments in respect of the UKEF Support Fee.

3.2 Monitoring

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

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

(a) The Agent shall not give effect to any Utilisation Request unless:

(i) the Agent has received all of the documents and other evidence listed in Schedule 1 (Conditions Precedent to Initial Utilisation) in a form and substance satisfactory to the Agent within ninety (90) days of the date of this Agreement or by such later date as the Agent may notify the Borrower in writing;

(ii) the Borrower has complied with its obligations under paragraph (a) of Clause 9.3 (UKEF Support Fee); and

(iii) the Agent has notified the Borrower and the Lender that the conditions precedent referred to in paragraphs (i) and (ii) above have been satisfied (the "CP Satisfaction Notice").

(b) The conditions precedent described in Schedule 1 (Conditions Precedent to Initial Utilisation) are for the benefit of the Agent and the Lender and the Agent may waive any or all of those conditions precedent in whole or in part and decide when and if each of those conditions precedent has been fulfilled to its satisfaction.

(c) If the conditions precedent referred to in paragraph (a) above are not met within ninety (90) days of the date of this Agreement, or such later date as the Agent may have notified the Borrower, the Agent may notify the Borrower that the Commitments of the Lenders shall be cancellable on notice.

(d) Where the Agent notifies the Borrower of a later date for meeting the conditions precedent referred to in paragraph (a) above, it may also notify the Borrower in writing at or around the same time of a change to the CIRR.
4.2 Further conditions precedent

(a) Subject to paragraph (b) below, the Lender shall only be obliged to comply with Clause 5.7 (Lender's participation) if on the date of the Utilisation Request (if applicable) and on the proposed Utilisation Date:

(i) no Default is continuing or would result from the proposed Loan;

(ii) the Repeating Representations to be made by each Obligor are true;

(iii) no event described in paragraph Error! Reference source not found. of Clause 7.2 (Material Export Contract Change) has occurred;

(iv) no Sanctions Laws and Regulations would apply to or otherwise affect the receipt by the Borrower of proceeds from a proposed Loan and or the incurring of debt in relation to a proposed Loan;

(v) it would not be unlawful or contrary to any Sanctions Laws and Regulations applicable to the Lender for the proposed Loan to be made;

(vi) [the Agent has received the full amount of the UKEF Support Fee:]

(vii) if the proposed Utilisation pursuant to a Utilisation Request is a Reimbursement Request or an Exporter Payment Request, the representations made by the Exporter in the Exporter Receipt or the Exporter Payment Request, as appropriate, are true; and

(viii) [if the proposed Utilisation Request is a Reimbursement Request, the amount requested does not include any amount in respect of payments made by the Borrower under the Export Contract to the Exporter which form part of the cash down payment referred to in the condition precedent in paragraph 5(a) of Schedule 1 (Conditions Precedent to Initial Utilisation)].

(b) The Lender may, acting at its discretion, decide to make its participation in each Loan available in accordance with Clause 5.7 (Lender's participation) regardless of:

(i) whether the conditions set out in paragraph (a) above have been met; or

(ii) the delivery of notice to the Borrower under paragraph (c) of Clause 17.14 (Acceleration).

(c) If any Loans are made when one or more of the conditions referred to in paragraph (a) above have not been met or after delivery of notice to the Borrower under paragraph 17.14(c) of Clause 17.14 (Acceleration), such Loans shall be repayable by the Borrower on demand by the Agent on the instructions of the Lender.
SECTION 3

UTILISATION

5. UTILISATION

5.1 Utilisation of the Facility

(a) The Borrower may utilise the Facility by delivery to the Agent of a duly completed Reimbursement Request to the Agent's satisfaction no later than the Specified Time.

(b) The Borrower shall be deemed to have requested a Utilisation of the Facility following the delivery to the Agent by the Exporter of:

(i) an Exporter Payment Request duly completed to the Agent's satisfaction;

(ii) an Exporter Arbitration Award Request duly completed to the Agent's satisfaction; or

(iii) an Exporter Termination Sums Request duly completed to the Agent's satisfaction.

(c) The Borrower shall be deemed to have requested a Utilisation of the Facility on the terms set out in Clause 5.6 (Payment of the UKEF Support Fee from the Facility) following the issue by the Agent of the CP Satisfaction Notice; and

5.2 Reimbursement Requests

(a) Each Reimbursement Request is irrevocable and shall not be regarded as having been duly completed unless:

(i) the proposed Utilisation Date is a Business Day within the Availability Period;

(ii) the currency of the Loan requested in the Reimbursement Request is the Facility Currency;

(iii) the amount of the proposed Loan is an amount that does not exceed the Available Facility and which is a minimum of [•] ([•]) or, if less, the Available Facility;

(iv) it has been signed by the Borrower's Signatory and the Appendix to the Reimbursement Request has been signed by the Exporter's Signatory; and

(v) it has attached true copies of each of the Required Documents.

(b) Only one Loan may be requested in each Reimbursement Request.

5.3 Exporter Payment Requests

(a) Each Exporter Payment Request is irrevocable.

(b) Each Exporter Payment Request must be delivered to the Agent not less than [•] ([•]) Business Days before the last day of the Availability Period.

(c) An Exporter Payment Request shall not be regarded as having been duly completed unless:

(i) it has been signed by the Exporter's Signatory; and
(ii) it has attached true copies of each of the Required Documents.

(d) Upon delivery to the Agent of an Exporter Payment Request duly completed to the Agent’s satisfaction, the Borrower shall be deemed to have requested a Utilisation of the Facility on the following terms:

(i) the amount of the Loan shall be:

(A) the total amount certified in the Exporter Payment Request as being due to the Exporter under the Export Contract (or, if that amount is not an amount in the Facility Currency, that amount converted into the Facility Currency at the Rate of Exchange on the date of the Exporter Payment Request); or

(B) if less, the Available Facility; and

(ii) the Utilisation Date shall be the date falling [*] ([•]) Business Days after the date of receipt by the Agent of the Exporter Payment Request duly completed to the Agent’s satisfaction.

5.4 Exporter Arbitration Award Requests

(a) Each Exporter Arbitration Award Request is irrevocable.

(b) Each Exporter Arbitration Award Request must be delivered to the Agent not less than [*] ([•]) Business Days before the Expiry Date.

(c) An Exporter Arbitration Award Request shall not be regarded as having been duly completed unless:

(i) it has been signed by the Exporter’s Signatory; and

(ii) it has attached true copies of each of the Required Documents.

(d) Upon delivery to the Agent of an Exporter Arbitration Award Request, the Borrower shall be deemed to have requested a Utilisation of the Facility on the following terms:

(i) the amount of the Loan shall be:

(A) the total amount certified in the Exporter Arbitration Award Request as being due to the Exporter under the Export Contract (or, if that amount is not an amount in the Facility Currency, that amount converted into the Facility Currency at the Rate of Exchange on the date of the Exporter Arbitration Award Request); or

(B) if less, the Available Facility; and

(ii) the Utilisation Date shall be the date falling [*] ([•]) Business Days after the date of receipt by the Agent of the Exporter Arbitration Award Request duly completed to the Agent’s satisfaction.

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Wording with regards to court proceedings to be considered where Export Contract provides for court proceedings or other dispute resolution processes.
5.5 Exporter Termination Sums Requests

(a) Each Exporter Termination Sums Request is irrevocable.

(b) Each Exporter Termination Sums Request must be delivered to the Agent on a date not less than [\(\times\) \(\times\)] Business Days before the Expiry Date.

(c) An Exporter Termination Sums Request shall not be regarded as having been duly completed unless:

(i) it has been signed by the Exporter's Signatory; and

(ii) it has attached true copies of each of the Required Documents.

(d) Upon delivery to the Agent of an Exporter Termination Sums Request duly completed to the Agent's satisfaction, the Borrower shall be deemed to have requested a Utilisation of the Facility on the following terms:

(i) the amount of the Loan shall be:

(A) the total amount certified in the Exporter Termination Sums Request as being due to the Exporter under the Export Contract (or, if that amount is not an amount in the Facility Currency, that amount converted into the Facility Currency at the Rate of Exchange on the date of the Exporter Termination Sums Request); or

(B) if less, the Available Facility; and

(ii) the Utilisation Date shall be the date falling [\(\times\) \(\times\)] Business Days after the date of receipt by the Agent of the Exporter Termination Sums Request duly completed to the Agent's satisfaction.

5.6 Payment of the UKEF Support Fee from the Facility

(a) Upon the issue of the CP Satisfaction Notice, the Borrower shall be deemed to have requested a Loan under the Facility of an amount equal to eighty-five per cent (85%) of the UKEF Support Fee.

(b) The Utilisation Date of the Loan referred to in paragraph (a) above shall be the date falling three (3) Business Days after the date of the CP Satisfaction Notice.

(c) The proceeds of the Loan referred to in paragraph (a) above shall be paid by the Agent on the Utilisation Date in accordance with paragraph (b) of Clause 22.3 (Distributions in respect of Utilisations).

5.7 Lender's participation

(a) If the conditions set out in this Agreement have been met, the Lender shall make each Loan available by the Utilisation Date.

(b) Save for the Loan made pursuant to Clause 5.6, the Agent shall notify the Lender of the amount of each Loan by the Specified Time.
5.8 Loans paid directly to the Exporter or to the Lender

The Borrower acknowledges and agrees that the payment of the proceeds of any Utilisation directly to the Exporter or the Lender shall constitute a Loan for the purposes of this Agreement as if the proceeds of that Loan had been paid to the Borrower.
SECTION 4
REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

(a) Subject to paragraph (b) below, the Borrower shall repay outstanding Loans [made during the Availability Period] in equal six monthly instalments of [•] ([•]) (being [1/30] of the amount that would be outstanding on the last day of the Availability Period if the entire Total Commitments were Utilised during the Availability Period).

(b) The instalments referred to in paragraph (a) above shall be payable as follows:

(i) the first such instalment shall become due and payable on [date];

(ii) the Borrower shall continue to pay further such instalments (or if less, the remainder of all outstanding Loans) on each succeeding Repayment Date until it has repaid all outstanding Loans.

(c) [Subject to paragraph (d) below, the Borrower shall repay outstanding Loans made after the end of the Availability Period in equal six monthly instalments by paying on each Repayment Date an amount equal to (i) the amount of such Loan on its Utilisation State divided by (ii) the number of Repayment Dates that fall in the period commencing on (but not including) the Utilisation Date of that Loan and ending on (and including) the Final Maturity Date.]

(d) The instalments referred to in paragraph (b) above shall be payable as follows:

(i) the first such instalment shall become due and payable on the first Repayment Date after the date on which such Loan was made;

(ii) the Borrower shall continue to pay such instalments on each succeeding Repayment Date until it has repaid all outstanding Loans; and

(iii) the amount of the instalment on the [Final Maturity Date] shall be the remainder of all outstanding Loans.]

6.2 Reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.

7. PREPAYMENT AND CANCELLATION

7.1 Illegality

(a) If, in any applicable jurisdiction, it is or becomes unlawful for the Lender (including, without limitation, as a result of Sanctions Laws and Regulations applicable to the Lender) to maintain its participation in any Loan:

(b) the Lender shall promptly notify the Agent upon becoming aware of that event;

5 Equal to 15 year term

6 Expected to be 18 months in line with completion of Project and subject to UKEF's agreement
(c) upon the Agent notifying the Borrower of that event the Available Commitment will be immediately cancelled; and

(d) the Borrower shall repay the Loans on the first Interest Payment Date occurring after the Agent has so notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent pursuant to paragraph 7.1(b) above (being no earlier than the last day of any applicable grace period permitted by law) and the Commitment shall be cancelled in the amount repaid.

7.2 Material Export Contract Change

(a) If a Material Export Contract Change is made without the prior written consent of the Agent:

(b) the Lender shall not be obliged to fund a Utilisation; and

(c) if the Lender so requires, the Agent shall, by not less than [•] (17) Business Days’ notice to the Borrower, cancel the Total Commitments and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

7.3 Voluntary cancellation

The Borrower may not cancel the whole or any part of the Available Facility, unless otherwise agreed by the Agent.

7.4 Voluntary prepayment of Loans

(a) Subject to paragraph (b) below and Clause 7.5 (CIRR Break Costs), the Borrower may, if it gives the Agent not less than [•] (17) Business Days’ (or such shorter period as the Lender may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of [•] (17)).

(b) A Loan may only be prepaid on a Repayment Date falling after the last day of the Availability Period (or if earlier, the day on which the Available Facility is zero).

(c) Any prepayments made under this Clause 7.4 (Voluntary prepayment of Loans) shall satisfy the Borrower’s obligations under Clause 6.1 (Repayment of Loans) in inverse chronological order of the Repayment Dates.

7.5 CIRR Break Costs

(a) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to CIRR Break Costs, without premium or penalty.

(b) The Borrower agrees that the amount payable pursuant to paragraph (a) above may include a genuine pre-estimate of the cost to the Lender of replacing the part of the fixed rate cash inflow interrupted by the early repayment.

(c) If, and on each occasion that, a prepayment occurs or is to occur, the Lender shall, using a discount rate at the Calculation Rate:

(i) calculate the aggregate of the net present values in the Facility Currency of each amount of interest which would have been payable by the Borrower on each of the Interest Payment Dates occurring after the date of that prepayment, had (i) that prepayment not occurred and (ii) all amounts payable pursuant to
Clause 6.1 (Repayment) on each Interest Payment Date been paid in full and on time; and

(ii) calculate the aggregate of the net present values in the Facility Currency of each amount of interest which would have been payable by the Borrower on each of the Interest Payment Dates occurring after the date of that prepayment, had (i) that prepayment not occurred and (ii) all amounts payable pursuant to Clause 6.1 (Repayment) and on each Interest Payment Date been paid in full and on time and (iii) interest with respect to Loans made by the Lender under this Agreement accrued at the Calculation Rate instead of the CIRR.

(d) If the aggregate amount calculated in accordance with sub-paragraph (c)(ii) above exceeds that calculated in accordance with sub-paragraph (c)(i) above, no further action shall be taken.

(e) If the aggregate amount calculated in accordance with sub-paragraph (c)(i) above exceeds that calculated in accordance with sub-paragraph (c)(ii) above, then paragraph (a) above shall apply.

7.6 Restrictions

(a) Any notice of cancellation or prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

(b) The Borrower may not reborrow any part of the Facility which is prepaid.

(c) The Borrower shall not repay or prepay all or any part of the Loans except at the times and in the manner expressly provided for in this Agreement.

(d) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

(e) If the Agent receives a notice under this Clause 7 it shall promptly forward a copy of that notice to either the Borrower or the Lender, as appropriate.

(f) If all or part of the Lender's participation in a Loan is repaid or prepaid, an amount of the Commitment (equal to the amount of the participation which is repaid or prepaid) shall be deemed to be cancelled on the date of such repayment or prepayment.
SECTION 5
COSTS OF UTILISATION

8. INTEREST

8.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum of the CIRR.

8.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on each Interest Payment Date.

8.3 Default interest

(a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below is [(1)1%] per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.2 shall be immediately payable by the Obligor on demand by the Agent.

(b) If any overdue amount consists of all or part of a Loan which became due on a day which was not an Interest Payment Date:

(i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

(ii) the rate of interest applying to the overdue amount during that first Interest Period shall be [(1)1%] per annum higher than the rate which would have applied if the overdue amount had not become due.

(c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 Notification of rates of interest

The Agent shall promptly notify the Lender and the Borrower of the determination of a rate of interest under this Agreement.

8.5 Interest Periods

(a) The first Interest Period relating to any Loan shall start on the Utilisation Date and, subject to paragraph (b) below and Clause 8.6 (Non-Business Days), shall end on the immediately succeeding Semi-Annual Date.

(b) If the Utilisation Date of any Loan is less than [fifteen] [(15)] Business Days prior to a Semi-Annual Date, the first Interest Period for that Loan shall end on the Semi-Annual Date that next follows the Semi-Annual Date immediately succeeding the Utilisation Date.
(c) Each Interest Period relating to a Loan other than the first Interest Period shall start on
the last day of its immediately preceding Interest Period and, subject to Clause 8.6
(Non-Business Days), shall end on the immediately succeeding Semi Annual Date.

8.6 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that
Interest Period will instead end on the next Business Day in that calendar month (if
there is one) or the preceding Business Day (if there is not).

9. FEES

9.1 Arrangement fee

The Borrower shall pay to the Arranger (for its own account) an arrangement fee in the
amount and at the times agreed in a Fee Document (equal to 1.25% of Loan
Commitment).

9.2 Agency fee

The Borrower shall pay to the Agent (for its own account) an agency fee in the amount
and at the times agreed in a Fee Document (being EUR150,000 flat).

9.3 UKEF Support Fee

The Borrower shall pay to the Agent (for the account of the Lender) an amount equal
to the UKEF Support Fee, of which:

(a) an amount equal to fifteen per cent. (15%) of the UKEF Support Fee shall be paid
within ninety (90) days of the date of this Agreement; and

(b) the remainder shall be paid prior to the Agent giving effect to the first request for a
Utilisation in accordance with Clause 5.6 (Payment of the UKEF Support Fee from the
Facility).
SECTION 6
ADDITIONAL PAYMENT OBLIGATIONS

10. TAX GROSS UP AND INDEMNITIES

10.1 Tax Definitions

(a) In this Agreement:

"Protected Party" means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document;

"Tax Credit" means a credit against, relief or remission for, or repayment of any Tax;

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction; and

"Tax Payment" means either the increase in a payment made by an Obligor to a Finance Party under Clause 10.2 (Tax gross up) or a payment under Clause 10.3 (Tax indemnity).

(b) Unless a contrary indication appears, in this Clause 10 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

10.2 Tax gross up

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, the Lender shall notify the Agent on becoming so aware in respect of a payment payable to the Lender. If the Agent receives such notification from the Lender it shall notify the Borrower and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) If a Tax Deduction is required to be made by an Obligor by law, that Obligor shall:

(i) pay directly to the relevant authorities the full amount of the Tax Deduction;

(ii) promptly forward to the Agent for each affected Finance Party an official receipt or other documentation evidencing such payment to such authority; and

(iii) make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

10.3 Tax indemnity

(a) The Borrower shall (within three (3) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party
determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

(b) Paragraph (a) above shall not apply:

(i) with respect to any Tax assessed on a Finance Party:

(A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

(ii) to the extent a loss, liability or cost:

(A) is compensated for by an increased payment under Clause 10.2 (Tax gross up); or

(B) relates to a FATCA Deduction required to be made by a Party.

(c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.

(d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 10.3, notify the Agent.

10.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

(a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) that Finance Party has obtained and utilised that Tax Credit,

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

10.5 Stamp taxes

The Borrower shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.
10.6 VAT

(a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party shall pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party shall promptly provide an appropriate VAT invoice to that Party).

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

(i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT; and

(ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

(c) The Recipient must (where paragraph (b)(i) above applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply.

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

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

10.7 FATCA Information

(a) Subject to paragraph (c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:

(i) confirm to that other Party whether it is:

(A) a FATCA Exempt Party; or
(B) not a FATCA Exempt Party;

(ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and

(iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

(b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

(c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

(i) any law or regulation;

(ii) any fiduciary duty; or

(iii) any duty of confidentiality.

(d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

10.8 FATCA Deduction

(a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

(b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Agent and the Agent shall notify the other Finance Parties.

11. OTHER INDEMNITIES

11.1 Currency indemnity

(a) If any sum due from the Borrower under the Finance Documents (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:

(i) making or filing a claim or proof against the Borrower; or
(ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

(b) the Borrower shall as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(c) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

11.2 Other indemnities

The Borrower shall, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

(a) the occurrence of any Event of Default;

(b) a failure by the Borrower to pay any amount due under a Finance Document on its due date;

(c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request or pursuant to Clause 5.6 (Payment of the UKEF Premium from the Facility) but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or

(d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

11.3 Indemnity to the Agent

(a) The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

(i) investigating any event which it reasonably believes is a Default;

(ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

(iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

(b) The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent’s gross negligence or wilful misconduct) in acting as Agent under the Finance Documents.

12. MITIGATION BY THE LENDER

12.1 Mitigation

(a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (Illegality) or Clause 10 (Tax Gross Up and Indemnities).
Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.

12.2 Limitation of liability

(a) The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 12.1 (Mitigation).

(b) A Finance Party is not obliged to take any steps under Clause 12.1 (Mitigation) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

13. COSTS AND EXPENSES

13.1 Transaction expenses

The Borrower shall promptly on demand pay the Lender, the Agent and the Arranger the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing and execution of:

(a) the Finance Documents and any other documents referred to in the Finance Documents; and

(b) any other Finance Documents executed after the date of this Agreement.

13.2 Amendment costs

If the Borrower requests an amendment, waiver or consent or an amendment is required pursuant to Clause 22.10 (Change of currency), the Borrower shall, within three (3) Business Days of demand reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent or the Lender (for the account of the Agent or the Lender, as appropriate), in responding to, evaluating, negotiating or complying with that request or requirement.

13.3 Enforcement costs

The Borrower shall, within three (3) Business Days of demand, pay to the Agent the amount of all costs and expenses (including legal fees) incurred by the Agent or the Lender (for the account of the Agent or the Lender, as appropriate), in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

SECTION 7

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

14. REPRESENTATIONS

The Borrower makes the representations and warranties set out in this Clause 14 to each Finance Party on the date of this Agreement.

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7 Insertion of cap language on legal fees subject to agreement of UKEF
14.1 Status

(a) It is a sovereign state and is not subject to any insolvency procedures.
(b) It is a representative of the Government of the Republic of Ghana.
(c) It has the power and authority to:
   (i) sue and be sued in its own name;
   (ii) own its assets;
   (iii) carry on its business as it is being conducted; and
   (iv) enter into and perform its obligations under the Finance Documents.

14.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations.

14.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

(a) any Applicable Law;
(b) the constitution of Ghana;
(c) any treaty to which the Borrower is a party; or
(d) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (howsoever described) under any such agreement or instrument.

14.4 Power and authority

(a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
(b) No limit on its powers will be exceeded as a result of the borrowing or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.

14.5 Validity and admissibility in evidence

All Authorisations and other acts, conditions and things required or desirable:

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
(b) to ensure that the obligations expressed to be assumed by the Borrower in the Finance Documents are legal valid, binding and enforceable; and
(c) to make the Finance Documents to which it is a party admissible in evidence in the Relevant Jurisdiction.
have been obtained or effected and are in full force and effect.

14.6 Governing law and enforcement

(a) The choice of English law as the governing law of the Finance Documents and all non-contractual obligations arising from or connected with them will be recognised and enforced in the Relevant Jurisdiction.

(b) Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in the Relevant Jurisdiction.

14.7 Deduction of Tax

It is not required to make any Tax Deduction in Ghana from any payment it may make under any Finance Document.

14.8 No filing or stamp taxes

Other than stamping of the Transaction Documents as exempt under the "Stamp Duty Act, 2005 (Act 689)" under the law of Ghana it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

14.9 No Default

(a) No Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document.

(b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or might have a Material Adverse Effect.

14.10 No misleading information

All factual information provided by or on behalf of it to a Finance Party in relation to the Facility was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

14.11 No breach of laws

It has not breached any Applicable Law which would, if breached, materially impair its ability to perform its obligations under the Finance Documents.

14.12 Pari passu ranking

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to unsubordinated creditors generally.
14.13 No adverse consequences

(a) It is not necessary under the laws of the Relevant Jurisdiction:

(i) in order to enable any Finance Party to enforce its rights under any Finance Document; or

(ii) by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party or UK Export Finance should be licensed, qualified or otherwise entitled to carry on business in any of its Relevant Jurisdictions.

(b) No Finance Party is or will be deemed to be resident, domiciled or carrying on business in its Relevant Jurisdictions by reason only of the execution, performance and/or enforcement of any Finance Document.

14.14 Immunity

(a) In any proceedings taken in its jurisdiction of incorporation in relation to the Finance Documents to which it is a party, it will not be entitled to claim for itself or any of its assets (excluding diplomatic, consular, military or defence assets, petroleum assets protected by the "Petroleum Revenue Management Act, 2011 (Act 815)" and assets which have been expressly recognised as belonging to the public domain of Ghana in accordance with the laws of the Republic of Ghana) immunity from suit, execution, attachment or other legal process.

(b) Its execution of the Finance Documents to which it is a party constitutes, and the exercise of its rights and performance of its obligations thereunder will constitute, private and commercial acts done and performed for private and commercial purposes.

14.15 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

14.16 Environmental laws and standards

[To be inserted]

14.17 Anti-corruption law

It and the Buyer has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

14.18 Repetition

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of each Utilisation Request and each Interest Payment Date.
15. INFORMATION UNDERTAKINGS

The undertakings in this Clause 15 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

15.1 Information: miscellaneous

The Borrower shall supply to the Agent:

(a) all documents dispatched by the Borrower to its creditors generally at the same time as they are dispatched;

(b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it or any of its assets, and which might, if adversely determined, have a Material Adverse Effect; and

(c) promptly, such further information regarding such matters as any Finance Party (through the Agent) may reasonably request.

15.2 Notification of default

(a) The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

(b) Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by [two of its senior officials]/[an authorised signatory] on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

15.3 Use of websites

(a) The Borrower may satisfy its obligation under this Agreement to deliver any information where the Lender accepts this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (the "Designated Website") if:

(i) the Agent expressly agrees (after consultation with the Lender) that it will accept communication of the information by this method;

(ii) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and

(iii) the information is in a format previously agreed between the Borrower and the Agent.

(b) If the Lender does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent in paper form. In any event, the Borrower shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

(c) The Agent shall supply the Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.
(d) The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:

(i) the Designated Website cannot be accessed due to technical failure;

(ii) the password specifications for the Designated Website change;

(iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;

(iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or

(v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

(e) If the Borrower notifies the Agent under paragraphs (d)(i) or paragraph (d)(v) above, all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and the Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

(f) The Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.

15.4 "Know your customer" checks

(a) If:

(i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

(ii) a change in UK Export Finance’s internal practices and procedures relating to “know your customer” checks;

(iii) any change in the status of the Borrower after the date of this Agreement, or

(iv) a proposed assignment or transfer by the Lender of any of its rights or obligations under this Agreement to a party that is not the Lender prior to such assignment or transfer,

obliges the Agent or the Lender (or, in the case of paragraph (iv) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of the Lender) or the Lender (for itself or, in the case of the event described in paragraph (iv) above, on behalf of any prospective new Lender) in order for the Agent, the Lender or, in the case of the event described in paragraph (iv) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable law and/or as required under UK Export Finance’s internal practices and procedures pursuant to the transactions contemplated in the Finance Documents.
(b) The Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable law pursuant to the transactions contemplated in the Finance Documents.

15.5 Notifications relating to the Export Contract

The Borrower shall promptly notify the Agent if it becomes aware that:

(a) a Material Export Contract Change has been made without the prior written consent of the Agent or is proposed to be made;
(b) a termination or suspension lasting [•] Business Days or more has occurred under the Export Contract; or
(c) any disputes or the commencement of arbitration or other legal proceedings in connection with the Export Contract have occurred.

16. GENERAL UNDERTAKINGS

The undertakings in this Clause 16 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

16.1 Authorisations

Each Obligor shall promptly:

(a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
(b) supply certified copies to the Agent of,

any Authorisation required under any Applicable Law to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in the Relevant Jurisdiction of any Finance Document.

16.2 Compliance with laws

Each Obligor shall comply in all respects with Applicable Laws, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

16.3 Environmental undertakings

[To be inserted]

16.4 Anti-corruption law

The Borrower shall:

(a) conduct its businesses in compliance with applicable anti-corruption laws; and
(b) maintain policies and procedures designed to promote and achieve compliance with such laws.
16.5 **Pari passu ranking**

The Borrower shall ensure that at all times all its unsecured and unsubordinated obligations to the Finance Parties (or any of them) against it under the Finance Documents rank at least pari passu with its obligations to all of its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

16.6 **Compliance with Export Contract**

The Borrower shall (and shall ensure that the Buyer will):

(a) comply in all material respects with its obligations under, and in the manner and at the times provided in the Export Contract; and

(b) not repudiate or evidence an intention to repudiate the Export Contract nor take nor omit to take any action that might result in any default on any of its payment or other material obligations under the Export Contract.

16.7 **Insurance**

The Borrower shall:

(a) procure that any goods and/or services to be supplied under the Export Contract will be insured to the satisfaction of the Agent against the risk of loss or damage in accordance with normal commercial practice for similar contracts until final acceptance of those goods and/or services under the Export Contract; and

(b) produce to the Agent (from time to time at the Agent's request) evidence that such insurance has been effected and maintained.

17. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 17 is an Event of Default (save for Clause 17.11 (Acceleration)).

17.1 **Non-payment**

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

(a) its failure to pay is caused by:

(i) administrative or technical error; or

(ii) a Disruption Event; and

(b) payment is made within three (3) Business Days of its due date.

17.2 **Other obligations**

(a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in Clause 17.1 (Non-payment)).
No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within ten (10) Business Days of the earlier of:

(i) the Agent giving notice to the Borrower; and

(ii) the Borrower becoming aware of the failure to comply.

17.3 Misrepresentation

Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

17.4 Cross default

(a) Any Financial Indebtedness of the Borrower is not paid when due or within any originally applicable grace period.

(b) As a result of an event of default (however described), any Financial Indebtedness of the Borrower is:

(i) declared to be or otherwise becomes due and payable prior to its specified maturity; or

(ii) placed on demand.

(c) Any commitment for any Financial Indebtedness of the Borrower is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).

(d) No Event of Default will occur under this Clause 17.4 if the aggregate amount of the Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (c) above is less than [•] ([•]) (or its equivalent in any other currency or currencies as determined by the Agent).

17.5 Insolvency

(a) The Borrower:

(i) is unable or admits inability to pay its debts as they fall due;

(ii) is deemed to or is declared to be unable to pay its debts under Applicable Law;

(iii) suspends or threatens to suspend making payments on any of its debts; or

(iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.

(b) The value of the assets of the Borrower is less than its liabilities (taking into account contingent and prospective liabilities).

(c) A moratorium is declared in respect of any indebtedness of the Borrower. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.
17.6 Insolvency proceedings

(a) Any legal proceedings or other procedure or step is taken in relation to:

(i) the suspension of payments, a moratorium of any indebtedness, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;

(ii) a composition, compromise, assignment or arrangement with any creditor of the Borrower;

(iii) enforcement of any Security over any assets of the Borrower; or

(iv) any analogous procedure or step is taken in any jurisdiction.

17.7 Creditors' process

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of the Borrower and is not discharged within [•] ([•]) days.

17.8 Unlawfulness

(a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents or any of the obligations of the Borrower under the Finance Documents are not or cease to be legal, valid, binding and enforceable.

(b) Any obligation or obligations of the Borrower under any Finance Document cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

17.9 Repudiation

The Borrower repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

17.10 Legislative acts

Any legislative authorisation or any other act necessary under the laws of the Relevant Jurisdiction to enable the Borrower to perform its obligations under the Finance Documents or any transaction contemplated thereby is withdrawn or modified or shall otherwise cease to be in full force and effect or has not been obtained.

17.11 Exchange controls

Any event or series of events occurs which limits the acquisition or the transfer of foreign exchange by the Borrower and such event or events has or is reasonably likely to affect the ability of the Borrower to perform its obligations under any Finance Document.

17.12 Membership of international communities

The Borrower is not or ceases to be a member of the IMF or to be in good standing and eligible to use the resources of the IMF.
17.13 Material adverse change

There has been a material adverse change in the functions, operations, assets, liabilities, prospects or financial condition of the Borrower since the date of this Agreement.

17.14 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Agent may, and shall if so directed by the Lender, by notice to the Borrower:

(a) cancel the Total Commitments whereupon they shall immediately be cancelled;

(b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

(c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Lender.
SECTION 9

CHANGES TO PARTIES

18. CHANGES TO THE LENDER

(a) The Lender may:

(i) assign any of its rights under the Finance Documents; and/or

(ii) transfer all of its rights or obligations by novation,

(iii) in such form and documentation as the Lender may require and the Borrower shall provide such assistance as the Agent or Lender may reasonably request of it for the purposes of facilitating the assignment or transfer.

19. CHANGES TO THE OBLIGORS

No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.
SECTION 10
THE FINANCE PARTIES

20. ROLE OF THE AGENT AND THE ARRANGER

20.1 Appointment of the Agent

(a) The Lender appoints the Agent to act as its agent under and in connection with the Finance Documents.

(b) The Arranger and the Lender authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

20.2 Instructions

(a) Notwithstanding any other provision of this Agreement, unless a contrary indication appears in a Finance Document, the Agent shall:

(i) exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Lender; and

(ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.

(b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Lender as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

(c) The Agent may refrain from acting in accordance with any instructions of the Lender until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss (excluding any management time and any direct or indirect loss of profit) or liability which it may incur in complying with those instructions.

(d) In the absence of instructions, the Agent may, acting reasonably and in good faith, act (or refrain from acting) as it considers to be in the best interest of the Lender.

(e) The Agent is not authorised to act on behalf of the Lender (without first obtaining the Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

20.3 Duties of the Agent

(a) Subject to paragraph (d) of Clause 20.2 (Instructions), the Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

(b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
(c) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document which is delivered to the Agent that it forwards to another Party.

(d) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

(e) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.

(f) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents with respect to the Finance Documents to which it is expressed to be a party (and no others shall be implied).

20.4 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

20.5 No fiduciary duties

(a) Nothing in any Finance Document constitutes the Agent (in its capacity as agent under the Finance Documents) or the Arranger (in its capacity as arranger under the Finance Documents) as a trustee or fiduciary of any other person.

(b) Neither the Agent nor the Arranger shall be bound to account to the Lender for any sum or the profit element of any sum received by it for its own account.

20.6 Business with the Group

The Agent and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

20.7 Rights and discretions

(a) The Agent may:

(i) rely on any representation, communication notice or document believed by it to be genuine, correct and appropriately authorised;

(ii) assume that:

(A) any directions received by it from the Lender are duly given in accordance with the terms of the Finance Documents; and

(B) unless it has received notice of revocation, that those instructions have not been revoked;

(iii) rely on a certificate from any person:

(A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,
as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate; and

(iv) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within that individual's knowledge or power to verify.

(b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lender) that:

(i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 17.1 (Non-payment));

(ii) any right, power, authority or discretion vested in any Party or the Lender has not been exercised; and

(iii) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of all the Obligors.

(c) The Agent may, pursuant to the instructions of the Lender, engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts for the benefit of the Lender.

(d) Without prejudice to the generality of paragraph (e) below, the Agent may at any time engage at its own expense the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lender) if the Agent in its reasonable opinion deems this to be necessary.

(e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts obtained by the Agent pursuant to the instructions of the Lender and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

(f) The Agent may act in relation to the Finance Documents through its officers, employees and agents.

(g) Unless a Finance Document expressly provides otherwise, the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

(h) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

(i) Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

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20.8 Responsibility for documentation

(a) Neither the Agent nor the Arranger is responsible or liable for:

(b) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Obligor or any other person in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document other than information generated by itself; or

(c) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or

(d) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

20.9 No duty to monitor

The Agent shall not be bound to enquire:

(a) whether or not any Default has occurred;

(b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or

(c) whether any other event specified in any Finance Document has occurred.

20.10 Exclusion of liability

(a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:

(i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.

(ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; or

(iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (but not including any claim based on the fraud of the Agent) arising as a result of:

(A) any act, event or circumstance not reasonably within its control; or

(B) the general risks of investment in, or the holding of assets in, any jurisdiction,
including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.4 (Third party rights) and the provisions of the Third Parties Act.

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

(d) Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:

(i) any "know your customer" or other checks in relation to any person; or

(ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for the Lender,

on behalf of the Lender and the Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

(e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default). In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

20.11 Lender's indemnity to the Agent

(a) Subject to paragraph (d) of Clause 20.7 (Rights and Discretions), the Lender shall indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability whatsoever incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) [(or, in the case of any cost, loss or liability pursuant to Clause [30.4] (Disruption to payment systems etc.), notwithstanding any other category of liability whatsoever but not including any claim based on the fraud of the Agent)] in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document) save for any cost, loss or liability incurred by the Agent i) in connection with its determination of the agency fee and payment of it by the Borrower pursuant to [Clause [10.3] (Agency Fee)] and ii) on management time.
(b) The Borrower shall immediately on demand reimburse the Lender for any payment that Lender makes to the Agent pursuant to paragraph (a) above.

20.12 Resignation of the Agent

(a) The Agent may, with the prior written consent of the Lender, resign and appoint one of its Affiliates acting through an office (in the United Kingdom) as successor by giving notice to the Lender and the Borrower.

(b) Alternatively the Agent may, with the prior written consent of the Lender, resign by giving thirty (30) days' notice to the Lender and the Borrower, in which case the Lender may appoint a successor Agent.

(c) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents. [The Borrower shall, within three (3) Business Days of demand, reimburse the retiring Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.]

(d) The resignation notice of the Agent referred to in paragraphs (a) and (b) above shall take effect only upon the appointment of a successor under paragraph (b) above.

20.13 Confidentiality

(a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

(b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

20.14 Credit appraisal by the Lenders

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, the Lender confirms to the Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

(a) the financial condition, status and nature of each member of the Group;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(c) whether the Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

(d) the adequacy, accuracy completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement,
arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

20.15 Agent's management time

Any amount payable to the Agent under Clause 11.3 (Indemnity to the Agent), Clause 13 (Costs and Expenses) and Clause 20.9 (No duty to monitor) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 9 (Fees).

20.16 Deduction from amounts payable by the Agent

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

21. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

(a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

(b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

(c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

(d) [Further Provisions to be agreed with the Agent]
SECTION 11
ADMINISTRATION

22. PAYMENT MECHANICS

22.1 Payments to the Agent

(a) On each date on which the Borrower or the Lender is required to make a payment under a Finance Document, the Borrower or the Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

(b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.

22.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 22.4 (Distributions to the Borrower) and Clause 22.5 (Clawback and pre-funding) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London), as specified by that Party.

22.3 Distributions in respect of Utilisations

(a) The Borrower irrevocably and unconditionally authorises and directs the Agent to pay the proceeds of any Loans to be made to the Borrower pursuant to a Utilisation Request made by:

(i) a Reimbursement Request, to the Borrower;

(ii) an Exporter Payment Request, to the Exporter;

(iii) an Exporter Arbitration Award Request, to the Exporter; [and]

(iv) by way of an Exporter Termination Sums Request, directly to the Exporter.

(b) The Borrower and the Lender agree that the first Utilisation for eighty-five per cent. (85%) of the UKEF Support Fee shall be paid to the Lender.

(c) Each payment under paragraphs (a) and (b) above, shall be to such bank account with a bank in the principal financial centre of the currency for which the relevant Utilisation was made (or, in relation to euro, in the principal financial centre of a Participating Member State or London) as notified to the Agent by the Borrower, Exporter or the Lender (as relevant).
22.4 Distributions to the Borrower

The Agent may, with the consent of the Borrower or in accordance with Clause 233 (Set-Off), apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

22.5 Clawback and pre-funding

(a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

(b) Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

(c) If the Agent is willing to make available amounts for the account of the Borrower before receiving funds from the Lender then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from the Lender in respect of a sum which it paid to the Borrower:

(i) the Borrower shall on demand refund it to the Agent; and

(ii) the Lender or, if the Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from the Lender.

22.6 Partial payments

(a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents then the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:

(i) any sum due but unpaid under Clause 13.3 (Enforcement costs);

(ii) any sum due but unpaid under Clause 8.3 (Default interest) in respect of the sums described in paragraphs (iii) and (iv) of this Clause 22.6(a) in that order, but only up to the amount that would be due if that sum were calculated by reference to the CIRR instead of the Default Interest Rate;

(iii) any sum due but unpaid under Clause 8.2 (Payment of interest) and any unpaid sum which would have been due under Clause 8.2 (Payment of interest) but which instead has become due under Clause 17.141 (Acceleration), Clause 7.1 (Illegality) or Clause Error! Reference source not found. (Material Export Contract Change);

(iv) any sum due but unpaid under Clause 6 (Repayment) and any unpaid sum which would have been due under Clause 6 (Repayment) but which instead has become due under Clause 17.141 (Acceleration), Clause 7.1 (Illegality) or
Clause Error! Reference source not found. (Material Export Contract Change);

(v) the remainder of the sums due but unpaid under Clause 8.3 (Default interest) in respect of the sums described in paragraphs (iii) and (iv) above that were not applied further to paragraph (ii) above;

(vi) any sum due but unpaid under Clause 7.5 (CIRR Break Costs); and

(vii) any other sum due but unpaid under this Agreement.

(b) The Agent shall, if so directed by the Lender, vary the order set out in Clause 22.6(a) above.

(c) Clauses 22.6(a) and (b) above will override any appropriation made by the Borrower.

22.7 No set-off by the Borrower

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

22.8 Business Days

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

(b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

22.9 Currency of account

(a) Subject to paragraphs (b) and (c) below, the Facility Currency is the currency of account and payment for any sum due from the Borrower under any Finance Document.

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

(c) Any amount expressed to be payable in a currency other than the Facility Currency shall be paid in that other currency.

22.10 Change of currency

(a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

(i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and

(ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of
that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

(b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

22.11 Disruption to payment systems etc.

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

(a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;

(b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

(c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

(d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 28 (Amendments and Waivers);

(e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking or failing to take, any actions pursuant to or in connection with this Clause 22.11; and

(f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

22.12 Amalgamation of Loans

If two or more Loans have Interest Periods that end on the same Interest Payment Date, the Agent may consolidate those Loans into, and treat them as, a single Loan on that Interest Payment Date.

23. SET-OFF

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
24. NOTICES

24.1 Communications in writing

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

24.2 Contact details

The address and/or fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is those identified with its name on the signatories pages, or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change to its own contact details is made by the Agent) by not less than five (5) Business Days' notice.

24.3 Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

(i) if by way of fax, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 24.2 (Contact details), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature on the Agent's signature page (or any substitute department or officer as the Agent shall specify for this purpose).

(c) All notices from or to an Obligor shall be sent through the Agent.

(d) Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

(e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the next Business Day.

24.4 Notification of contact details

Promptly upon changing its own address or fax number, the Agent shall notify the other Parties.
24.5 **Electronic communication**

(a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including without limitation, by way of posting to a secure website) if those two Parties:

(i) notify each other in writing of their electronic communication address and/or any other information required to enable the transmission of information by that means; and

(ii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days’ notice.

(b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

(c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and, in the case of any electronic communication, made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

(d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following Business Day.

(e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 24.5.

24.6 **English language**

(a) Any notice given under or in connection with any Finance Document must be in English.

(b) All other documents provided under or in connection with any Finance Document must be:

(i) in English; or

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

25. **CALCULATIONS AND CERTIFICATES**

25.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.
25.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

25.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

26. PARTIAL INVALIDITY

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

27. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

28. AMENDMENTS AND WAIVERS

28.1 Required consents

(a) Any term of the Finance Documents may be amended or waived only with the consent of the Lender and the Obligors and any such amendment or waiver will be binding on all Parties.

(b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 28.

28.2 Other exceptions

(a) An amendment or waiver which relates to the rights or obligations of the Agent or the Arranger (each in their capacity as such) may not be effected without the consent of the Agent, the Arranger as the case may be.

29. CONFIDENTIAL INFORMATION

29.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 29.2 (Disclosure of Confidential Information), and to ensure that all Confidential Information is protected
with security measures and a degree of care that would apply to its own confidential information.

29.2 Disclosure of Confidential Information

Any Finance Party may disclose:

(a) to any of its officers, directors, employees, professional advisers, auditors, partners, delegates, agents, managers, administrators, nominees, attorneys, trustees or custodians such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

(i) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law;

(ii) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

(iii) who is a Party; or

(iv) with the consent of the Borrower,

in each case, such Confidential Information as that Finance Party shall consider appropriate if in relation to paragraph (b)(iii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances.

29.3 Disclosure by the Lender

The Parties acknowledge and agree that nothing in this Agreement shall prevent the Lender from disclosing Confidential Information:

(a) on a confidential basis to the employees, agents, consultants, advisers and contractors of the Lender;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Lender transfers or proposes to transfer all or any part of its business;

(c) to the extent that the Lender (acting reasonably) deems disclosure to be necessary or appropriate in connection with carrying out its public functions;

(d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which it has used its resources; and
to the Serious Fraud Office where the Lender has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010.

29.4 Freedom of Information

(a) Each Party acknowledges that the Lender is subject to the requirements of the Information Legislation and will provide all necessary assistance and cooperation as reasonably requested by the Lender to enable it to comply with its obligations under the Information Legislation.

(b) Each Party acknowledges that the Lender may be required under the Information Legislation to disclose Information concerning any Party (including Confidential Information and commercially sensitive information) without consulting or obtaining consent from that Party. Notwithstanding this, if the Lender receives a request under the Information Legislation to disclose Information concerning any Party, the Lender will endeavour, in accordance with any relevant guidance issued under the Information Legislation and to the extent that it is lawful for the Lender to do so, to:

(i) prior to the making of a disclosure pursuant to the Information Legislation provide the relevant Party with details of the request received and give that Party an opportunity to make representations on the applicability of any exemption in the Information Legislation in relation to the Information which has been requested;

(ii) consider any such representations received from that Party; and

(iii) if the Lender determines that disclosure pursuant to the Information Legislation is required, advise that Party of the scope and content of any disclosure in advance of disclosing that information.

(c) The Lender will be responsible for determining in its absolute discretion whether any Information relating to any Party is exempt from disclosure in accordance with the Information Legislation.

29.5 Disclosure to the Exporter

Subject to Clause 29.2 (Disclosure of Confidential Information), each Party agrees that the Agent may disclose any terms of this Agreement necessary to enable the Exporter to request a payment and for such payment to be made to the Exporter.

29.6 Entire agreement

This Clause 29 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

29.7 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.
29.8 Notification of disclosure

Subject to Clause 29.3 (Disclosure by the Lender) and Clause 29.4 (Freedom of Information), each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(i) of Clause 29.2 (Disclosure of Confidential Information) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory functions; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 29.29.

29.9 Continuing obligations

The obligations in this Clause 29.29 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of [twelve (12)] months from the earlier of:

(a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

30. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

SECTION 12

GOVERNING LAW AND ENFORCEMENT

31. GOVERNING LAW

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

32. ENFORCEMENT

32.1 Arbitration

(a) Subject to the rights of the Finance Parties to commence proceedings in the courts of England pursuant to Clause Error! Reference source not found. (Jurisdiction), all disputes arising under, out of or in connection with any Finance Document shall be settled conclusively and with binding effect under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the Rules. The Parties to this Agreement hereby agree that:

(i) the governing law for the arbitration is English law;

(ii) the place of arbitration shall be London; and

(iii) the language to be used in the arbitral proceedings shall be English.
The decision of the arbitral tribunal will be final and binding upon all Parties to this Agreement without the possibility of an appeal and is enforceable by the English courts.

32.2 Jurisdiction

Notwithstanding Clause 32.1 (Arbitration):

(a) The Parties irrevocably agree, for the benefit of the Finance Parties and subject to below that the courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute regarding the existence, validity or termination of any Finance Document) (a Dispute) and to enforce any decision of the arbitral tribunal.

(b) The Parties agree that the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with any Finance Document (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a "Dispute").

(c) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(d) This Clause 32.12 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

(e) The Borrower hereby hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the deciding of a venue of any action or proceeding arising out of or relating to this Agreement or any of the other Finance Documents to which it is a party in any English court. The Borrower hereby irrevocably waives, to the fullest extent permitted by applicable law, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(f) To the extent that the Borrower has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, the Borrower hereby irrevocably waives such immunity in respect of its obligations under this Agreement and the other Finance Documents to which it is a party to the fullest extent allowed by law.

32.3 Service of process

(a) Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

(i) irrevocably appoints the High Commission of the Republic of Ghana in the United Kingdom (currently located at 13 Belgrave Square, London SW1X 8PN, United Kingdom) as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Documents;

(ii) will advise the Finance Parties of any changes made to the above named process agent. In the event the Borrower does not advise of such changes, the last process agent on record shall continue to apply; and
(iii) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

32.4 Waiver of Immunity

(a) The Borrower irrevocably acknowledges and accepts that any Finance Document and all agreements entered into in connection herewith are commercial rather than public or governmental acts.

(b) In any event, subject to Clause Error! Reference source not found., the Borrower hereby consents to waive any claim it may have or may acquire to immunity on the grounds of sovereignty or otherwise (for itself and its property, present or subsequently acquired) to the fullest extent allowed by law in relation to any disputes arising out of or in connection with any Finance Document under any law or in any jurisdiction, notwithstanding the dispute(s) relate(s) to acts of a sovereign or governmental character, from:

(i) the service and pursuit of any proceedings arising out of or in connection with any Finance Document;

(ii) procedural privileges relating to the obligation to disclose documents or information;

(iii) any action, before or after proceedings have been commenced, including but not limited to proceedings for injunction, specific performance, or recovery of land or other property, any set off, attachment or execution or enforcement of a judgment or arbitral award against its property, or in an action in rem for its arrest, detention or sale irrespective of its use or intended use, commercial or otherwise.

(c) Notwithstanding Clauses Error! Reference source not found..2 and (b), the Borrower does not waive any right to immunity in relation to diplomatic, consular, military or defence assets, petroleum assets protected by the "Petroleum Revenue Management Act, 2011 (Act 815)" and assets which have been expressly recognised as belonging to the public domain of Ghana in accordance with the laws of the Republic of Ghana. This Agreement has been entered into on the date stated at the beginning of this Agreement.
SCHEDULE 1

CONDITIONS PRECEDENT TO INITIAL UTILISATION

[Note: The conditions precedent below are purely indicative and will be agreed in due course with the Borrower]

1. Authorisation Documentation

(a) An original or certified copy of the relevant approval of the parliament of the Republic of Ghana duly signed by the Clerk of Parliament, authorising the Borrower to enter into the Finance Documents and to perform its obligations thereunder.

(b) An original or certified copy of the relevant approval of the parliament of the Republic of Ghana duly signed by the Clerk of Parliament, authorising the Buyer to enter into the Export Contract and to perform its obligations thereunder.

(c) A specimen signature of each person authorised by evidence referred to in paragraph 3 above, on behalf of the Borrower, to execute the Finance Documents to which it is a party, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection to the Finance Documents to which it is a party. Such evidence shall be updated by the Borrower if there shall be any change of such persons and/or their authority.

(d) A certificate of a duly authorised signatory of the Borrower:

(i) certifying that each copy document relating to the Borrower specified in this Schedule 2 is correct, complete and in full force and effect and, if not in English, confirming that the English translation thereof is correct and complete;

(ii) certifying that no Default has occurred and is continuing;

(iii) confirming that the representations and warranties on the part of the Borrower contained in this Agreement are true and accurate;

(iv) confirming that the Borrower has obtained all consents, licenses, permits and authorisations and fulfilled all conditions of governmental and other authorities necessary to enable the Borrower to enter into the Finance Documents and to make payment of all sums in euro or other foreign currency which become due from the Borrower under the Finance Documents; and

(e) A certificate of a duly authorised signatory of the Buyer:

(i) setting out the full name, title and true signature of each representative of the Buyer authorised to countersign on behalf of the Buyer any [Finance Document] pursuant to this Agreement; [and]

(ii) certifying that the Export Contract is in full force and effect; [and]

(iii) setting out the full name and true signature of each representative of the Engineer (if one is appointed) authorised to sign payment certificates and countersign Export Contractor invoices in respect of Eligible Services performed under the Export Contract.

(f) In respect of the Exporter:

(i) evidence that the signatory who signed the Export Contract on behalf of the Exporter was duly authorised to sign it;
(ii) the name of a specified person or persons who are duly authorised on its behalf to sign and/or despatch documents related to this Agreement including any Exporter Payment Request, Exporter Receipt, Exporter Termination Sums Request and Exporter Arbitration Award Request together with evidence of their authority; and

(iii) a specimen signature of each person authorised in the manner described in paragraph (ii) above.

(g) In respect of the Buyer, evidence that the signatory who signed the Export Contract on behalf of the Buyer was duly authorised to sign it.

2. Consents and Authorisations

(a) In respect of the Borrower, evidence it has obtained all Authorisations required in the Relevant Jurisdiction for:

(i) it to enter into this Agreement and any other Finance Documents to which it is a party, to fulfil its obligations under such Finance Documents and for the enforcement of such Finance Documents; and

(ii) the payment of all sums in the Facility Currency in the relevant Participating Member State or London (as communicated by the Agent) which become due from the Obligor to any Finance Party in relation to any Finance Document to which it is a party, and that each such Authorisation remains in full force and effect.

(b) In respect of the Buyer, evidence that the Buyer has obtained all Authorisations in the Buyer’s Relevant Jurisdiction necessary for the purchase and import of the goods and/or services to be supplied under the Export Contract and payment in the Facility Currency in [principal financial centre of the Facility Currency] and that such Authorisations remain in full force and effect.**

3. Finance Documents

An original of each Finance Document duly entered into by the parties to it.

4. Export Contract

A copy of the Export Contract duly executed by the parties to it.

5. Exporter Confirmations

The Exporter shall have provided to the Agent:

(a) written confirmation that it has received payment in cash of [*] [[([•])] being the amount equal to [fifteen per cent (15%) of the total payment due from the Buyer to the Exporter [and evidence/confirmation of payment and which contractual amounts its relates to]]; and

(b) evidence that [description of any performance security] referred to in clause [*] of the Export Contract has been duly executed in [terms acceptable to the Agent] in [accordance with the terms of the Export Contract];

** Subject to UKEF policy approval
(c) written confirmation that all Authorisations (if any), including export licences (if required), in respect of the goods and/or services to be supplied in accordance with the Export Contract have been obtained and remain in full force and effect; and**

(d) a copy of any relevant export licences.

6. Legal opinions

(a) A legal opinion of the legal advisers to the Finance Parties in England, in the form and substance acceptable to the Finance Parties.

(b) A legal opinion of the legal advisers to the Finance Parties in Ghana, in the form and substance acceptable to the Parties.

(c) A legal opinion of the Attorney General of the Republic of Ghana as to the capacity of the Borrower.

7. UKEF Support Fee

Evidence that the Borrower has paid to the Agent, for the account of the Lender a sum equal to 15% of the UKEF Support Fee, together with the sum (if any) due under Clause 8.3 (Default interest) in respect of the UKEF Support Fee.

8. Other documents and evidence

(a) A certified copy of the Export Contract (as amended).

(b) Evidence that any process agent referred to in Clause 32.3 (Service of process), if not an Obligor, has accepted its appointment.

(c) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by the Finance Documents or for the validity and enforceability of any Finance Document.

(d) Evidence that the fees, costs and expenses due from the Borrower pursuant to Clause 9 (Fees) and Clause 13 (Costs and Expenses) have been paid or will be paid on or before the first Utilisation Date.

(e) [Note: List any Environmental Conditions Precedent]
SCHEDULE 2
UTILISATION REQUESTS
PART A
REIMBURSEMENT REQUEST

From: [Borrower]
To: [Agent]
Dated: [•]

Dear Sirs,

Reimbursement Request No. [•]

1. We refer to:
   (a) the contract for [short description of export] dated [•] and made between [Exporter] (the "Exporter") and [Buyer] (the "Buyer"), as amended from time to time (the "Export Contract"); and
   (b) the facility agreement dated [•] made between, inter alia, [Borrower] (the "Borrower"), [Guarantor] (the "Guarantor"), UK Export Finance as lender ("Lender") and [Agent] (the "Agent") as amended from time to time (the "Facility Agreement").

2. This is a "Reimbursement Request" as defined in the Facility Agreement.

3. Terms defined in the Facility Agreement have the same meaning in this Reimbursement Request unless given a different meaning in this Reimbursement Request.

4. We would like to borrow by way of Loan the amount set out below on the date set out below:

   Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)

   Amount: [•] [in the Facility Currency]

5. We confirm that each condition specified in Clause 4.2 (Further conditions precedent) of the Facility Agreement is satisfied on the date of this Reimbursement Request.

6. We enclose an acknowledgement, in the form attached in the appendix to this Reimbursement Request, from the Exporter ("Exporter's Receipt") in respect of the payment for the goods and/or services described in paragraph 9 below supplied to the Buyer by the Exporter under the Export Contract.

7. This Reimbursement Request is irrevocable.

8. We represent and warrant that:
   (a) the Buyer has made the payment(s) set out in paragraph 9 below for goods and/or services supplied to the Buyer under the Export Contract;
(b) we have calculated the value in the Facility Currency of the payments due to us in [local/other currency] using the Rate of Exchange on [date/description of date] as set out in paragraph 9 below;

(c) the amount requested under paragraph 4 above does not, when added to any Loans made under the Facility Agreement, exceed the Available Facility;

(d) the amount requested under paragraph 4 above does not include any amount which has already been requested in any other Reimbursement Request or which has been the subject of an Exporter Payment Request;

(e) [the amount requested under paragraph 4 above does not relate to payments made by the Borrower under the Export Contract to the Exporter which form part of the cash down payment referred to in the condition precedent in paragraph 5(a) of Schedule 1 (Conditions Precedent to Initial Utilisation);]^ and

(f) the copies of the documents attached to this Reimbursement Request are true copies of the original documents.

9. Payments:

[Note: Adapt table as appropriate]

<table>
<thead>
<tr>
<th>Date of receipt of payment by Exporter</th>
<th>Goods/Services</th>
<th>Value in [other currency]</th>
<th>Applicable Rate*</th>
<th>Value in [the Facility Currency]*</th>
</tr>
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</tr>
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</table>

10. We attach copies of:

(a) the Exporter's invoice(s) to the Buyer in respect of the payments set out in paragraph 9 above;

(b) [Other evidence?]

11. We undertake to provide any other documentation reasonably requested by the Agent from time to time in connection with this Reimbursement Request.

---

^ Subject to UKEF policy approval

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Yours faithfully

For and on behalf of [Borrower]

Signature:* ..................................................
Name: ..................................................
Position: ..................................................
Date: ..................................................

*Signature of Borrower’s Signatory

[Counter signature*]

For and on behalf of [Guarantor]*

Signature:* ..................................................
Name: ..................................................
Position: ..................................................
Date: ..................................................

*Consider whether required on a transaction by transaction basis

**Signature of Guarantor’s Signatory
Appendix to Reimbursement Request

Form of Exporter Receipt

From: [Exporter]
To: [Agent]
Dated: [•]

Dear Sirs,

Exporter's Receipt No. [•]

1. We refer to:
   (a) the contract for [short description of export] dated [•] and made between [Exporter] (the "Exporter") and [Buyer] (the "Buyer"), as amended from time to time (the "Export Contract"); and
   (b) the facility agreement dated [•] and made between, inter alia, [Borrower] (the "Borrower"), [Guarantor] (the "Guarantor"), UK Export Finance as lender ("Lender") and [Agent] (the "Agent") as amended from time to time (the "Facility Agreement").

2. Terms defined in the Facility Agreement have the same meaning in this receipt unless given a different meaning in this Exporter Receipt.

3. In this Exporter Receipt:
   "Exported Element Value" means the value of the Export Contract less the cost to the Exporter of procuring any Local Supplies; [Note: rep becomes convoluted if we transpose this concept in full in the rep]

   "Integrated Goods" means:
   (i) in the case of Local Supplies, Local Supplies that are or will be integrated with other goods in the UK to produce goods that are or will be eligible for a certificate of UK origin from a British Chamber of Commerce; and
   (ii) in the case of Third Country Supplies, Third Country Supplies that are or will be integrated with other goods in the UK to produce goods that are or will be eligible for a certificate of UK origin from a British Chamber of Commerce;

   "Local Supplies" means goods and/or services procured by the Exporter from persons ordinarily resident in and/or carrying on business in the Buyer's country but excluding Integrated Goods;

   "Non-UK Supplies" means Local Supplies and Third Country Supplies, together; and

   "Third Country Supplies" means goods and/or services that are not Local Supplies and that are procured by the Exporter from persons ordinarily resident in and/or carrying on business in a country other than the UK but excluding Integrated Goods;

4. We confirm that we have received the payment(s) set out in paragraph 5 below from [Buyer] in respect of sums due to us under the Export Contract.
5. Payments:

[Note: Adapt table as appropriate]

<table>
<thead>
<tr>
<th>Date of receipt of payment by Exporter</th>
<th>Goods/Services</th>
<th>Place of Origin*</th>
<th>Payments received</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[•]</td>
<td>[•]</td>
<td>[•]</td>
</tr>
<tr>
<td></td>
<td>[•]</td>
<td>[•]</td>
<td>[•]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total</td>
<td>[•]</td>
</tr>
</tbody>
</table>

We represent and warrant that:

(a) the payments set out paragraph 4 above do not include any payment (i) which we have previously submitted pursuant to any Exporter Payment Request, Exporter Arbitration Award Request or Exporter Termination Sums Request or (ii) in respect of which we have already provided an Exporter Receipt;

(b) the goods and/or services identified in paragraph 5 above have been supplied in accordance with the Export Contract and are consistent with the description given by us in the UKEF Application Form;

(c) the goods and/or services identified in paragraph 5 above have been manufactured or produced in or purchased from the place identified in paragraph 5 above as the place of origin;

(d) the cost to us of procuring any Local Supplies in respect of which this Exporter Receipt is being submitted does not, when added to the cost to us of procuring any Local Supplies in respect of which previous Exporter Receipts and/or Exporter Payment Requests have been submitted, exceed [30%] of the Exported Element Value;

(e) the cost to us of procuring any Non-UK Supplies in respect of which this Exporter Receipt is being submitted does not, when added to the cost to us of procuring any Non-UK Supplies in respect of which previous Exporter Receipts and/or Exporter Payment Requests have been submitted, exceed [75%] of the value of the Export Contract;

(f) the obligations expressed to be assumed by us under the Export Contract are legal, valid, binding and enforceable obligations;

(g) the Export Contract has not been terminated;

(h) neither the Export Contract nor any part of the Export Contract is subject to any litigation or arbitration currently in progress or any arbitration award; and

(i) to the best of our knowledge and belief, neither the Export Contract nor any part of the Export Contract will be the subject of litigation or arbitration.
For and on behalf of [Exporter]

Signature:* ..............................................
Name: ....................................................
Position: ............................................... 
Date: .....................................................

*Signature of Exporter's Signatory
PART B
EXPORTER PAYMENT REQUEST

From: [Exporter]

To: [Agent, include address/email]

CC: [Borrower, include address/email]

CC: UK Export Finance by email at: DirectLendingDivisionOperations@ukexportfinance.gov.uk giving the reference [....]

Dated: [*]

Dear Sirs,

Exporter Payment Request No. [*]

1. We refer to:

(a) the contract for [short description of export] dated [*] and made between [Exporter] (the "Exporter") and [Buyer] (the "Buyer"), as amended from time to time (the "Export Contract"); and

(b) the facility agreement dated [*] and made between, inter alia, [Borrower] (the "Borrower"), [Guarantor] (the "Guarantor"), UK Export Finance as lender ("Lender") and [Agent] (the "Agent") as amended from time to time (the "Facility Agreement").

2. This is an "Exporter Payment Request" as defined in the Facility Agreement.

3. Terms defined in the Facility Agreement have the same meaning in this Export Payment Request unless given a different meaning in this Export Payment Request.

4. In this Exporter Payment Request:

"Exported Element Value" means the value of the Export Contract less the cost to the Exporter of procuring any Local Supplies; [Note: rep becomes convoluted if we transpose this concept in full in the rep]

"Integrated Goods" means:

(i) in the case of Local Supplies, Local Supplies that are or will be integrated with other goods in the UK to produce goods that are or will be eligible for a certificate of UK origin from a British Chamber of Commerce; and

(ii) in the case of Third Country Supplies, Third Country Supplies that are or will be integrated with other goods in the UK to produce goods that are or will be eligible for a certificate of UK origin from a British Chamber of Commerce;

"Local Supplies" means goods and/or services procured by the Exporter from persons ordinarily resident in and/or carrying on business in the Buyer's country but excluding Integrated Goods;

"Non-UK Supplies" means Local Supplies and Third Country Supplies, together; and
"Third Country Supplies" means goods and/or services that are not Local Supplies and that are procured by the Exporter from persons ordinarily resident in and/or carrying on business in a country other than the UK but excluding Integrated Goods;

5. This Exporter Payment Request is irrevocable.

6. We represent and warrant that:

(a) each of the payments set out in the appendix to this Export Payment Request (the "Appendix"), the total amount of which is [total amount], is now due to us from the Buyer under the Export Contract;

(b) the payments set out in the Appendix do not include any payment (i) which we have previously submitted pursuant to any Exporter Payment Request, Exporter Arbitration Award Request or Exporter Termination Sums Request or (ii) in respect of which we have already provided an Exporter Receipt;

(c) we have calculated the value in the Facility Currency of the payments due to us in [local/other currency] using the Rate of Exchange on [date/description of date] as set out in the Appendix;

(d) the goods and/or services identified in the Appendix have been supplied in accordance with the Export Contract and are consistent with the description given by us to the Lender in the UKEF Application Form;¹⁰

(e) the goods and/or services identified in the Appendix have been manufactured or produced in or purchased from the place identified in the Appendix as the place of origin;

(f) the cost to us of procuring any Local Supplies in respect of which this Exporter Payment Request is being submitted does not, when added to the cost to us of procuring any Local Supplies in respect of which previous Exporter Receipts and/or Exporter Payment Requests have been submitted, exceed [30%] of the Exported Element Value;

(g) the cost to us of procuring any Non-UK Supplies in respect of which this Exporter Payment Request is being submitted does not, when added to the cost to us of procuring any Non-UK Supplies in respect of which previous Exporter Receipts and/or Exporter Payment Requests have been submitted, exceed [75%] of the value of the Export Contract;

(h) the obligations expressed to be assumed by us under the Export Contract are legal, valid, binding and enforceable obligation;

(i) the Export Contract has not been terminated;

(j) neither the Export Contract nor any part of the Export Contract is subject to any litigation or arbitration currently in progress or any arbitration award;

(k) to the best of our knowledge and belief, neither the Export Contract nor any part of the Export Contract will be the subject of litigation or arbitration; and

¹⁰Wording to be amended to refer to any other contractual amount under the Export Contract to be covered by the Facility.
(I) the copies of the documents attached to this Export Payment Request are true copies of the original documents.

7. The payment of the total amount due to us, set out in paragraph 6(a) above, should be made into the following bank account: [account].

8. We attach copies of:

(a) our invoice(s) to the Buyer in respect of the payments set out in the Appendix; and

(b) the following evidence:

(i) [other evidence e.g., bills of lading etc.?]

9. We undertake to provide any other documentation reasonably requested by the Agent from time to time in connection with this Exporter Payment Request.

Yours faithfully

For and on behalf of [Exporter]

Signature:* ........................................
Name: ...........................................
Position: ........................................
Date: ...........................................

*Signature of Exporter's Signatory

Yours faithfully

[Counter signature*]

For and on behalf of [name of counter-signatory]

Signature:* ........................................
Name: ...........................................
Position: ........................................
Date: ...........................................

*Delete if no counter-signature is required.
### Payments

[Note: Adapt table as appropriate]

<table>
<thead>
<tr>
<th>Date of Invoice</th>
<th>Goods/Services</th>
<th>Place of Origin*</th>
<th>Payment Due</th>
<th>Applicable Rate*</th>
<th>Value in [the Facility Currency]*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>*[identify whether UK, Local or other Country] [identify country of origin]</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>*</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total</td>
</tr>
</tbody>
</table>

*only required if the original payment due in a currency other than the currency of the Facility.*
PART C
EXPORTER ARBITRATION AWARD REQUEST

From: [Exporter]

To: [Agent, include address/email]

CC: [Buyer, include address/email]

Dated: [•]

Dear Sirs,

Exporter Arbitration Award Request

1. We refer to:
   (a) the contract for [short description of export] dated [•] and made between [Exporter] (the "Exporter") and [Buyer] (the "Buyer"), as amended from time to time (the "Export Contract"); and
   (b) the facility agreement dated [•] and made between, inter alia, [Borrower] (the "Borrower"), [Guarantor] (the "Guarantor"), UK Export Finance as lender ("Lender") and [Agent] (the "Agent") as amended from time to time (the "Facility Agreement").

2. This is an "Exporter Arbitration Award Request" as defined in the Facility Agreement.

3. Terms defined in the Facility Agreement have the same meaning in this Exporter Arbitration Award Request unless given a different meaning in this Exporter Arbitration Award Request.

4. We wish to request [amount] representing the eligible content awarded to us pursuant to an arbitration award dated [•] (the "Arbitration Award") which is attached to this Exporter Arbitration Award Request.

5. We acknowledge that you will determine, at your sole discretion, the amount of the arbitration award that relates to the goods and/or services supplied under the Export Contract, as well as any retention monies retained in respect of them and any arbitration costs relating to that part of the award and that shall be the total amount paid to us to the bank account set out at paragraph 6 below.

6. We represent and warrant that:
   (a) we have calculated the value in the Facility Currency of the payments due to us in [local/other currency] using the Rate of Exchange on [date/description of date];
   (b) the amount requested under paragraph 4 above does not include any amount which has been the subject of an Exporter Payment Request or an Exporter Termination Sums Request; and
   (c) the copies of the documents attached to this Exporter Arbitration Award Request are true copies of the original documents.
   (d) The payment of the total amount due to us should be made into the following bank account: [account].
7. We attach copies of:

(a) the full arbitration award; and

(b) [other evidence e.g., award supporting documents? calculations supporting UK content within the award?]

Yours faithfully

For and on behalf of [Exporter]

Signature:* ........................................
Name: ........................................
Position: ........................................
Date: ........................................

*Signature of Exporter's Signatory

[For and on behalf of [name of counter-signatory]]

Signature:* ........................................
Name: ........................................
Position: ........................................
Date: ........................................

*Delete if no counter-signature is required
PART D

EXPORTER TERMINATION SUMS REQUEST

From: [Exporter]
To: [Agent, include address/email]
CC: [Buyer, include address/email]
Dated: [*]

Dear Sirs,

Exporter Termination Sums Request

1. We refer to:
   (a) the contract for [short description of export] dated [*] and made between [Exporter] (the "Exporter") and [Buyer] (the "Buyer"), as amended from time to time (the "Export Contract"); and
   (b) the facility agreement dated [*] and made between, inter alia, [Borrower] (the "Borrower"), [Guarantor] (the "Guarantor"), UK Export Finance as lender ("Lender") and [Agent] (the "Agent") as amended from time to time (the "Facility Agreement").

2. This is an "Exporter Termination Sums Request" as defined in the Facility Agreement.

3. Terms defined in the Facility Agreement have the same meaning in this Exporter Termination Sums Request unless given a different meaning in this Exporter Termination Sums Request.

4. We wish to draw [amount] representing the eligible amounts due to us upon termination of the Export Contract.

5. We represent and warrant that:
   (a) the Export Contract has been terminated;
   (b) we have calculated the value in the Facility Currency of the payments due to us in [local/other currency] using the Rate of Exchange on [date/description of date];
   (c) the amount requested under paragraph 4 above does not include any amount which has been the subject of an Exporter Payment Request or an Exporter Arbitration Award Request; and
   (d) the copies of the documents attached to this Exporter Termination Sums Request are true copies of the original documents.

6. The payment of the total amount due to us, set out in paragraph 4 above, should be made into the following bank account: [account].
7. We attach copies of:

(a) [the Exporter Termination Statement attaching an Accountant’s Supporting Opinion][written agreement of the payment due to the Exporter countersigned by the Buyer]; and

(b) [list any other evidence required e.g., calculation statements?]

Yours faithfully

For and on behalf of [Exporter]

Signature:* ..............................................................
Name: .................................................................
Position: ..............................................................
Date: .................................................................

*Signature of Exporter’s Signatory

For and on behalf of [Borrower]

Signature:* ..............................................................
Name: .................................................................
Position: ..............................................................
Date: .................................................................

**Signature of Borrower’s Signatory. Delete if counter-signature is not required
### SCHEDULE 3

#### TIMETABLES

<table>
<thead>
<tr>
<th>Clause</th>
<th>Description</th>
<th>Specified Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 5.2 ([Reimbursement Requests])</td>
<td>Delivery of Reimbursement Request duly completed to the Agent’s satisfaction</td>
<td>[time] on the day that is [•] Business Days prior to the proposed Utilisation Date</td>
</tr>
<tr>
<td>Clause 5.7 (Lender’s participation)</td>
<td>Agent notifies the Lender of the Loan</td>
<td>[time] on the day that is [seven] Business Days following the receipt of a Utilisation Request</td>
</tr>
</tbody>
</table>

---

11 Choose the timetable applicable for the Facility Currency.
SIGNATORIES

For and on behalf of
The Government of the Republic of
Ghana, acting through the Ministry
of Finance as Borrower

Signature: ........................................
Name: ...........................................
Position: ........................................

CONTACT DETAILS

[ ]
For and on behalf of Her Britannic Majesty's Secretary of State acting by the Export Credits Guarantee Department (operating as UK Export Finance) as the Lender

Signature: ........................................
Name: ............................................
Position: ...........................................

CONTACT DETAILS
1 Horse Guards Road
London SW1A 2HQ
United Kingdom

For administrative matters:
Email: DirectLendingDivisionOperations@ukexportfinance.gov.uk
Attention: Direct Lending Division Operations – [deal name]

For general liaison in relation to all other matters:
Email: [*]@ukexportfinance.gov.uk
Phone: +44 207 [*] / +44 207 [*]
Facsimile: +44 207 271 8001
Attention: [*] / [*]
For and on behalf of
HSBC Bank plc as Agent

Signature: ......................................
Name: ...........................................
Position: ......................................

CONTACT DETAILS
[   ]
For and on behalf of
HSBC Bank plc as Arranger

Signature: ........................................
Name: ...........................................
Position: ........................................

CONTACT DETAILS
[ ]
ANNEX 2

EUR term loan Facility Agreement
SUBJECT TO COMMENTS AND APPROVALS OF ALL PARTIES

EUR term loan Facility Agreement of €[4,500,000]
relating to the [Aqua Africa Project]

Dated _________________ 2018

The Government of the Republic of Ghana, acting through the Ministry of Finance
(as Borrower)

HSBC Bank plc
(as Arranger)

The financial institutions specified in Schedule 1
(as Original Lenders)

HSBC Bank plc
(as Facility Agent)
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<td>28</td>
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<td>19 General undertakings</td>
<td>40</td>
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<td>62</td>
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<td>63</td>
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<tr>
<td>26 Set-off</td>
<td>66</td>
</tr>
<tr>
<td>27 Notices</td>
<td>66</td>
</tr>
</tbody>
</table>
Facility Agreement

Dated __________________________ 2018

Between

(1) The Government of the Republic of Ghana, acting through the Ministry of Finance of PO Box M40, Accra, Republic of Ghana (the Borrower);

(2) HSBC Bank plc, in its capacity as mandated lead arranger (in such capacity, the Arranger);

(3) The financial institutions listed in Schedule 1 as lenders (the Original Lenders); and

(4) HSBC Bank plc, in its capacity as agent of the other Finance Parties (the Facility Agent).

It is agreed:

1 Definitions and construction

1.1 Definitions

In this Agreement:

Administration Fee means the fee described in Clause 11.3 (Administration fee).

Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

Assets means each and all of the commodities, raw material, machinery and equipment, and other materials that the EPC Contractor is required to supply to the Buyer in connection with the Project pursuant to the EPC Contract.

Assignment Agreement means an agreement substantially in the form set out in Schedule 6 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee.

Authorisation means an authorisation, consent, permission, approval, resolution, licence, exemption, filing, notarisation or registration.

Availability Period means the period from and including the Effective Date to and including twelve (12) Months from the Signing Date, or such other period as the Facility Agent and the Borrower may agree.

Available Commitment means a Lender’s Commitment minus:

(a) the amount of its participation in any outstanding Loans; and

(b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made on or before the proposed Utilisation Date.

Available Facility means the aggregate for the time being of all Lenders’ Available Commitments.
Borrowings means any indebtedness for or in respect of any amount:

(a) which is borrowed, constituted by an obligation, whether actual or contingent, to repay a loan, deposit, advance or similar extension of credit (including, without limitation, any extension of credit under an acceptance facility);

(b) which is evidenced by a bill of exchange, note, bond, debenture or similar instrument (whether drawn, accepted or endorsed by such person and whether or not drawn under an acceptance facility), or raised pursuant to any note purchase facility, and the amount of any liability of any guarantee or indemnity in respect of any of the above, and any other amounts otherwise classified as borrowings.

Break Costs means, in relation to a Loan or an Unpaid Sum, the amount (if any) by which:

(a) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of the Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period, exceeds:

(b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London, New York and Accra.

Buyer means The Government of the Republic of Ghana acting through the Ministry of Sanitation and Water Resources, of P.O. Box ** Ministries, Accra, Republic of Ghana.

Buyer Approval Letter means a letter in the form set out in Schedule 4 (Form of Buyer Approval Letter).


Commitment means:

(a) in relation to each Original Lender, the amount set opposite its name under the heading “Commitment” in Schedule 1 (The Original Lenders) and the amount of any other Commitment transferred to it under this Agreement; and

(b) in relation to any other Lender, the principal amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

Confidential Information means all information relating to either Obligor, the Finance Documents, the EPC Contract, each Other Agreement or the Facility in respect of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a
Finance Party under, the Finance Documents, each Other Agreement or the Facility from either:

(a) either Obligor or any of their respective advisers, or

(b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from either Obligor or any of their respective advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes

(y) information that:

   (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 32 (Confidentiality); or

   (ii) is identified in writing at the time of delivery as non-confidential by either Obligor or any of their respective advisers; or

   (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with either Obligor and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; and

(z) any Funding Rate or Reference Bank Quotation.

Confidentiality Undertaking means a confidentiality undertaking substantially in a recommended form of the Loan Market Association or in a form agreed between the Borrower and the Facility Agent.

Contract Price means €30,000,000.00 (thirty million euro), being the contract price in relation to the EPC Contract.

Default means an Event of Default or any event or circumstance specified in Clause 20 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination or the satisfaction of any condition under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

Disruption Event means either or both of:

(a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or

(b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

   (i) from performing its payment obligations under the Finance Documents; or
(ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

**Down Payment** means, in respect of services or equipment to be provided under the EPC Contract, a payment equal to fifteen per cent (15%) of the amount paid by the Buyer to the EPC Contractor pursuant to the EPC Contract.

**ECA Facility Agreement** means the unsecured direct lending facility agreement dated on or about the date hereof in respect of the Project between, amongst others, UKEF, the Borrower and the Facility Agent.

**Effective Date** means the date on which the Facility Agent notifies the Borrower and the Lenders in accordance with Clause 4.1.1 (Initial conditions precedent) that the initial conditions precedent referred to in that Clause have been satisfied or that it has waived or deferred the receipt of any documents or evidence pursuant to Clause 4.2(c) (Waiver or deferral of conditions precedent).

[**Engineer** means **.*]

**Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

(a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);

(b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

(c) land (including, without limitation, land under water).

**Environmental Law** means any applicable law, regulation, treaty, code of practice, order or decision of any court, governmental authority, agency or any regulatory body (including the Equator Principles and IFC Standards) and which relates to:

(a) the pollution or protection of the Environment;

(b) the conditions of the workplace;

(c) reclamation of land and waterways; or

(d) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

**Environmental Permit** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of either Obligor conducted on or from the properties owned or used by either Obligor.

**Environmental and Social Requirements** means, collectively, Environmental Law as in force from time to time and the IFC Standards in force at the time of this Agreement.
Environmental or Social Claim means any claim, proceeding, formal notice or investigation by any person in respect of any applicable Environmental and Social Requirements.

EPC Contract means the engineering, procurement and construction contract relating to the Project dated ** made between the EPC Contractor and the Buyer (as amended and supplemented from time to time and including all exhibits thereto and all letter agreements).

EPC Contractor means Aqua Africa Limited, a company incorporated under English law and, having its registered office at Apt 14, 34 Bromells Road, London SW4 0BG, United Kingdom, and includes its legal personal representatives, successors and permitted assigns as set forth in the EPC Contract.

Equator Principles means those principles so entitled and described in "The Equator Principles III" - A financial industry benchmark for determining, assessing and managing social and environmental risk in project financing" (June 2013) adopted by certain financial institutions and in the form as of the Signing Date available at: http://equator-principles.com/wp-content/uploads/2017/03/eQuator_principles_III.pdf.

EUR, euro or € means the single currency unit of the Participating Member States.

EURIBOR means, in relation to any Loan:

(a) the applicable Screen Rate as of 10.00 a.m. on the Quotation Day for the offering of deposits in euro for a period comparable to the Interest Period of the relevant Loan; or

(b) as otherwise determined pursuant to Clause 10 (Absence of quotations),

and if any such rate is below zero, EURIBOR shall be deemed to be zero.

Event of Default means any event or circumstance specified as such in Clause 20 (Events of Default).

Exporter Declaration means an exporter declaration substantially in the form set out in Schedule 3 (Utilisation Documents), Part 2 (Form of Exporter Declaration).

External Debt means, in relation to the Borrower, Borrowings which are:

(a) denominated or payable at the option of the debtor or the creditor in a currency other than Ghanaian Cedi (GHC); or

(b) owed to any person not resident in, or whose principal or lending office is situated outside, Ghana.

Facility means the term loan facility described in Clause 2 (The Facility).

Facility Office means the office or offices notified by a Lender to the Facility Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

FATCA means:
sections 1471 to 1474 of the Code or any associated regulations;

any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

FATCA Application Date means:

(a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;

(b) in relation to a "withholdable payment" described in section 1473(1)(A)(ii) of the Code (which relates to "gross proceeds" from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or

(c) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019,

or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the Signing Date.

FATCA Deduction means a deduction or withholding from a payment under a Transaction Document required by FATCA.

FATCA Exempt Party means a Party that is entitled to receive payments free from any FATCA Deduction.

Fee Letter means any letter or letters dated on or about the Signing Date between the Borrower and both or either of the Arranger and the Facility Agent setting out any of the fees referred to in Clause 11 (Fees).

Final Repayment Date means the date falling sixty (60) Months after the Signing Date.

Finance Document means this Agreement, any Fee Letter, a Letter of Undertaking, each Utilisation Request, any Transfer Certificate, any Assignment Agreement and any other document designated as such by the Facility Agent.

Finance Party means the Arranger, the Facility Agent or a Lender.

Funding Rate means any individual rate notified by a Lender to the Facility Agent pursuant to Clause 10.4.1(b) (Cost of funds).

Ghana means the Republic of Ghana.

Governmental Entity means any de facto or de jure government (or any agency, instrumentality, ministry or department thereof), court, tribunal, administrative or other
governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the Bank of Ghana) in Ghana.

**Holding Company** means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

**IFC Standards** means, collectively, the International Finance Corporation's (IFC) Performance Standards on Social and Environmental Sustainability dated 1 January 2012 and the relevant IFC Environmental Health and Safety (EHS) Guidelines in force at the time of this Agreement.

**Illicit Origin** means any origin which is illicit or fraudulent, including, without limitation, drug trafficking, corruption, organised criminal activities, money laundering or fraud.

**Interest Payment Date** shall have the meaning given to the term in Clause 8.2 (Payment of interest).

**Interest Period** means, in relation to the Loan, each period determined in accordance with Clause 9 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (Additional interest).

**Interpolated Screen Rate** means, in relation to EURIBOR for any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

(a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and

(b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as at 10.00 a.m. on the Quotation Day.

**Lender** means:

(a) each Original Lender; and

(b) any New Lender,

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.


**Loan** means the loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

**Majority Lenders** means:

(a) if no Loan is then outstanding, a Lender or Lenders whose Commitments aggregate more than 66\(\frac{2}{3}\) per cent of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66\(\frac{2}{3}\) per cent of the Total Commitments immediately before the reduction); and
(b) at any other time, a Lender or Lenders whose participations in the Loan then outstanding aggregate more than 66\(\frac{2}{3}\) per cent of the Loan then outstanding.

**Mandatory Prepayment Event** means the occurrence of any of the events detailed in Clause 7.1 (*Mandatory Prepayment Events*).

**Margin** means four point eight zero per cent (4.80%) per annum.

**Material Adverse Effect** means, any event or circumstance which in the reasonable opinion of the Facility Agent acting on the instructions of the Majority Lenders (acting reasonably and in good faith), has a material adverse effect on or material adverse change in:

(a) the economic and/or financial condition of any Obligor, which will or is reasonably likely to have an effect on the ability of an Obligor to perform its obligations under the Transaction Documents;

(b) the political and economic situation of Ghana, which will or is reasonably likely to have an effect on the ability of an Obligor to perform its obligations under the Transaction Documents;

(c) the ability of an Obligor to perform and comply with its payment obligations under the Transaction Documents; or

(d) the validity or enforceability of the Transaction Documents or the rights or remedies of any Finance party under the Transaction Documents.

**Month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

(a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one or, if there is not, on the immediately preceding Business Day; and

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month.

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

**New Lender** is defined in Clause 21.1 (*Assignments and transfers by the Lenders*).

**Obligor** means the Borrower or the Buyer.

**Other Agreements** means the EGA Facility Agreement and any other finance agreement entered into in respect of the Project.

**Other MPE** means a "Mandatory Prepayment Event" under and as defined in any Other Agreement, unless such event occurs pursuant to Clause 7.1.1 (*Illegality*) of the relevant Other Agreement.

**Participating Member State** means any member state of the European Communities that adopts or has adopted the "euro" as its lawful currency in accordance with the legislation of the European Union relating to the Economic and Monetary Union.
Party means a party to this Agreement.

Payment Documents means each of the documents, information and other evidence specified in the EPC Contract as being required for the purposes of facilitating payment to the EPC Contractor, including but not limited to (as appropriate):

(a) a certified true copy of the relevant invoices;

(b) a certified true copy of any bills of lading (in respect of goods only);

(c) the Exporter Declaration; and

(d) the Buyer Approval Letter.

Prohibited Payment means:

(a) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would constitute bribery or an improper gift or payment under, or a breach of, any law of any jurisdiction; or

(b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997.

Project means [delivery of water filtration systems across Ghana], as contemplated in the EPC Contract.

Quotation Day means, in relation to any period for which an interest rate is to be determined, two (2) Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market in which case the Quotation Day will be determined by the Facility Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

Reference Bank Quotation means any quotation supplied to the Facility Agent by a Reference Bank.

Reference Bank Rate means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request by the Reference Banks as either:

(a) if:

(i) the Reference Bank is a contributor to the applicable Screen Rate; and

(ii) it consists of a single figure,

the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or
(b) in any other case, the rate at which the relevant Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market.

**Reference Banks** means the principal office in London of any bank(s) appointed by the Facility Agent in consultation with the Borrower.

**Related Fund** in relation to a fund (the first fund) means a fund which is managed or advised by the same investment manager or investment advisor as the first fund, or, if it is managed by a different investment manager or investment advisor, a fund whose investment manager or investment advisor is an Affiliate of the investment manager or investment advisor of the first fund.

**Relevant Event** means any one or more of the following:

(a) a Default;

(b) a Mandatory Prepayment Event; or

(c) any event that with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing would be a Mandatory Prepayment Event.

**Relevant Interbank Market** means the London interbank market.

**Repayment Date** has the meaning given to that term in Clause 6.1.1 (Repayment of Loans).

**Repayment Installment** means an amount equal to the outstanding principal of the Loans on a Repayment Date (assuming that no repayment of principal has been made on that Repayment Date and disregarding the outstanding principal of any Loan made during the thirty (30) day period ending on, and including, that Repayment Date) divided by the number of Repayment Dates from (and including) that Repayment Date to (and including) the Final Repayment Date.

**Repeating Representations** means each of the representations set out in Clauses 17.1 (Status) to 17.13 (Availability and transfer of foreign currency), 17.14 (No Immunity) to 17.19 (No breach of laws), 17.20 (Environmental and social compliance) to 17.23 (No proceedings threatened or pending), 17.25 (No adverse consequences), 17.26 (Sanctions) and 17.27 (Anti-corruption law).

**Representative** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

**Sanctions** means any sanctions administered or enforced by the US Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury or the Hong Kong Monetary Authority.

**Screen Rate** means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for euro for the relevant period displayed on page EURIBOR01 of the Reuters Screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such
page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrower and the Lenders.

Security means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

Signing Date means the date of this Agreement.

Specified Time 10.00 am (London time) on the Business Day which is seven (7) Business Days before the proposed Utilisation Date (or such later time as may be agreed between the Borrower, the Facility Agent and the Lenders).

Starting Date of Repayment means the date falling twelve (12) Months after the Signing Date, provided that if such day is not a Business Day (disregarding the application of paragraph (a) of Month), then the Starting Date of Repayment shall be the immediately preceding Business Day.

Structuring Fee means the fee described in Clause 11.2 (Structuring fee) below.

Subsidiary means an entity from time to time of which a person has direct or indirect control (as that term is understood under the laws of the jurisdiction where that entity is domiciled) or owns, directly or indirectly, more than 50 per cent of the share capital or similar right of ownership.

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

Total Commitments means the aggregate of the Commitments being [€4,500,000] as at the Signing Date.

Transaction Documents means the Finance Documents and the EPC Contract.

Transfer Certificate means a certificate substantially in the form set out in Schedule 4 (Form of Transfer Certificate) or any other form agreed between the Facility Agent and the Borrower.

Transfer Date means, in relation to a transfer, the later of:

(a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and

(b) the date on which the Facility Agent executes the relevant Assignment Agreement or Transfer Certificate.

UKEF means UK Export Finance, being the operating name of the Export Credits Guarantee Department (the official export credit agency of the UK).

Unpaid Sum means any sum due and payable but unpaid by the Borrower under the Finance Documents.

US means the United States of America.
US Tax Obligor means:

(a) a Borrower which is resident for tax purposes in the United States of America; or

(b) an Obligor some or all of whose payments under the Transaction Documents are from sources within the United States for US federal income tax purposes.

USD denotes the lawful currency of the United States of America.

Utilisation means the utilisation of the Facility.

Utilisation Date means the date of the Utilisation, being the date on which the Loan is (or is to be) made.

Utilisation Request means a notice substantially in the form set out in Schedule 3 (Utilisation Documents), Part 1 (Form of Utilisation Request).

VAT means:

(a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

(b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

1.2 Construction

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

(a) the Facility Agent, the Arranger, any Finance Party, any Lender, any Obligor, any Party and any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

(b) assets includes present, future, actual and contingent properties, revenues and rights of every description, whether tangible or intangible (including uncalled share capital);

(c) a Clause or Schedule is to be construed as a reference to the relevant clause of, or schedule to, this Agreement;

(d) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, restated or replaced from time to time and includes any increase in, extension of or change to any facility made available under that Finance Document or other agreement or instrument;

(e) guarantee includes any guarantee or indemnity, bond, letter of credit, documentary or other credit, or other assurance against financial loss;

(f) debt or Indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
(g) the words include(s), including and in particular shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;

(h) liabilities includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;

(i) the words other and otherwise shall not be construed ejusdem generis with any preceding words where a wider construction is possible;

(j) any person includes any assignee, transferee, successor in title, delegate, sub-delegate or appointee of that person (in the case of a Party, in so far as such assignees, transferees, successors in title, delegates, sub-delegates or appointees are permitted) and, and any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

(k) a regulation includes any regulation, rule, official directive, request or guideline of any competent governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation (and for the purposes of Clause 13 (Increased Costs) whether or not having the force of law);

(l) a provision of law is a reference to that provisions as amended or re-enacted;

(m) any statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces it, or which has been amended, extended, consolidated or replaced by it, and any orders, regulations, instruments or other subordinate legislation made under it;

(n) words importing the plural shall include the singular and vice versa;

(o) any statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces it, or which has been amended, extended, consolidated or replaced by it, and any orders, regulations, instruments or other subordinate legislation made under it;

(p) accounting terms shall be construed so as to be consistent with IFRS; and

(q) unless otherwise specified, a time of day is a reference to London time.

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

1.2.3 Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

1.2.4 A Default or an Event of Default is continuing if it has not been remedied or waived (with such waiver being in writing).
1.3 Third party rights

1.3.1 Unless expressly provided to the contrary in this Agreement a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

1.3.2 Notwithstanding any term of any Finance Document, the Parties may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Agreement without the consent of any person who is not a Party.

1.4 Single Lender

As of the Signing Date, the Original Lender is the only Lender under this Agreement and shall accordingly be solely entitled to and exercise all rights, powers and discretions granted to the Lenders hereunder until such time as New Lenders accede to this Agreement.

2 The Facility

2.1 The Facility

Subject to the terms of this Agreement, the Lenders agree to make available to the Borrower, during the Availability Period, a euro denominated term loan facility in a maximum principal amount equal to the Total Commitments.

2.2 Finance Parties' rights and obligations

2.2.1 The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

2.2.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower shall be a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with Clause 2.2.3. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party’s participation in the Facility or its role under a Finance Document (including any such amount payable to the Facility Agent on its behalf) is a debt owing to that Finance Party by the Borrower.

2.2.3 A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

3 Purpose

3.1 Purpose

3.1.1 The Borrower shall apply all amounts borrowed by it under the Facility towards financing:

(a) the Down Payment (up to a maximum of [€4,500,000]); and;
(b) payments in respect of goods and/or services under the EPC Contract that have not or will not be financed by amounts made available under the ECA Facility Agreement],

provided always that the sum of the amounts under Clauses 3.1.1(a) [and (b)] shall at no time exceed the Total Commitments.

3.1.2 Utilisations under Clause 3.1.1 shall be applied by the Borrower towards effecting payments due from the Buyer to the EPC Contractor under the EPC Contract.

3.2 Monitoring

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

4 Conditions of utilisation

4.1 Initial conditions precedent

4.1.1 No Utilisation Request may be delivered unless the Facility Agent, has received all of the documents and other evidence listed in Schedule 2 (Conditions precedent) in form and substance satisfactory to the Facility Agent (except in respect of any Fee Letter, acting on the instructions of the Lenders) or the provision of such documents or evidence is waived or deferred in accordance with this Clause 4. The Facility Agent shall notify the Borrower and the Lenders promptly upon being so satisfied, or of any such waiver or deferral.

4.1.2 Other than to the extent that the Majority Lenders notify the Facility Agent in writing to the contrary before the Facility Agent gives the notification described in Clause 4.1.1 above, the Lenders authorise (but do not require) the Facility Agent to give that notification. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Further conditions precedent for the Utilisation

The Lenders will only be obliged to comply with Clause 5.3 (Lenders’ participation) if:

(a) on the date of the Utilisation Request and on the proposed Utilisation Date:

(i) no Relevant Event is continuing or would result from the proposed Loan;

(ii) the Repeating Representations to be made by each Obligor are true in all material respects;

(iii) all fees, costs and expenses due from the Borrower pursuant to Clauses 11 (Fees) and 16 (Costs and expenses) have been paid;

(iv) this Agreement is in full force and effect;

(v) the EPC Contract is in full force and effect and has not been suspended, cancelled, materially modified or otherwise terminated;

(vi) the Facility Agent has received evidence that the EPC Contractor has performed its obligations under and in accordance with the terms of the EPC Contract;
(vii) since the Signing Date, nothing has occurred which in the opinion of the Facility Agent (acting on the instructions of the Majority Lenders) has or can reasonably be expected to have a Material Adverse Effect; and

(b) the Facility Agent has received no later than the Specified Time (i) a Utilisation Request duly completed and signed by the Borrower and (ii) the relevant Payment Documents relating to the goods and services which are the subject of the Utilisation Request; and

(c) the Facility Agent and the Lenders have received:

(i) an Exporter Declaration from the EPC Contractor in respect of the relevant portion of the EPC Contract to be financed by the Utilisation and which attaches the relevant invoice (or invoices);

(ii) a Buyer Approval Letter in respect of the invoice (or invoices) relating to the goods and services which are the subject of the Utilisation Request; and

(iii) to the extent applicable, the bills of lading relevant to the shipment of goods as are specified therein.

4.3 Waiver or deferral of conditions precedent

4.3.1 The conditions precedent set forth in Clauses 4.1 (Initial conditions precedent) and 4.2 (Further conditions precedent for each Utilisation) are for the benefit of the Finance Parties and may be waived or deferred by the Facility Agent (acting on the instructions of all the Lenders) in whole or in part and with or without conditions.

4.3.2 If any of the conditions specified in Clauses 4.1 (Initial conditions precedent) and 4.2 (Further conditions precedent for each Utilisation) are not satisfied on the date of the relevant Utilisation Request and/or the relevant Utilisation Date, as the case may be, and the Facility Agent (acting on the instructions of the Lenders) agrees, at the request of the Borrower, to waive or defer the same, the Borrower shall (unless the Facility Agent, acting on the instructions of all the Lenders, expressly agrees otherwise) ensure that such condition is satisfied within such period as the Facility Agent, acting on the instructions of the Lenders, may specify in a waiver letter. If such condition is not satisfied within the period of deferment (including any additional period of deferment), then, unless waived in writing by the Facility Agent, non-satisfaction of such condition will be an Event of Default.

4.4 Termination of the Agreement

If the initial conditions precedent specified in Clause 4.1 (Initial conditions precedent) have not been met to the satisfaction of the Facility Agent (acting on the instructions of all the Lenders) before the date falling six (6) Months after the Signing Date, the Facility Agent (acting on the instructions of the Lenders) may terminate this Agreement by giving written notice to the Borrower, and such termination shall occur on the date stated in the notice.

5 Utilisation

5.1 Delivery of a Utilisation Request

The Facility may be utilised by delivery to the Facility Agent of a fully completed Utilisation Request not later than the Specified Time.
5.2 Completion of the Utilisation Request

5.2.1 The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

(a) the proposed Utilisation Date is a Business Day within the Availability Period and does not fall within the period of ten (10) Business Days before the last day of the then current Interest Period;

(b) the currency specified in the Utilisation Request is euro, and the amount does not exceed the Available Facility;

(c) it specifies the account and bank of the EPC Contractor to which the proceeds of the Utilisation are to be credited;

(d) the Utilisation Request is executed by a person duly authorised to do so on behalf of the Borrower;

(e) it is accompanied by an invoice or invoices in respect of the relevant portion of the EPC Contract to be financed by the Utilisation and such other documents as are specified in the Utilisation Request.

5.2.2 Only one (1) Loan may be requested in the Utilisation Request.

5.2.3 The Utilisation Request may refer to more than one (1) invoice in respect of goods and services to be financed.

5.2.4 Only one (1) valid Utilisation Request may be delivered by the Borrower.

5.3 Lenders' participation

5.3.1 As soon as reasonably practicable upon receipt of the Utilisation Request delivered to the Facility Agent pursuant to this Clause 5, the Facility Agent shall forward to each Lender a copy of such Utilisation Request and all attached and related documents for information purposes only.

5.3.2 Each Lender shall advise the Facility Agent by no later than 5:00pm on the Business Day which is four (4) Business Days before the proposed Utilisation Date of any requests for clarifications or additional information which it requires from the Borrower in respect of the Utilisation Request and related documents provided under Clause 5.3.1.

5.3.3 The Facility Agent shall, as soon as reasonably practicable, notify the Borrower or any requests for clarifications or additional information which it requires from the Borrower in respect of the Utilisation Request and related documents received under Clause 5.3.2 and the Borrower shall use all reasonable endeavours to respond to such requests. As soon as reasonably practicable upon receipt, the Facility Agent shall forward responses received from the Borrower to the relevant Lender.

5.3.4 If the conditions set out in this Agreement have been met, each Lender shall make its participation in the Loan available by the Utilisation Date through its Facility Office.

5.3.5 The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Available Commitment to the Total Commitment immediately before making the Loan.
5.3.6 The Facility Agent shall notify each Lender of the amount of the Utilisation and the amount of its participation in that Utilisation by 3.00 pm four (4) Business Days before the proposed Utilisation Date (or such later time as may be agreed between the Facility Agent and the Lenders).

5.4 Acknowledgement and instruction by the Borrower; authority to disburse

5.4.1 Neither the Facility Agent nor any Lender shall be responsible for any delay in the making of Utilisations occasioned by any request the Facility Agent may make for reasonable clarification as to the contents of the Utilisation Request or accompanying or related document(s). The Parties hereby agree that if the Facility Agent is not fully satisfied with the form and content of any Utilisation Request or any clarification relating thereto, the Borrower shall be deemed to have requested in the Utilisation Request that the Utilisation be made six (6) Business Days after the Facility Agent is fully satisfied therewith (unless (a) the Utilisation Date actually requested is later, (b) the documents required to trigger the authorisation to disburse the Utilisation as specified in the Utilisation Request have not been provided or (c) that date falls outside the Availability Period and the Facility Agent agrees to a shorter notice period that would fall within the Availability Period).

5.4.2 Neither the Facility Agent nor any Lender shall be responsible for any delay in the making of the Utilisation arising out of any reasonable request it may make for additional documentation or information in accordance with Clause 5.4.1.

5.4.3 Without limiting any other provision of any Finance Document expressed to be for the benefit of the Finance Parties, the Borrower irrevocably and unconditionally acknowledges and agrees that:

(a) the responsibility of the Facility Agent for the examination of the Utilisation Request and all attached and related documents is limited to ascertaining that they appear to be in order on their face. Documents which appear on their face to be inconsistent with one another shall not be considered to be in order;

(b) the Facility Agent shall be entitled and obliged (without any duty whatsoever to make any prior enquiry of, or to give any prior notice to, the Borrower or the EPC Contractor or any other person) to (i) rely upon and treat the Utilisation Request received in accordance with this Clause 5 as an irrevocable instruction of the Borrower, and (ii) to act upon such Utilisation Request as if it had been duly and correctly completed, authorised, executed and delivered by the Borrower (in that capacity under the Finance Documents) to the Facility Agent in accordance with this Agreement and that the Facility Agent shall have no responsibility for, or liability with respect to, such matters; and

(c) the Borrower will not dispute any Utilisation Request received by the Facility Agent and treated in accordance with this Clause 5.4.

5.4.4 The amount requested in paragraph 3(b) of the Utilisation Request will constitute a Utilisation and a Loan for all purposes of this Agreement, and a liability on the part of the Borrower which the Borrower will have an unconditional and irrevocable obligation to repay in accordance with Clause 6 (Repayment) and all other provisions of this Agreement.

5.4.5 The Facility Agent and the Lenders (as applicable) are irrevocably and unconditionally authorised by the Borrower to pay, and apply, the proceeds of the Loan in accordance with the Utilisation Request.
5.5 Cancellation

The undrawn Commitment of each Lender shall be cancelled on the earlier of (a) the Utilisation being made and (b) the expiry of the Availability Period.

6 Repayment

6.1 Repayment of Loans

6.1.1 The Borrower shall repay the Loan by paying to the Facility Agent (for the account of the Lenders) nine (9) Repayment Instalments. The first Repayment Instalment shall be payable on the Starting Date of Repayment and each subsequent Repayment Instalment shall be payable on the corresponding day of each successive period of six (6) Months following thereafter (each a Repayment Date) provided that the final Repayment Date shall be the Final Repayment Date.

6.1.2 The Borrower may not re-borrow any part of the Facility which is repaid.

6.1.3 Any amount repaid or prepaid shall reduce rateably each Lender's Commitment.

7 Prepayment and cancellation

7.1 Mandatory Prepayment Events

7.1.1 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in the Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

(a) that Lender shall promptly notify the Facility Agent upon becoming aware of that event;

(b) upon the Facility Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and

(c) to the extent that that Lender's participation has not been transferred pursuant to Clause 7.3 (Right of replacement or repayment and cancellation in relation to a single Lender), the Borrower shall repay to the Facility Agent (for the account of that Lender) that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Facility Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law).

7.1.2 Mandatory prepayment under Other Agreements

If on any date an Other MPE occurs pursuant to which the commitments under the relevant Other Agreement are cancelled in their entirety earlier than scheduled, or the facility thereunder become immediately due and payable or payable upon demand in their entirety (in each case, earlier than scheduled), upon written notice from the Facility Agent (acting on the instructions of the Majority Lenders) to the Borrower:

(a) no Lender shall be obliged to fund a Loan; and
(b) the Facility Agent shall, as applicable, cancel the outstanding Commitments and declare the outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

7.2 Voluntary prepayment of the Loan

7.2.1 Subject to the other provisions of this Clause 7.2, the Borrower may if it gives the Facility Agent not less than thirty (30) days' (or such shorter period as the Facility Agent and Majority Lenders agree) prior written notice, prepay the whole or any part of the Loan on an Interest Payment Date (but, if in part, being an amount which reduces the amount of the Loan by a minimum amount of €1,000,000 (one million euro) and integral multiples of €500,000 (five hundred thousand euro).

7.2.2 Unless otherwise agreed by the Facility Agent, the Borrower may only prepay the Loan (in whole or in part) if on the date of prepayment the Borrower also prepays (in the same proportion as the prepayment of the Loan) the loan made under the ECA Facility Agreement.

7.2.3 A Loan may not be prepaid prior to the earlier of:

(a) the day following the last day of the Availability Period; and
(b) the first scheduled Repayment Date.

7.2.4 Any prepayment under this Clause 7.2 shall satisfy the obligations under Clause 6.1 (Repayment of loans) in inverse order of maturity.

7.2.5 The Facility Agent shall notify any proposed prepayment under this Clause 7.2 to the Lenders.

7.3 Right of replacement or repayment and cancellation in relation to a single Lender

7.3.1 If:

(a) any sum payable to any Lender by the Borrower is required to be increased under Clause 12.2 (Tax gross-up); or

(b) any Lender claims indemnification from the Borrower under Clause 12.3 (Tax indemnity) or Clause 13 (Increased Costs),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Facility Agent not less than seven (7) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice of cancellation of the Commitment of that Lender and its intention to repay that Lender's participation in the Loan.

7.3.2 On receipt of a notice of cancellation referred to in Clause 7.3.1, the Commitment of that Lender shall immediately be reduced to zero.

7.3.3 On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under Clause 7.3.1 (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loan.
7.4 Restrictions

7.4.1 Any notice of cancellation or prepayment given by any Party under this Clause 7 (Prepayment and cancellation) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

7.4.2 Any cancellation or prepayment under this Clause 7 (Prepayment and cancellation) is subject to the payment by the Borrower of (i) accrued interest on the amount prepaid and (ii) any Break Costs, in accordance with the terms of this Agreement.

7.4.3 The Borrower may not re-borrow any part of the Facility which is prepaid.

7.4.4 The Borrower shall not repay or prepay all or any part of the Loan or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement. Notwithstanding the foregoing, the Facility Agent agrees to act reasonably and consider in good faith any written request from the Borrower to make a voluntary prepayment of all or any part of the Loans that is not in accordance with this Agreement, but any consent to such request shall be at the direction of the Majority Lenders.

7.4.5 No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

7.4.6 If the Facility Agent receives a notice under this Clause 7 (Prepayment and cancellation), it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.

7.5 Effect of Repayment and Prepayment on Commitments

If all or part of any Lender's participation in a Utilisation under the Facility is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment.

7.6 Application of prepayments

Any prepayment of a Utilisation (other than a prepayment pursuant to Clause 7.1 (Illegality) or 7.3 (Right of replacement or repayment and cancellation in relation to a single Lender), shall be applied in inverse order of maturity and pro rata to each Lender's participation in that Utilisation.

8 Interest

8.1 Calculation of Interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

(a) Margin; and

(b) EURIBOR.
8.2 Payment of interest

The Borrower shall pay accrued interest on the Loan on the last day of each Interest Period, (being an Interest Payment Date).

8.3 Additional interest

8.3.1 If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to Clause 8.3.2, is the sum of one per cent (1%) and the higher of EURIBOR and the rate (calculated in accordance with Clause 8.1 Calculation of interest) which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount in each case for successive Interest Periods each of a duration selected by the Facility Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Facility Agent (for the avoidance of doubt, such interest shall continue to accrue until payment has been received by the Facility Agent).

8.3.2 If any overdue amount consists of all or part of the Loan which became due on a day which was not the last day of an Interest Period:

(a) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period; and

(b) the rate of interest applying to the overdue amount during that first Interest Period shall be the sum of one per cent (1%) and the rate which would have applied if the overdue amount had not become due.

8.3.3 Additional interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 Notification of rates of interest

The Facility Agent shall promptly notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.

9 Interest Periods

9.1 Duration of Interest Periods

9.1.1 Subject to this Clause 9, each Interest Period shall have a duration of six (6) Months.

9.1.2 An Interest Period for the Loan shall not extend beyond the Final Repayment Date.

9.1.3 If an Interest Period would otherwise overrun a Repayment Date, it shall be shortened so that it ends on that Repayment Date.

9.1.4 The first Interest Period for the Loan shall start on the Utilisation Date and each subsequent Interest Period shall start on the Interest Payment Date for the immediately preceding Interest Period.
9.2 **Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10 **Changes to the calculation of interest**

10.1 **Unavailability of Screen Rate**

10.1.1 **Interpolated Screen Rate**: If no Screen Rate is available for EURIBOR for an Interest Period, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to that Interest Period.

10.1.2 **Reference Bank Rate**: If no Screen Rate is available for EURIBOR for:

(i) euro; or

(ii) the relevant Interest Period and it is not possible to calculate the Interpolated Screen Rate,

EURIBOR shall be the Reference Bank Rate as of the Specified Time and for a period equal in length to the Interest Period of the Loan.

10.1.3 **Cost of funds**: If Clause 10.1.2 applies but no Reference Bank Rate is available for euro or the relevant Interest Period there shall be no EURIBOR for the Loan and Clause 10.4 (Cost of funds) shall apply to the Loan for that Interest Period.

10.2 **Calculation of Reference Bank Rate**

10.2.1 Subject to Clause 10.2.2, if EURIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by 10.00 a.m. on the Quotation Day, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.

10.2.2 If at or about 11.00 a.m. on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 **Market disruption**

If before close of business in London on the Quotation Day for the relevant Interest Period the Facility Agent receives notifications from a Lender or Lenders (whose participations in the Loan exceed thirty-three per cent (33%) of the Loan) that the cost to it of funding its participation in the Loan from whatever source it may reasonably select would be in excess of EURIBOR then Clause 10.4 (Cost of funds) shall apply to the Loan for the relevant Interest Period.

10.4 **Cost of funds**

10.4.1 If this Clause 10.4 applies, the rate of interest on each Lender's share of the Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

(a) the Margin; and
the rate notified to the Facility Agent by that Lender as soon as practicable and in any event within two (2) Business Days of the first day of that Interest Period (or, if earlier, on the date falling two (2) Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in the Loan from whatever source it may reasonably select and, if any such rate is below zero, such rate shall be deemed to be zero.

10.4.2 If this Clause 10.4 applies pursuant to Clause 10.3 (Market disruption): and

(i) a Lender's Funding Rate is less than EURIBOR; or

(ii) a Lender does not supply a quotation by the time specified in Clause 10.4.1(b),

the cost to that Lender of funding its participation in the Loan for that Interest Period shall be deemed, for the purposes of Clause 10.4.1, to be EURIBOR.

10.4.3 If this Clause 10.4 applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

10.4.4 Any alternative basis agreed pursuant to Clause 10.4.3 shall be binding on all Parties to this Agreement.

10.5 Break Costs

10.5.1 The Borrower shall, within fourteen (14) Business Days of demand by a Lender, pay to that Lender its Break Costs attributable to all or any part of the Loan or an Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for the Loan or Unpaid Sum.

10.5.2 Each Lender shall, as soon as reasonably practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11 Fees

11.1 Commitment fee

11.1.1 The Borrower shall pay to the Facility Agent (for the account of each Lender) a fee computed at the rate of one point zero zero per cent (1.00%) per annum on that Lender’s Available Commitment for the period from the Signing Date to the last day of the Availability Period.

11.1.2 The accrued commitment fee is payable on each Interest Payment Date which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

11.2 Structuring fee

The Borrower shall pay to the Arranger (for its own account) a structuring fee (being one point two five per cent (1.25%) of the Commitment) at the time agreed in the relevant Fee Letter.
11.3 Administration fee

The Borrower shall pay to the Facility Agent (for its own account) an administration fee (being €30,000 flat) at the time agreed in the relevant Fee Letter.

12 Tax gross-up and indemnities

12.1 Definitions

12.1.1 In this Agreement:

Tax Credit means a credit against, relief from, or remission or repayment of any Tax.

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

Tax Payment means either the increase in a payment made by the Borrower under Clause 12.2 (Tax gross-up) or a payment under Clause 12.3 (Tax indemnity).

12.1.2 Unless a contrary indication appears, in this Clause 12 a reference to determines or determined means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

12.2.1 The Borrower shall make all payments to be made by it under the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.

12.2.2 The Borrower shall promptly upon becoming aware that it had or will have to make a Tax Deduction (or that there has been or will be any change in the rate at which or the basis on which any Tax Deduction has to be made) notify the Facility Agent accordingly. Similarly, a Lender shall notify the Facility Agent on becoming so aware in respect of a payment payable to that Lender. If the Facility Agent receives such a notification from a Lender it shall notify the Borrower.

12.2.3 If a Tax Deduction is required by law to be made by the Borrower, and such Tax Deduction is made from a payment the amount of the payment in respect of which the Tax Deduction is required to be made shall be increased to the amount which (after the Tax Deduction) will leave an amount equal to the payment which would have been due if no Tax Deduction had been required.

12.2.4 If the Borrower is required to make a Tax Deduction, the Borrower shall make the Tax Deduction, and any payment required in connection with the Tax Deduction within the time allowed and in the minimum amount required by law.

12.2.5 Within thirty (30) days of making a Tax Deduction or a payment required in connection with a Tax Deduction, the Borrower shall deliver to the Facility Agent for the Finance Party in question evidence reasonably satisfactory to that Finance Party that the Tax Deduction or payment has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
12.3 **Tax indemnity**

12.3.1 If any Finance Party is or will be subject to any liability or required to make any payment for or on account of Tax in relation to any sum received or receivable (or any sum deemed for Tax purposes to be received or receivable) under any Finance Document, the Borrower shall (within fourteen (14) Business Days of demand by the Facility Agent) pay to that Finance Party the amount determined by that Finance Party, set out in reasonable detail, to be equal to the loss, liability or cost which will be or has been (directly or indirectly) suffered for or on account of Tax by that Finance Party as a result of that liability or payment.

12.3.2 Clause 12.3.1 shall not apply:

(a) in relation to any Tax assessed on a Finance Party:

(i) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or

(ii) under the law of the jurisdiction in which that Finance Party's Facility Office is located, in respect of amounts received or receivable in that jurisdiction;

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

(b) to the extent that a loss, liability or cost:

(i) is compensated for by an increased payment under Clause 12.2 (Tax gross-up) or;

(ii) relates to a FATCA Deduction required to be made by a Party.

12.3.3 A Finance Party making, or intending to make, a claim under Clause 12.3.1 above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Borrower accordingly.

12.3.4 A Finance Party shall, on receiving a payment from the Borrower under this Clause 12.3, notify the Facility Agent.

12.4 **Stamp taxes**

The Borrower shall pay or procure a waiver of all stamp duty, registration tax or other similar Taxes payable in respect of any Transaction Document (whether within the Republic of Ghana or otherwise), and shall, within fourteen (14) Business Days of demand, indemnify each Finance Party against any cost, loss or liability which that Finance Party incurs in relation to any stamp duty, registration tax or other similar Tax which is payable in respect of any of the Transaction Documents.

12.5 **Value added tax**

12.5.1 All amounts which are expressed to be payable under any Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for VAT purposes for any supply of goods or services shall be deemed to be exclusive of any VAT that is chargeable on that supply. If VAT is chargeable on any supply made by any Finance Party to
any Party under any Finance Document, that Party shall pay to such Finance Party (in addition to and at the same time as paying the consideration for the supply) an amount equal to the amount of the VAT.

12.5.2 Where any Party is required by any of the Finance Documents to reimburse a Finance Party in respect of any cost or expense, that Party shall at the same time indemnify the Finance Party against any VAT incurred by the Finance Party in respect of the cost or expense to the extent that the Finance Party reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to any credit or repayment from the relevant tax authority in respect of that VAT.

12.6 FATCA information

12.6.1 Subject to Clause 12.6.3, each Party shall, within ten (10) Business Days of a reasonable request by another Party:

(a) confirm to that other Party whether it is:
   (i) a FATCA Exempt Party; or
   (ii) not a FATCA Exempt Party; and

(b) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party’s compliance with FATCA;

(c) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party’s compliance with any other law, regulation, or exchange of information regime.

12.6.2 If a Party confirms to another Party pursuant to Clause 12.6.1(a) that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

12.6.3 Clause 12.6.1 shall not oblige any Finance Party to do anything, and Clause 12.6.1(c) shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

(a) any law or regulation;

(b) any fiduciary duty; or

(c) any duty of confidentiality.

12.6.4 If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with Clause 12.6.1(a) or (b) (including, for the avoidance of doubt, where Clause 12.6.1(c) applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
12.7 FATCA Deduction

12.7.1 Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

12.7.2 Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

13 Increased Costs

13.1 Increased Costs

13.1.1 Subject to Clause 13.3 (Exceptions), the Borrower shall, within fourteen (14) Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation (including, for the avoidance of doubt, any law or regulation implementing CRDIV or Basel III), (ii) compliance with any law or regulation made after the Signing Date; or (iii) compliance with CRDIV or any law or regulation implementing it or Basel III.

13.1.2 In this Agreement:

Baseline III means:

(a) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity, risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

(b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

(c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

CRDIV means:

(a) "Regulation (EU) No 575/2013 of the European Parliament and of the Council dated 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012" as amended from time to time; and

Increased Costs means:

(a) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;

(b) an additional or increased cost; or

(c) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

13.2 Increased Cost claims

13.2.1 A Finance Party intending to make a claim pursuant to Clause 13.1 (Increased Costs) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.

13.2.2 Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

13.3.1 Clause 13.1 (Increased Costs) does not apply to the extent any Increased Cost is:

(a) attributable to a Tax Deduction required by law to be made by the Borrower;

(b) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the Signing Date (Basel II) or any other law or regulation which implements Basel II (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates), in each case excluding any amendments to Basel II arising from Basel III;

(c) compensated for by Clause 12.3 (Tax indemnity) (or would have been compensated for under Clause 12.3 but was not so compensated solely because any of the exclusions in Clause 12 applied); or

(d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

13.3.2 In this Clause 13.3, a reference to a Tax Deduction has the same meaning given to the term in Clause 12.1 (Definitions).

13.4 Non-discrimination in Increased Costs claims

Each Finance Party confirms that it shall not discriminate against the Borrower in determining whether or not to make a claim to recover any Increased Costs having regard to whether it has claimed or is intending to claim Increased Costs in respect of other similar financing transactions where it has similar rights. No Finance Party shall be required to divulge any confidential or sensitive information in connection with this Clause.
14 Other indemnities

14.1 Currency indemnity

14.1.1 If any sum due from the Borrower under the Finance Documents (a Sum), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the First Currency) in which that Sum is payable into another currency (the Second Currency) for the purpose of:

(a) making or filing a claim or proof against the Borrower; or
(b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall, as an independent obligation, within fourteen (14) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

14.1.2 The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

14.2 Other Indemnities

The Borrower shall within fourteen (14) Business Days of demand, indemnify each Finance Party and each Finance Party's officers and employees against any cost, loss or liability incurred by that Finance Party or any of its officers and employees as a result of:

(a) the occurrence of any Event of Default or a Mandatory Prepayment Event;
(b) a failure by the Borrower to pay any amount due under a Finance Document on its due date, including any cost, loss or liability arising as a result of Clause 24 (Sharing among the Finance Parties);
(c) funding, or making arrangements to fund, its participation in the Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
(d) the Loan (or part of the Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

14.3 Indemnity to the Facility Agent

The Borrower shall within seven (7) Business Days indemnify the Facility Agent against:

(a) any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:
   (i) investigating any event which it reasonably believes is a Default; or
(ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

(iii) instructing external lawyers, accountants, tax advisers or other professional advisers or experts as permitted under this Agreement; and

(b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Facility Agent (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 25.10 (Disruption to payment systems, etc) notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent in acting as Facility Agent under the Finance Documents.

14.4 Continuing obligations

Each indemnity given by the Borrower under or in connection with any Finance Document is a continuing obligation, independent of the Borrower's other obligations under or in connection with that Finance Document or any other Finance Document and survives after that Finance Document is terminated. It is not necessary for a person to pay any amount or incur any expense before enforcing an indemnity under or in connection with this Agreement or any other Finance Document.

15 Mitigation by the Lenders

15.1 Mitigation

15.1.1 Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (Illegality), Clause 11 (Tax gross-up and indemnities), or Clause 13 (Increased Costs) including, but not limited to, transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

15.1.2 Clause 15.1.1 does not in any way limit the obligations of any Obligor under the Finance Documents.

15.2 Limitation of liability

15.2.1 The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (Mitigation).

15.2.2 A Finance Party is not obliged to take any steps under Clause 15.1 (Mitigation) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16 Costs and expenses

16.1 Transaction expenses

The Borrower shall within fourteen (14) Business Days on demand pay the Arranger and the Facility Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them from time to time in connection with the negotiation, preparation, printing, execution, syndication and perfection of the Finance Documents, subject to the cap agreed
from time to time in writing by the Borrower and the Arranger (being €45,000 excluding VAT
and disbursements for English legal counsel and €11,500 including taxes and disbursements
for Ghanaian legal counsel).

16.2 Amendment costs

If the Borrower requests an amendment, waiver, release, or consent, the Borrower shall,
within fourteen (14) Business Days of demand, reimburse each of the Finance Parties for the
amount of all costs and expenses (including legal fees) reasonably incurred by that Finance
Party (a cap on such amounts to be agreed with the Borrower prior to incurring those costs
and expenses) in responding to, evaluating, negotiating or complying with that request or
requirement.

16.3 Enforcement and preservation costs

The Borrower shall, within ten (10) Business Days of demand, pay to each Finance Party the
amount of all costs and expenses incurred by that Finance Party in connection with the
enforcement of, or the preservation of any rights under, any Finance Document.

17 Representations

The Borrower makes the representations and warranties set out in this Clause 17 to each
Finance Party on the Signing Date.

17.1 Status

17.1.1 It is a sovereign state and is not subject to any insolvency procedures.

17.1.2 It is a representative of the Government of the Republic of Ghana.

17.1.3 It has the power and authority to:

(a) sue and be sued in its own name;

(b) own its assets;

(c) carry on its business as it is being conducted; and

(d) enter into and perform its obligations under the Finance Documents.

17.2 Binding obligations

The obligations expressed to be assumed by it in each Transaction Document to which it is a
party are, subject to any general principles of law limiting its obligations which are specifically
referred to in any legal opinion delivered pursuant to Clause 4 (Conditions of utilisation), legal,
valid, binding and enforceable obligations.

17.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance
Documents to which it is a party do not and will not conflict with:

(a) any law or regulation applicable to it or binding on its assets;
(b) the constitution of Ghana;
(c) any treaty to which the Borrower is a party; or
(d) any agreement or instrument binding upon it or upon any of its assets or (without prejudice to the generality of the foregoing) constitute a default or termination event (howsoever described) under any such agreement or instrument.

17.4 Power and authority

It:

(a) has full legal power, authority and legal right, to execute and deliver the Finance Documents and the transactions contemplated thereby for and on behalf of Ghana; and

(b) has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated thereby for and on behalf of Ghana.

17.5 Validity and admissibility in evidence

All Authorisations required or desirable:

(a) to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party; and

(b) to make the Transaction Documents to which it is a party admissible in evidence in Ghana,

have been obtained or effected and are in full force and effect.

17.6 Governing law and enforcement

17.6.1 The choice of English law as the governing law of each Finance Document to which it is a party will be recognised and enforced in Ghana in accordance with applicable law;

17.6.2 Any arbitral award obtained in arbitration pursuant to Clause 36.1 (Arbitration), and any judgment obtained pursuant to Clause 36.2 (Jurisdiction) in relation to a Finance Document expressed to be governed by English law will be recognised and enforced in Ghana in accordance with applicable law and without re-examination of the merits.

17.7 Deduction of Tax

Subject to any qualifications as to any general principles of law limiting the obligations of the Borrower which are specifically referred to in any legal opinion accepted pursuant to Clause 4 (Conditions of Utilisation), it is not required under Ghanaian law to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

17.8 No filing or stamp taxes

Other than stamping of the Transaction Documents as exempt under the "Stamp Duty Act, 2005 (Act 689)" and registering any Security Document with the Collateral Registry under the
"Borrowers and Lenders Act 2008 (Act 773)" in the Republic of Ghana, it is not necessary that any of the Transaction Documents are filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to any of the Transaction Documents or any of the transactions contemplated by the Transaction Documents.

17.9 No Relevant Event

17.9.1 No Relevant Event is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by any Finance Document.

17.9.2 No other event or circumstance is outstanding which constitutes (or with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or to which its assets are subject in a manner or to an extent which will have a Material Adverse Effect.

17.9.3 To the extent it is aware, the Borrower is not (and would not be with the giving of notice or lapse of time or both) in breach or default under any agreement relating to External Debt to which it is a party or may be bound.

17.10 No misleading information

17.10.1 Any factual information provided by it in relation to any Finance Document or this transaction was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

17.10.2 Nothing has occurred or been omitted from the information referred to in Clause 17.10.1 and no information has been given or withheld that results in that information being untrue or misleading in any material respect.

17.10.3 All other written information provided by it (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respects.

17.11 Pari passu ranking

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other present and future unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to unsubordinated creditors generally.

17.12 Consents and Licences

Every consent, authorisation, licence or approval of or registration with or declaration to governmental or public bodies or authorities or courts required by it to authorise, or required by it in connection with, the execution, delivery, validity, enforceability or admissibility in evidence of each Finance Document to which it is a party or the performance by it of its obligations under the Finance Documents to which it is a party, has been obtained or made and is in full force and effect and there has been no default in the observance or performance of the conditions or restrictions (if any) imposed in, or in connection with, any of the same.
17.13 Availability and transfer of foreign currency

17.13.1 The Borrower has obtained all relevant Authorisations (if any) required by law to borrow and repay euro outside of Ghana.

17.13.2 The Buyer has obtained all relevant Authorisations (if any) required by law to make payments under the EPC Contract in euro outside of Ghana.

17.14 No Immunity

17.14.1 In any proceedings taken for the enforcement of any arbitral award or any judgment in relation to the Finance Documents, it will not be entitled to claim for itself or any of its assets (excluding diplomatic, consular, military or defence assets, petroleum assets protected by the "Petroleum Revenue Management Act, 2011 (Act 815)" and assets which have been expressly recognised as belonging to the public domain of Ghana in accordance with the laws of the Republic of Ghana) immunity from suit, execution, attachment or other legal process.

17.14.2 Each Obligor is subject to civil and commercial law with respect to its obligations under the Finance Documents to which it is a party.

17.15 Private and commercial acts

Its execution of the Finance Documents, and the Buyer's execution of the EPC Contract constitutes, and the exercise of their respective rights and performance of their respective obligations thereunder will constitute, private and commercial acts done and performed for private and commercial purposes.

17.16 Acting as principal

17.16.1 In all matters relating to the Finance Documents, the Borrower acts as principal and for its own account, and not as agent or trustee or in any other capacity whatsoever on behalf of any third party.

17.16.2 To the best of the Borrower's knowledge, in all matters relating to the EPC Contract, the Buyer acts as principal and for its own account, and not as agent or trustee or in any other capacity whatsoever on behalf of any third party.

17.17 Membership of International Monetary Fund and World Bank

The Republic of Ghana is a member of the World Bank and is a member in good standing eligible to use the general resources of the International Monetary Fund, and by entering into this Agreement, the Borrower will be in compliance with the terms of any applicable International Monetary Fund programme, to the extent applicable to the Government of the Republic of Ghana.

17.18 Public procurement

All public procurement Laws in the Republic of Ghana which are applicable to the Obligors' entry into and the exercise of its rights and performance of its obligations under the Transaction Documents to which they are respectively party (including without limitation the appointment of the Arranger, the Facility Agent and any other advisors of the Borrower in connection with the Facility) have been complied with.
17.19 No breach of laws

17.19.1 The Borrower has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

17.19.2 To the best of the Borrower's knowledge, the Buyer has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

17.19.3 Entry into and performance by each Obligor of its obligations under the Transaction Documents to which it is a party are in compliance with the purposes of activity and functions of that Obligor.

17.20 Environmental and social compliance

The Borrower has used its best endeavours to procure that the EPC Contractor has at all times complied with all applicable Environmental and Social Requirements and all applicable Environmental Permits.

17.21 No Prohibited Payments; no funds of Illicit Origin

17.21.1 No Prohibited Payment has been made or provided, directly or indirectly, by the Borrower (or on behalf of), any of its affiliates, its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority of any applicable Government Entity (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, any Government Entity) in connection with this Agreement or any other Transaction Document.

17.21.2 To the best knowledge of the Borrower, no Prohibited Payment has been made or provided, directly or indirectly, by the Buyer (or on behalf of), any of its affiliates, its officers, directors or any other person acting on its behalf to, or for the benefit of, any authority of any applicable Government Entity (or any official, officer, director, agent or key employee of, or other person with management responsibilities in, any Government Entity) in connection with any Transaction Document.

17.21.3 No payments made by any Obligor in respect of amounts due under this Agreement and/or the other Transaction Documents have been funded out of funds of Illicit Origin and none of the sources of funds to be used by any Obligor in connection with its business is of Illicit Origin.

17.22 EPC Contract

17.22.1 Subject to Clause 17.22.2, the Borrower represents that to the best of its knowledge and belief:

(a) the EPC Contract is in full force and effect in accordance with its terms;

(b) the EPC Contract constitutes the legal, valid, binding and enforceable obligations of the Buyer;

(c) each Authorisation necessary in connection with the entry into, performance and validity and enforceability of the EPC Contract has been obtained or effected;

(d) neither the Buyer nor the EPC Contractor is in breach of any of its material obligations under the EPC Contract;

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(e) there have been no material amendments to the EPC Contract in the form provided to
the Facility Agent in accordance with Clause 4.1 (Initial conditions precedent);

(f) there has been no act, omission or event which might reasonably be expected to give
rise to the revocation, suspension, cancellation, withdrawal or termination of any
provision of the EPC Contract, nor, is the EPC Contract the subject of any pending or
threatened proceedings which proceedings if adversely determined would reasonably
be expected to have a Material Adverse Effect; and

(g) no Prohibited Payment has been made or provided, directly or indirectly, by the Buyer
(or on behalf of), any of its affiliates, its officers, directors or any other person acting
on its behalf to, or for the benefit of, any authority of any applicable Government
Entity or the EPC Contractor (or any official, officer, director, agent or key employee
of, or other person with management responsibilities in, any Government Entity or the
EPC Contractor) in connection with any Transaction Document.

17.22.2 The representation and warranty made on the Signing Date pursuant to Clause 17.22.1 is
given subject to:

(a) any conditionality in the EPC Contract with respect to the effectiveness of this
Agreement; and

(b) the completion of a value for money audit in respect of the Project.

Each repetition of this representation and warranty shall not be so qualified.

17.23 No proceedings pending or threatened

17.23.1 No litigation, arbitration or administrative proceedings or investigations of, or before, any
court, arbitral body or agency have (to the best of its knowledge and belief (having made due
and careful enquiry)) been started or threatened against it.

17.23.2 No unsatisfied judgment or award given against the Borrower by any court, arbitrator or other
body is subsisting.

17.24 Environmental Laws

17.24.1 The Borrower is in compliance with Clause 19.3 (Environmental compliance) and to the best
of the Borrower's knowledge and belief (having made due and careful enquiry) no
circumstances have occurred which would prevent such compliance in a manner or to an
extent which has or is reasonably likely to have a Material Adverse Effect.

17.24.2 To the best of the Borrower's knowledge and belief, no circumstances have arisen which
would entitle any regulatory body to revoke, suspend, amend, vary, withdraw, transfer or
refuse to amend any Environmental Permit or which might give rise to a claim against the
Borrower which might reasonably be expected to have a Material Adverse Effect.

17.25 No adverse consequences

17.25.1 It is not necessary under the laws of Ghana:

(a) in order to enable any Finance Party to enforce its rights under any Finance
Document; or
by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in Ghana.

17.25.2 No Finance Party is or will be deemed to be resident, domiciled or carrying on business in Ghana by reason only of the execution, performance and/or enforcement of any Finance Document.

17.26 Sanctions

None of the Obligors, any of their respective Subsidiaries, departments, ministries or agencies, any director or officer, or any employee, agent, representative, or affiliate, of the Obligors or any of their respective Subsidiaries, departments, ministries or agencies is a person that is, or is owned or controlled by persons that are, (i) the subject of Sanctions, or (ii) located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions, including, without limitation, currently, Cuba, Iran, North Korea, Sudan, Syria and the Crimea region.

17.27 Anti-corruption law

(a) No Obligor, nor to the knowledge of any Obligor, any director, officer, agent, employee, Affiliate or other person acting on behalf of an Obligor or any of an Obligor's Subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of any applicable anti-bribery law, including but not limited to, the United Kingdom Bribery Act 2010 (the UK Bribery Act) and the U.S. Foreign Corrupt Practices Act of 1977 (the FCPA).

(b) The Obligors and, to the knowledge of the Obligors, the Affiliates of each Obligor have conducted their businesses in compliance with the UK Bribery Act, the FCPA and similar laws, rules or regulations and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

17.28 Repetition

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of the Utilisation Request, the Utilisation Date and the first day of each Interest Period.

18 Information undertakings

The undertakings in this Clause 18 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

18.1 Information: miscellaneous

The Borrower shall supply to the Facility Agent (in sufficient copies for all the Lenders, if the Facility Agent so requests):

(a) promptly, notification of any change in authorised signatories accompanied by new specimen signatures;
(b) promptly on becoming aware of them, details of:

(i) any litigation, arbitration or administrative proceedings or Environmental or Social Claim that is current, threatened or pending against an Obligor; and

(ii) any event or circumstance that is reasonably likely to result in litigation, arbitration or administrative proceedings or an Environmental or Social Claim being started or threatened against an Obligor, that, if determined against the Obligor, would be reasonably likely to have a Material Adverse Effect;

(c) promptly, such further information regarding the economic and/or financial condition, of an Obligor as any Finance Party (through the Facility Agent) may reasonably request;

(d) promptly, on receipt, any notices, information relating to the EPC Contract that may have a Material Adverse Effect; and

(e) promptly, any information relating to this transaction or in relation to the Project as any Finance Party (through the Facility Agent) may reasonably request.

18.2 Notification of default

18.2.1 The Borrower shall notify the Facility Agent of:

(a) any Relevant Event (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence; and

(b) to the extent that the Borrower becomes aware after due and careful enquiry, any other occurrence relating to an Obligor (including any third party claim or liability) which might reasonably be expected to have a Material Adverse Effect.

18.2.2 Promptly upon a request by the Facility Agent, the Borrower shall supply to the Facility Agent a certificate signed by an authorised signatory on its behalf certifying that no Relevant Event and that none of the other events referred to in Clause 18.2.1 is continuing (or if a Relevant Event or any of those events is continuing, specifying the event and the steps, if any, being taken to remedy it).

18.3 Know your customer checks

18.3.1 If:

(a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the Signing Date;

(b) any change in the status of the Borrower after the Signing Date; or

(c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Facility Agent or any Lender (or, in the case of paragraph (c) above, any prospective new Lender) to comply with "know your customer" in circumstances where the
necessary information is not already available to it, the Borrower shall promptly upon the request of the Facility Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in paragraph (c) above, on behalf of any prospective new Lender), in order for the Facility Agent, such Lender or, in the case of the event described in paragraph (c) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

18.3.2 Each Lender shall promptly upon the request of the Facility Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself) in order for the Facility Agent to carry out and be satisfied it has complied with all necessary “know your customer” checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

18.4 Environmental claim

The Borrower shall promptly upon becoming aware of the same, inform the Facility Agent in writing of:

(a) any Environmental or Social Claim against the Borrower which is current, pending or threatened; and

(b) any facts or circumstances which are reasonably likely to result in any Environmental or Social Claim being commenced or threatened against the Borrower.

19 General undertakings

The undertakings in this Clause 19 remain in force from the Signing Date for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1 Authorisations

The Borrower shall, and shall procure that the Buyer will, promptly:

(a) obtain, comply with and do all that is necessary to maintain in full force and effect;

(b) supply copies (such copies to be certified if requested by the Facility Agent) of,

such Authorisations, if any, required under any law or regulation of Ghana to:

(i) enable it to perform its obligations under the Transaction Documents to which it is a party;

(ii) to ensure the legality, validity, enforceability or admissibility in evidence in Ghana of any Transaction Document; and

(iii) enable it to carry on its business, trade and ordinary activities.
19.2 Compliance with laws and regulations

The Borrower shall, and shall procure that the Buyer will, comply in all respects with all laws and regulations (including, without limitation, environmental laws and regulations) to which it may be subject, if failure so to comply has, or is reasonably likely to have, a Material Adverse Effect.

19.3 Environmental compliance

19.3.1 The Borrower shall procure that the Buyer will:

(a) comply with all applicable Environmental and Social Requirements;
(b) obtain, maintain, file (where applicable) and ensure compliance with all requisite Environmental Permits and take all reasonable steps in anticipation of known or expected future changes to or obligations under the same;
(c) implement procedures to monitor compliance with and to prevent liability under all applicable Environmental and Social Requirements; and
(d) inform the Facility Agent of any failure to comply with any of the above.

19.4 Anti-corruption law

19.4.1 The Borrower shall not, and shall procure that the Buyer does not, directly or indirectly use the proceeds of the Facility for any purpose which would breach the UK Bribery Act, the FCPA or any applicable anti-bribery laws (whether in Ghana or otherwise).

19.4.2 The Borrower shall, and shall procure that the Buyer will:

(a) conduct its businesses in compliance with applicable anti-corruption laws; and
(b) maintain policies and procedures designed to promote and achieve compliance with such laws.

19.5 Pari passu ranking

The Borrower shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party against it under the Finance Documents rank at least pari passu with the claims of all its other present and future unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to public bodies.

19.6 Disposals

The Borrower shall procure that the Buyer does not enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, transfer, license, loan or otherwise dispose of any Asset or enter into an agreement to make any such disposal.

19.7 Maintenance of Legal Validity

The Borrower shall promptly obtain, maintain and comply with all consents, approvals, authorisations and other requirements (if any) as may be required under any applicable law or
regulation necessary for the performance of its obligations under this Agreement or required to ensure the legality, validity, enforceability or admissibility in evidence in Ghana of this Agreement or borrowings under the Facility.

19.8 Insurance

The Borrower shall:

(a) procure that the Buyer effects and maintains insurances at its own expense in respect of the Assets with reputable insurers of good standing acceptable to the Facility Agent;

(b) procure that such insurances (the Insurances):

(i) are on the same terms and cover the same risks as those normally taken out by prudent insureds owning or possessing assets similar to the Assets; and

(ii) are in such amounts as is prudent (including for the full replacement value from time to time of any assets destroyed or otherwise becoming a total loss),

(c) procure that the Buyer pays when due all premiums and other moneys payable under the Insurances and promptly at the request of the Facility Agent produce (or procure that the Buyer produces) receipts for the payment of the premiums;

(d) promptly when asked by the Facility Agent, procure that the Buyer deposits with or produces for inspection to the Facility Agent all policies and other contracts for the Insurances; and

(e) use all reasonable endeavours to prevent the happening of any act, omission, breach or default that would be reasonably likely to render void or voidable any Insurances.

19.9 Access for the Facility Agent

The Borrower shall, and shall procure that the Buyer will, permit the Finance Parties and/or their respective accountants or other professional advisers and contractors free access at all reasonable times and on reasonable notice to the premises (including the Project site), assets, books, accounts and records of each Obligor.

19.10 Isabella Clause

The Borrower shall perform its obligations (including, without limitation its payment obligations) under this Agreement and shall not claim to be relieved of any such obligations notwithstanding:

(a) any failure, delay or default whatsoever by the Buyer, the EPC Contractor or any other party to fulfil its obligations under the EPC Contract for any reason whatsoever or the frustration of the EPC Contract;

(b) any dispute under the EPC Contract, or any claim which any party to the EPC Contract may have against, or consider that it has against, any person under the EPC Contract;

(c) the insolvency or dissolution of any party to the EPC Contract;
(d) the amalgamation, demerger, merger or reconstruction of any party to the EPC Contract; or

(e) the unenforceability, illegality or invalidity of any obligation of any person under the EPC Contract or any document or agreement relating to the EPC Contract,

and the Borrower shall not use any such event as an excuse, defence, set-off or counterclaim in respect of the Borrower's obligations under this Agreement and the other Finance Documents.

19.11 EPC Contract

The Borrower shall procure that the Buyer will not without the prior written consent of the Facility Agent:

(a) vary, amend or waive any provision of the EPC Contract; or

(b) terminate, cancel or suspend or agree or consent to any termination, cancellation or suspension of the EPC Contract.

19.12 Sanctions

The Obligors will not, directly or indirectly, use the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person, (i) to fund any activities or business of or with any person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions or (ii) in any other manner that would result in a violation of Sanctions by any person (including any person participating in the Loans, whether as underwriter, advisor, investor or otherwise).

20 Events of Default

Each of the events or circumstances set out in this Clause 20 is an Event of Default (save for Clauses 20.16 (Acceleration).

20.1 Non-payment

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

(a) in the case of payment pursuant to Clause 7.1.2 (Mandatory prepayment under Other Agreements) only, payment is made within thirty (30) days of its due date; or

(b) in all other cases its failure to pay is caused by:

(i) administrative or technical error which is not its fault; or

(ii) a Disruption Event; and

payment is made within three (3) Business Days of its due date.
20.2 Other obligations

20.2.1 The Borrower does not comply with any provision of the Finance Documents (other than that referred to in Clause 20.1 (Non-payment)).

20.2.2 No Event of Default under Clause 20.2.1 above will occur if the failure to comply is, in the opinion of the Facility Agent, capable of remedy and is remedied within ten (10) Business Days of the earlier of (i) the Facility Agent giving notice to the Borrower or (ii) the Borrower becoming aware of the failure to comply.

20.3 Misrepresentation

Any representation or statement made or given or deemed to be made or given by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

20.4 Cross default

20.4.1 Any External Debt of the Borrower is not paid when due:

(a) within any originally applicable grace period and the obligation to pay is not being disputed in good faith; or

(b) within any extended grace period provided that the relevant creditor(s) has not started or threatened any legal proceedings or other procedure against the Borrower with respect to the non-payment of such External Debt.

20.4.2 No Event of Default will occur under Clause 20.4.1 if the aggregate amount of External Debt falling within Clause 20.4.1 is less than USD 25,000,000 (or its equivalent in any other currency or currencies).

20.4.3 Any External Debt of the Borrower is validly declared to be or otherwise becomes due and payable prior to its specified maturity as a result of any actual default, event of default, credit review event or any similar event (however described).

20.4.4 An event of default under (and howsoever defined in) any Other Agreement occurs.

20.5 Inability to pay debt

20.5.1 The Borrower is unable to (in the reasonable opinion of the Facility Agent), or admits its inability to, pay its debts, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its External Debt.

20.5.2 A moratorium is declared or is otherwise existing in respect of any External Debt of the Borrower.

20.6 Insolvency proceedings

Any legal proceedings or other procedure or step is taken in relation to:

(a) the suspension of payments or a moratorium of any External Debt of the Borrower;
(b) a composition, assignment or arrangement with any creditor in respect of any
External Debt of the Borrower; or
(c) enforcement of any Security over any assets of the Borrower in respect of External
Debt,
or any analogous procedure or step is taken in any jurisdiction.

20.7 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process
in any jurisdiction, affects any asset or assets of the Borrower and is not discharged or stayed
within thirty (30) Business Days.

20.8 Illegality

At any time it is or becomes unlawful for any Obligor, to perform or comply with any or all of
its obligations under the Transaction Documents, or any of the obligations under the
Transaction Documents are not or cease to be legal, valid and binding.

20.9 Repudiation

An Obligor or the EPC Contractor:
(a) rescinds or repudiates; or
(b) defaults in the observance or performance of any material provisions of,
one or more of the Transaction Documents (to which they are a party).

20.10 Material adverse change

Any event or circumstance, or series of events or circumstances, occurs which, in the opinion
of the Majority Lenders, has or would reasonably be expected to have a Material Adverse
Effect.

20.11 Transaction Documents

Any Transaction Document is not (or is claimed by an Obligor not to be) in full force and
effect.

20.12 Enforcement of Security

Any Security over any of its assets becomes enforceable where such enforcement would or
could be expected to have a Material Adverse Effect.

20.13 Litigation

20.13.1 Any litigation, arbitration or administrative proceeding (excluding any litigation, arbitration or
administrative proceeding that is, in the opinion of the Facility Agent acting on the instructions
of the Majority Lenders, frivolous or vexatious) is current, threatened or pending against either
Obligor, or in respect of the EPC Contract, which is reasonably likely to be adversely
determined and, if so adversely determined, would in the opinion of the Majority Lenders be
reasonably likely to have a Material Adverse Effect.
20.14 EPC Contract

Any licence, approval, permit or consent required in connection with the EPC Contract or the performance of it is terminated, amended or revoked.

20.15 Prohibited Payments

20.15.1 Any Prohibited Payment has been made or provided, directly or indirectly, by (or on behalf of) or to either Obligor or any of their respective personnel or any other person acting on their behalf in connection with any of the Transaction Documents.

20.15.2 Any personnel of either Obligor or any other person acting on any Obligor's behalf has been held by the judgment of a court, in a criminal or a civil matter, to have made or received a Prohibited Payment in connection with any of the Transaction Documents.

20.16 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing, the Facility Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:

(a) cancel the Commitments whereupon they shall immediately be cancelled;

(b) declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

(c) declare that all or part of the Loan be payable on demand, whereupon all or that part of the Loan shall immediately become payable on demand by the Facility Agent on the instructions of the Majority Lenders.

21 Changes to the Parties

21.1 Assignments and transfers by the Lenders

21.1.1 Subject to this Clause 21, a Lender (the Existing Lender) may:

(a) assign any of its rights under the Finance Documents; or

(b) transfer by novation any of its rights and obligations under the Finance Documents to another person (the New Lender).

21.1.2 Any assignment or transfer by an Existing Lender shall require the prior written consent of the Borrower unless:

(a) such assignment or transfer is to a bank, an Affiliate of a Lender; or

(b) an Event of Default has occurred and is continuing.

21.1.3 At least five (5) Business Days before the Transfer Date, the Existing Lender shall provide written notification to the Borrower of the name of the New Lender and the amount of the Commitment to be transferred to the New Lender.
21.1.4 The Borrower shall be deemed to have consented to an assignment or transfer under this Clause 21.1 (Assignments and transfers by the Lenders) if they do not inform the Existing Lender that they do not consent to such assignment or transfer within five (5) Business Days of date of the notice delivered under Clause 21.1.3.

21.2 Conditions of assignment or transfer

21.2.1 An assignment will only be effective on:

(a) receipt by the Facility Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Facility Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it had been an Original Lender; and

(b) performance by the Facility Agent of all necessary "know your customer" and other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the New Lender.

21.2.2 A transfer will only be effective if the procedure set out in Clause 21.5 (Procedure for transfer) is complied with.

21.2.3 If:

(a) a Lender assigns or transfers any of its rights or obligations under the Finance Documents in accordance with Clause 21.1 (Assignments and transfers by the Lenders) or changes its Facility Office; and

(b) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment or an increased payment to the New Lender or Lender acting through its new Facility Office under Clause 11 (Tax gross-up and indemnities) or Clause 12 (Increased Costs),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

21.2.4 Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

21.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Facility Agent (for its own account) a fee of [€3,500].
21.4 Limitation of responsibility of Existing Lenders

21.4.1 Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

(a) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, or any other documents;

(b) the financial condition of an Obligor;

(c) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or

(d) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

21.4.2 Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

(a) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

(b) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

21.4.3 Nothing in any Finance Document obliges an Existing Lender to:

(a) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 21; or

(b) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

21.5 Procedure for transfer

21.5.1 Subject to the conditions set out in Clause 21.2 (Conditions of assignment or transfer) a transfer is effected in accordance with Clause 21.5.4 when the Facility Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender.

21.5.2 The Facility Agent shall, subject to Clause 21.5.3, execute the Transfer Certificate referred to in Clause 21.5.1 as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement.

21.5.3 The Facility Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary
"know your customer" or other similar checks under its own internal procedures and all applicable laws and regulations in relation to the transfer to such New Lender.

21.5.4 Subject to Clause 21.9 \textit{(Pro rata interest settlement)}, on the Transfer Date:

(a) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents, each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the Discharged Rights and Obligations);

(b) each Obligor and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;

(c) the Arranger, the Facility Agent, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Arranger, the Facility Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

(d) the New Lender shall become a Party as a Lender.

21.6 Procedure for assignment

21.6.1 Subject to the conditions set out in Clause 21.2 \textit{(Conditions of assignment or transfer)} an assignment may be effected in accordance with Clause 21.6.3 when the Facility Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Facility Agent shall, subject to Clause 21.6.2, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

21.6.2 The Facility Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

21.6.3 Subject to Clause 21.9 \textit{(Pro rata interest settlement)}, on the Transfer Date:

(a) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;

(b) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the Relevant Obligations) and expressed to be the subject of the release in the Assignment Agreement; and

(c) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
21.6.4 Lenders may utilise procedures other than those set out in this Clause 21.6 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with Clause 21.5 (Procedure for transfer), to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 21.2 (Conditions of assignment or transfer).

21.7 Copy of Transfer Certificate or Assignment Agreement to Obligors

The Facility Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to each Obligor a copy of that Transfer Certificate or Assignment Agreement.

21.8 Security over Lender's rights

In addition to the other rights provided to Lenders under this Clause 21, each Lender may without consulting with or obtaining consent from any Obligor, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

(a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

(b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representative of holders) of obligations owed, or securities issued, by that Lender as Security for those obligations or securities, except that no such charge, assignment or Security shall:

(i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

(ii) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

21.9 Pro rata interest settlement

If the Facility Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 21.5 (Procedure for transfer) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

(a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (Accrued Amounts) and shall become due and payable to the Existing Lender (without interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
21.10 Disclosure of information

Any Lender may disclose to any of its Affiliates and any other person:

(a) to its auditors, accountants, legal counsel and tax advisers and to any other professional advisers appointed by it in relation to the transactions contemplated by this Agreement;

(b) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;

(c) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor; or

(d) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about any Obligor and the Finance Documents as that Lender shall consider appropriate if, in relation to paragraphs (b) and (c) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking. This Clause 21.10 supersedes any previous agreement relating to the confidentiality of this information.

21.11 Changes to the Obligors

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

22 Role of the Facility Agent and the Arranger

22.1 Appointment of the Facility Agent

22.1.1 Each Lender:

(a) appoints the Facility Agent to act as its agent under and in connection with the Finance Documents; and

(b) authorises the Facility Agent to exercise the rights, powers, authorities and discretions specifically given to the Facility Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

22.1.2 Notwithstanding the above, the duties of the Facility Agent will be carried out by the Original Lender until such time as there are two or more Lenders under this Agreement.
22.2 Duties of the Facility Agent

22.2.1 Except as specifically provided in the Finance Documents or as required by applicable law, the Facility Agent has no obligations or duties of any kind to any other Party under or in connection with any Finance Document.

22.2.2 Subject to Clause 22.2.3, the Facility Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Facility Agent for that Party by any other Party.

22.2.3 Without prejudice to Clause 21.7 (Copy of Transfer Certificate or Assignment Agreement to Borrower), Clause 22.2.2 shall not apply to any Transfer Certificate or to any Assignment Agreement.

22.2.4 Except where a Finance Document specifically provides otherwise, the Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

22.2.5 If the Facility Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.

22.2.6 If the Facility Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Facility Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.

22.2.7 The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

22.2.8 In order to record the movement of funds relating to each Utilisation, the Facility Agent shall open and keep on its books a credit account in the name of the Borrower, in which credits and debits shall be made in the chronological order (as set out in the Utilisation Requests) in order to fund expenses incurred by the Borrower, fees, interest, default interest and principal and debits for principal, interest and default interest. The Facility Agent's credit account shall be prima facie evidence (in the absence of manifest error) of the amount due from time to time by the Borrower in connection with this Agreement.

22.3 Role of the Arranger

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

22.4 No fiduciary duties

22.4.1 Nothing in this Agreement constitutes the Facility Agent or the Arranger as a trustee or fiduciary of any other person.

22.4.2 Neither the Facility Agent nor the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

22.5 Business with the Borrower

The Facility Agent and the Arranger and any associated company of either of them may accept deposits from, lend money to and generally engage in any kind of banking or other
business with the Borrower or any entity associated with the Borrower, without any obligation to disclose to the Lenders, or to account to them for or in respect of, any such arrangement or activity.

22.6 Rights and discretions of the Facility Agent

22.6.1 The Facility Agent may:

(a) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;

(b) assume that:

(i) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and

(ii) unless it has received notice of revocation, that those instructions have not been revoked; and

(c) rely on a certificate from any person:

(i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

(ii) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of Clause 22.6.1(c)(i), may assume the truth and accuracy of that certificate.

22.6.2 The Facility Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

(a) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 20.1 (Non-payment));

(b) no Finance Document has been changed or amended; and

(c) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised.

22.6.3 The Facility Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other professional advisers or experts in relation to the Transaction Documents and the transactions contemplated thereby.

22.6.4 Without prejudice to the generality of Clause 22.6.3 above or Clause 22.6.5 below, the Facility Agent may at any time engage and pay for the service of any lawyers to act as independent counsel to the Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Facility Agent in its reasonable opinion deems this to be desirable.

22.6.5 The Facility Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Facility
Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

22.6.6 The Facility Agent may act in relation to the Finance Documents through its personnel and Facility Agent's, and shall not be liable for any error of judgment made by such person or be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person, unless such error or such loss was directly caused by the Facility Agent's gross negligence or wilful misconduct.

22.6.7 The Facility Agent may disclose to any other Party and to any person engaged by it or through whom it acts in accordance with this Clause 22 any information it reasonably believes it has received as Facility Agent under this Agreement.

22.6.8 Notwithstanding any other provision of any Finance Document to the contrary, neither the Facility Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

22.6.9 The Borrower and the Lenders hereby acknowledge and agree that the Facility Agent has the ability to exercise its rights severally and independently under the Finance Document (including in connection with Clause 20.16 (Acceleration).

22.6.10 Notwithstanding any provision of any Finance Document to the contrary neither the Facility Agent nor the Arranger is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

22.7 Majority Lenders' instructions

22.7.1 The Facility Agent shall:

(a) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Facility Agent in accordance with any instructions given to it by:

(i) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and

(ii) in all other cases, the Majority Lenders; and

(b) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with Clause 22.7.1(a).

22.7.2 The Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Facility Agent may refrain from acting unless and until it receives those instructions or that clarification.

22.7.3 Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
22.7.4 The Facility Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability (together with any associated VAT) which it may incur in complying with those instructions.

22.7.5 In the absence of instructions from the Majority Lenders (or, if appropriate, the Lenders), the Facility Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

22.7.6 The Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

22.8 Responsibility for documentation and customer identification

Neither the Facility Agent nor the Arranger nor any of their respective officers, employees or agents from time to time is responsible for:

(a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Facility Agent, the Arranger, the Borrower or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document; or

(c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

22.9 Exclusion of liability

22.9.1 Without limiting Clause 22.9.2 (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Facility Agent), the Facility Agent will not be liable (including for negligence or any other category of liability whatsoever) for:

(a) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;

(b) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document; or

(c) without prejudice to the generality of Clauses 22.9.1(a) and 22.9.1(b), any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

(i) any act, event or circumstance not reasonably within its control; or
the general risks of investment in, or the holding of assets in, any jurisdiction, including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

22.9.2 No Party (other than the Facility Agent) may take any proceedings against any officer, employee or agent of the Facility Agent in respect of any claim it might have against the Facility Agent or in respect of any act or omission of any kind by that officer, employee or Facility Agent in relation to any Finance Document and any officer, employee or agent of the Facility Agent may rely on this Clause subject to Clause 1.3 (Third Party Rights) and the provisions of the Third Parties Act.

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

22.9.4 Notwithstanding the provisions of Clause 25 (Payment mechanics), the Facility Agent shall not be liable to the Borrower or any Lender for the failure, or the consequences of any failure, of any cross-border payment system to effect same-day settlement to an account of the Borrower or any Lender.

22.9.5 Nothing in this Agreement shall oblige the Facility Agent or the Arranger to carry out:

(a) any "know your customer" or other checks in relation to any person; or

(b) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Facility Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent or the Arranger.

22.9.6 Without prejudice to any provision of any Finance Document excluding or limiting the Facility Agent’s liability, any liability of the Facility Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been (i) agreed between the relevant Party bringing the claim and the Facility Agent to have been suffered, or (ii) finally judicially determined to have been suffered, in each case as determined by reference to the date of default of the Facility Agent or, if later, the date on which the loss arises as a result of such default, but without reference to any special conditions or circumstances known to the Facility Agent at any time which increase the amount of that loss. In no event shall the Facility Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Facility Agent has been advised of the possibility of such loss or damages.
22.10  **No duty to monitor**

The Facility Agent shall not be bound to enquire:

(a) whether or not any Default has occurred;

(b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or

(c) whether any other event specified in any Finance Document has occurred.

22.11  **Lenders' indemnity to the Facility Agent**

22.11.1 Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Facility Agent and its officers and employees, within three (3) Business Days of demand, against any cost, loss or liability (including for negligence or any other category of liability whatsoever) incurred by the Facility Agent or any of its officers or employees (otherwise than by reason of the Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 25.10 (Disruption to payment systems etc.), notwithstanding the Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) in acting as Facility Agent under the Finance Documents (except to the extent that the Facility Agent or the relevant officer or employee has been reimbursed by the Borrower pursuant to a Finance Document).

22.11.2 Subject to Clause 22.11.4 below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Facility Agent pursuant to Clause 22.11.1 above.

22.11.3 Subject to Clause 22.11.4 below, each indemnity given by each Lender under or in connection with any Finance Document is a continuing obligation, independent of that Lender's other obligations under or in connection with that Finance Document or any other Finance Document and survives after that Finance Document is terminated. It is not necessary for a person to pay any amount or incur any expense before enforcing an indemnity under or in connection with this Agreement or any other Finance Document.

22.11.4 Clauses 22.11.2 and 22.11.3 above shall not apply to the extent that the indemnity payment in respect of which the Lender claims reimbursement relates to a liability of the Facility Agent to the Borrower.

22.12  **Resignation of the Facility Agent**

22.12.1 The Facility Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the other Finance Parties and the Borrower.

22.12.2 Alternatively, the Facility Agent may resign by giving thirty (30) days' notice to the otherFinance Parties and the Borrower, in which case the relevant Majority Lenders (after consultation with the Borrower) may appoint a successor Facility Agent.

22.12.3 If the relevant Majority Lenders have not appointed a successor Facility Agent in accordance with Clause 22.12.2 within twenty (20) days after notice of resignation was given, the Facility Agent (after consultation with the Borrower) may appoint a successor Facility Agent (acting through an office in the United Kingdom).
22.12.4 If the Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Facility Agent is entitled to appoint a successor Facility Agent under Clause 22.12.3, the Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Facility Agent to become a party to this Agreement as Facility Agent) agree with the proposed successor Facility Agent amendments to this Clause 22 with the consent of the Borrower (such consent being deemed to have been given within ten (10) days of the Facility Agent notifying the Borrower unless the Borrower expressly refuses to consent within such period) and any other term of this Agreement dealing with the rights or obligations of the Facility Agent consistent with then current market practice for the appointment and protection of corporate trustees and those amendments will bind the Parties.

22.12.5 The retiring Facility Agent shall, at its own cost, make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents.

22.12.6 The Facility Agent's resignation notice shall only take effect upon the appointment of a successor.

22.12.7 Upon the appointment of a successor, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 14.3 (Indemnity to the Facility Agent) and this Clause 22.12 (Resignation of the Facility Agent). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

22.12.8 After consultation with the Borrower, the Majority Lenders may, by notice to the Facility Agent, require it to resign in accordance with Clause 22.12.2 above. In this event, the Facility Agent shall resign in accordance with Clause 22.12.2 above.

22.12.9 The Facility Agent shall resign in accordance with Clause 22.12.2 if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Finance Documents, either:

(a) the Facility Agent fails to respond to a request under Clause 12.6 (FATCA information) and the Borrower or a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

(b) the information supplied by the Facility Agent pursuant to Clause 12.6 (FATCA information) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or

(c) the Facility Agent notifies the Borrower and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

and (in each case) the Borrower or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and the Borrower or that Lender, by notice to the Facility Agent, requires it to resign.
22.13 Replacement of the Facility Agent

22.13.1 After consultation with the Borrower, the Majority Lenders may, by giving thirty (30) days' notice to the Facility Agent replace the Facility Agent by appointing a successor Facility Agent.

22.13.2 The retiring Facility Agent shall make available to the successor Facility Agent such documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents.

22.13.3 The appointment of the successor Facility Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Facility Agent. As from this date, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 22.13 (and any fees for the account of the retiring Facility Agent shall cease to accrue from (and shall be payable on) that date).

22.13.4 Any successor Facility Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

22.14 Confidentiality and disclosure

22.14.1 In acting as agent for the Finance Parties under this Agreement, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

22.14.2 If information is received by another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facilities Agent shall not be deemed to have notice of it.

22.14.3 The Borrower consents to the disclosure, by each of the Finance Parties to the others, of any information in a Finance Party's possession regarding the Borrower.

22.15 Relationship with the Lenders

22.15.1 The Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:

(a) entitled to or liable for any payment due under any Finance Document on that day; and

(b) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

22.15.2 Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number
and (where communication by electronic mail or other electronic means is permitted under Clause 27.5 (Electronic communication)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 27.2 (Addresses) and Clause 27.5 (Electronic communication) and the Facility Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

22.16 Credit appraisal by the Lenders

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Facility Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including:

(a) the financial condition, status and nature of the Borrower and any surety for, or provider of Security in respect of, its obligations under any Finance Document;

(b) the adequacy or value of any such Security, or the title of any provider of Security;

(c) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

(d) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any other person or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

(e) the adequacy, accuracy and/or completeness of any information provided by the Facility Agent, the Arranger, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

22.17 Facility Agent's management time

If the Facility Agent requires, any amount payable to the Facility Agent by any Party under any indemnity or in respect of any costs or expenses incurred by the Facility Agent under the Finance Documents after the Signing Date may include the cost of using its management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Facility Agent may notify to the relevant Party. This is in addition to any amount in respect of fees or expenses paid or payable to the Facility Agent under any other term of the Finance Documents.

22.18 Deduction from amounts payable by the Facility Agent

If any Party owes an amount to the Facility Agent under the Finance Documents the Facility Agent may, after giving notice to that Party, deduct an amount not exceeding that amount.
from any payment to that Party which the Facility Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

22.19 Reliance and engagement letters

Each Finance Party confirms that each of the Arranger and the Facility Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or Facility Agent) the terms of any reliance letter or engagement letters relating to the Borrower or if applicable, any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents and to bind it and those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

22.20 Regulatory position

The Facility Agent is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Nothing in this Agreement shall require the Facility Agent to carry on an activity of the kind specified by any provision of Part II (other than article 5 (accepting deposits)) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or to lend money to the Borrower in its capacity as Facility Agent.

22.21 Money held as banker

The Facility Agent shall be entitled to deal with money paid to it by any person for the purposes of this Agreement in the same manner as other money paid to a banker by its customers except that it shall not be liable to account to any person for any interest or other amounts in respect of the money.

22.22 Abatement of fees

The fees, commissions and expenses payable to the Facility Agent for services rendered and the performance of its obligations under this Agreement shall not be abated by any remuneration or other amounts or profits receivable by the Facility Agent (or by any of its associates) in connection with any transaction effected by the Facility Agent with or for the Lenders or the Borrower.

23 Conduct of business by the Finance Parties

No provision of this Agreement will:

(a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

(b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

(c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

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24 Sharing among the Finance Parties

24.1 Payments to Finance Parties

If a Finance Party (a Recovering Finance Party) receives or recovers any amount by payment, by way of set-off or otherwise from an Obligor or any other person other than in accordance with Clause 25 (Payment mechanics) and applies that amount to a payment due under the Finance Documents (a Recovered Amount) then:

(a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Facility Agent;

(b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 25 (Payment mechanics), without taking account of any Tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and

(c) the Recovering Finance Party shall, within three Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the Sharing Payment) equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 25.6 (Partial payments).

24.2 Redistribution of payments

The Facility Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the Sharing Finance Parties) in accordance with Clause 25.6 (Partial payments) towards the obligations of that Obligor to the Sharing Finance Parties.

24.3 Recovering Finance Party's rights

24.3.1 On a distribution by the Facility Agent under Clause 24.2 (Redistribution of payments) the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.

24.3.2 If and to the extent that the Recovering Finance Party is not able to rely on its rights under Clause 24.3.1, the relevant Obligor will be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

24.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

(a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 24.2 (Redistribution of payments) shall, upon request of the Facility Agent, pay to the Facility Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
(b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

24.5 Exceptions

24.5.1 This Clause 24 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

24.5.2 A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(a) it notified the other Finance Party of the legal or arbitration proceedings; and

(b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

25 Payment mechanics

25.1 Payments to the Facility Agent

25.1.1 On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or that Lender (as the case may be) shall make the same available to the Facility Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Facility Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

25.1.2 Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Facility Agent) with such bank as the Facility Agent specifies.

25.2 Alternative Payment Arrangements

If, at any time, it shall become impracticable (by reason of any action of any governmental authority or any change of law, exchange control regulations or any similar event) for the Borrower to make any payments hereunder in the manner specified in Clause 25.1 (Payments to the Facility Agent), then the Borrower may agree with the Facility Agent or each and any of the Lenders alternative arrangements for the payment of amounts due to such Lender hereunder provided that, in the absence of any such agreement with the Lender, the Borrower shall be obliged to make all payments due to such Lender in the manner specified herein. Upon reaching such agreement the Borrower and the relevant Lender shall immediately notify the Facility Agent thereof and shall promptly notify the Facility Agent of all payments made direct to such Lender.

25.3 Distributions by the Facility Agent

Each payment received by the Facility Agent under the Finance Documents for another Party shall, subject to Clause 25.4 (Distributions to the Borrower) and Clause 25.5 (Clawback), be made available by the Facility Agent as soon as practicable after receipt to the Party entitled
to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Facility Agent by not less than five (5) Business Days’ notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by that Party).

25.4 Distributions to the Borrower

The Facility Agent may (with the consent of the Borrower or in accordance with Clause 26 (Set-off)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

25.5 Clawback

25.5.1 Where a sum is to be paid to the Facility Agent under the Finance Documents for another Party, the Facility Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

25.5.2 If the Facility Agent pays an amount to another Party and it proves to be the case that the Facility Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Facility Agent shall on demand refund the same to the Facility Agent together with interest on that amount from the date of payment to the date of receipt by the Facility Agent, calculated by the Facility Agent to reflect its cost of funds.

25.6 Partial payments

25.6.1 If the Facility Agent receives or recovers a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Facility Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:

(a) first, in or towards payment pro rata of any unpaid amount owing to the Facility Agent under the Finance Documents;

(b) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;

(c) thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and

(d) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

25.6.2 The Facility Agent shall, if so directed by the Majority Lenders, vary the order set out in Clauses 25.6.1(b) to 25.6.1(d).

25.6.3 Clauses 25.6.1 and 25.6.2 will override any appropriation made by the Borrower.

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25.7 No set-off by the Borrower

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

25.8 Business Days

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

25.8.2 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

25.9 Currency of account

25.9.1 Subject to Clauses 25.9.4 and 25.9.5, euro is the currency of account and payment for any sum due from the Borrower under any Finance Document.

25.9.2 A repayment of the Loan or any Unpaid Sum or a part of the Loan or Unpaid Sum shall be made in the currency in which the Loan or Unpaid Sum is denominated on its due date.

25.9.3 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

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

25.9.5 Any amount expressed to be payable in a currency other than euro shall be paid in that other currency.

25.10 Disruption to payment systems etc.

If either the Facility Agent determines (in its discretion) that a Disruption Event has occurred or the Facility Agent is notified by the Borrower that a Disruption Event has occurred:

(a) the Facility Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Facility Agent may deem necessary in the circumstances;

(b) the Facility Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

(c) the Facility Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

(d) any such changes agreed upon by the Facility Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the
Finance Documents notwithstanding the provisions of Clause 31 (Amendments and waivers):

(e) the Facility Agent shall not be liable for any damages, costs or losses whatsoever (including for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Facility Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 25.10; and

(f) the Facility Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

26 Set-off

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

27 Notices

27.1 Communications in writing

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

27.2 Addresses

27.2.1 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

(a) in the case of the Borrower and the Facility Agent, that identified with their respective names in Clause 27.2.2; and

(b) in the case of each Lender, that notified in writing to the Facility Agent on or before the date on which it becomes a Party,

or any substitute address or fax number or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five (5) Business Days' notice.

27.2.2 The addresses referred to in Clause 27.2.1 are as follows:

(a) The Borrower:

Address: Ministry of Finance
          PO Box M40
          Accra
          Republic of Ghana

Tel: +233 302 688 949
Fax: +233 302 688 016  
Email: chlefdirector@mofep.gov.gh  
Sarkhurst@mofep.gov.gh  
iarthur@mofep.gov.gh  
Attention: Chief Director, Director DMD

(b) The Facility Agent:

Address: HSBC Bank plc  
Corporate Trust & Loan Agency  
Level 28, 8 Canada Square  
London E14 5HQ

Attention: **  
Fax: +44 20 **  
Email: **  
Ref: FC**

(c) The Arranger:

Address: HSBC Bank plc  
Export and Specialised Finance  
Level 2, 8 Canada Square  
London E14 5HQ

Attention: Sergey Karmalito  
Fax: +44 20 7992 4622  
Email: sergey.karmalito@hsbc.com

27.3 Delivery

27.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

(a) if by way of fax, when received in legible form; or

(b) if by way of letter, when it has been left at the relevant address five (5) Business Days after being sent by an internationally recognised courier to it at that address,

(c) if by way of email, when received in legible form,

and, if a particular department or officer is specified as part of its address details provided under Clause 27.2 (Addresses), if addressed to that department or officer.

27.3.2 Any communication or document which becomes effective, in accordance with Clause 27.3.1 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

27.3.3 Any communication or document to be made or delivered to the Facility Agent will be effective only when actually received by the Facility Agent and then only if it is expressly marked for the attention of the department or officer identified in Clause 27.2.2 (or any substitute department or officer as the Facility Agent shall specify for this purpose).

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27.3.4 All notices under this Agreement from or to an Obligor shall be sent through the Facility Agent.

27.3.5 Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to each of the Obligors.

27.3.6 Notwithstanding the foregoing, each Utilisation Request must be received by the Facility Agent in original form.

27.4 Notification of address and fax number

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 27.2 (Addresses) or changing its own address or fax number, the Facility Agent shall notify the other Parties.

27.5 Electronic communication

27.5.1 Any communication (other than a Utilisation Request) to be made between the Facility Agent and another Party under or in connection with the Finance Documents may be made by electronic mail or other electronic means if the Facility Agent and the relevant Party:

(a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

(b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

(c) notify each other of any change to their address or any other such information supplied by them.

27.5.2 Any electronic communication made between the Facility Agent and another Party will be effective only when actually received in readable form and in the case of any electronic communication made by that Party to the Facility Agent only if it is addressed in such a manner as the Facility Agent shall specify for this purpose.

27.5.3 Any electronic communication which becomes effective, in accordance with Clause 27.5.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

27.6 English language

27.6.1 Any notice given under or in connection with any Finance Document must be in English.

27.6.2 All other documents provided under or in connection with any Finance Document must be:

(a) in English; or

(b) if not in English, and if so required by the Facility Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.
28 Calculations and certificates

28.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

28.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

28.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

29 Partial invalidity

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

30 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

31 Amendments and waivers

31.1 Required consents

31.1.1 Subject to Clause 31.2 (Exceptions) any term of the Finance Documents may be amended or waived only with the written consent, the Majority Lenders and the Borrower, and any such amendment or waiver will be binding on all Parties.

31.1.2 The Facility Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 31, and shall promptly give notice of such amendment or waiver to the other Finance Parties.

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31.2 Exceptions

31.2.1 An amendment or waiver that has the effect of changing or which relates to:

(a) the definition of Majority Lenders in Clause 1.1 (Definitions);
(b) an extension to the date of payment of any amount under the Finance Documents;
(c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
(d) a change in the currency of any payment under any Finance Document;
(e) an increase in or an extension of any Commitment or the Total Commitments;
(f) an extension of the Availability Period;
(g) a change to the Borrower;
(h) any provision which expressly requires the consent of all the Lenders; or
(i) Clauses 2.2 (Finance Parties' rights and obligations), 6 (Repayment), 7 (Prepayment and cancellation), 8 (Interest), 9 (Interest Periods), 21 (Changes to the Lenders), 24 (Sharing among the Finance Parties) or this Clause 31,

shall not be made without the prior consent of all the Lenders.

31.2.2 An amendment or waiver which relates to, or would otherwise affect, the rights or obligations of the Arranger or the Facility Agent (each in their capacity as such) may not be effected without the consent of the Arranger or the Facility Agent, as the case may be.

32 Confidentiality

32.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 32.2 (Disclosure of Confidential Information), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

32.2 Disclosure of Confidential Information

Any Finance Party may disclose:

(a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
(b) to any person:

(i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

(iii) appointed by any Finance Party or by a person to whom Clauses 32.2(a) or 32.2(b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under Clause 22.15.2);

(iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clauses 32.2(b)(i) or (ii) above;

(v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

(vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

(vii) who is a Party; or

(viii) with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

(a) in relation to Clauses 32.2(b)(i), (ii) or (iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

(b) in relation to Clause 32.2(b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
in relation to Clauses 32.2(b)(v), (vi) or (vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

(c) to any person appointed by that Finance Party or by a person to whom Clauses 32.2(b)(i) or (ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this Clause 32.2(c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party;

(d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information; and

(e) to the EPC Contractor such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (e) has provided a confidentiality undertaking to the Facility Agent on terms substantially the same as this Clause 32 (Confidentiality).

32.3 Disclosure to numbering service providers

Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and the Borrower the following information:

(a) name of the Borrower;
(b) country of domicile of the Borrower;
(c) place of incorporation of the Borrower;
(d) date of this Agreement;
(e) Clause 35 (Governing law);
(f) the names of the Facility Agent and the Co-ordinating Arranger;
(g) date of each amendment and restatement of this Agreement;
(h) the amount and name of the Facility;
(i) amount of Total Commitments;
(j) currency of the Facility;
(k) type of Facility;
(l) ranking of Facility;
(m) termination date for Facility;
(n) changes to any of the information previously supplied pursuant to sub paragraphs (a) to (m) above; and
(o) such other information agreed between such Finance Party and the Borrower,
to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

32.3.2 The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

32.3.3 The Borrower represents that none of the information set out in paragraphs (a) to (o) of this Clause 32.3 is, nor will at any time be, unpublished price-sensitive information.

32.3.4 The Facility Agent shall notify the Borrower and the other Finance Parties:
(a) the name of any numbering service provider appointed by the Facility Agent in respect of this Agreement, the Facility and the Borrower, and
(b) the number or, as the case may be, numbers assigned to this Agreement, the Facility and the Borrower by such numbering service provider.

32.4 Entire agreement

This Clause 32 (Confidentiality) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

32.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

32.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:
(a) of the circumstances of any disclosure of Confidential Information made pursuant to Clause 32.2(b)(v) except where such disclosure is made to any of the persons
referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 32 (Confidentiality).

32.7 Continuing obligations

The obligations in this Clause 32 (Confidentiality) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

(a) the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

33 Confidentiality of Funding Rates and Reference Bank Quotations

33.1 Confidentiality and disclosure

33.1.1 The Facility Agent and the Borrower agree to keep each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by Clauses 33.1.2, 33.1.3 and 33.1.4.

33.1.2 The Facility Agent may disclose:

(a) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 8.4 (Notification of rates of interest); and

(b) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Facility Agent and the relevant Lender or Reference Bank, as the case may be.

33.1.3 The Facility Agent may disclose any Funding Rate or any Reference Bank Quotation, and the Borrower may disclose any Funding Rate, to:

(a) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this Clause 33.1.3(a) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
(b) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances;

(c) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Facility Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and

(d) any person with the consent of the relevant Lender or Reference Bank, as the case may be.

33.1.4 The Facility Agent's obligations in this Clause 33 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.4 (Notification of rates of interest) provided that (other than pursuant to Clause 33.1.2(a)) the Facility Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

33.2 Related obligations

33.2.1 The Facility Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Facility Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Facility Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Facility Agent, any Reference Bank Quotation for any unlawful purpose.

(a) The Facility Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:

(i) of the circumstances of any disclosure made pursuant to Clause 33.1.3(b) (Confidentiality and disclosure) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(ii) upon becoming aware that any information has been disclosed in breach of this Clause 33.

33.3 No Event of Default

No Event of Default will occur under Clause 20.2 (Other obligations) by reason only of an Obligor's failure to comply with this Clause 33.
34 Counterparts

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

35 Governing law

English law governs this Agreement and any non-contractual obligations arising from or connected with it.

36 Enforcement

36.1 Arbitration

36.1.1 Subject to the rights of the Finance Parties to commence proceedings in the courts of England pursuant to Clause 36.2 (Jurisdiction), all disputes arising under, out of or in connection with any Transaction Document shall be settled conclusively and with binding effect under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the Rules. The Parties to this Agreement hereby agree that:

(a) the governing law for the arbitration is English law;
(b) the place of arbitration shall be London; and
(c) the language to be used in the arbitral proceedings shall be English.

36.1.2 The decision of the arbitral tribunal will be final and binding upon all Parties to this Agreement without the possibility of an appeal and is enforceable by the English courts.

36.2 Jurisdiction

Notwithstanding Clause 36.1 (Arbitration):

(a) the Parties irrevocably agree, for the benefit of the Finance Parties and subject to Clause 36.2(c) below that the courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with any Transaction Document (including a dispute regarding the existence, validity or termination of any Transaction Document) (a Dispute) and to enforce any decision of the arbitral tribunal.

(b) the Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

(c) this Clause 36.2 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

(d) the Borrower hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the deciding of a venue of any action or proceeding arising out of or relating to this Agreement or any of the other Transaction Documents to which it is a party in any English court. The Borrower hereby irrevocably waives, to the fullest extent
permitted by applicable law, the defence of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(e) to the extent that the Borrower has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, the Borrower hereby irrevocably waives such immunity in respect of its obligations under this Agreement and the other Transaction Documents to which it is a party to the fullest extent allowed by law.

36.3 Waiver of Immunity

36.3.1 The Borrower irrevocably acknowledges and accepts that any Transaction Document and all agreements entered into in connection herewith are commercial rather than public or governmental acts.

36.3.2 In any event, subject to Clause 36.3.3, the Borrower hereby consents to waive any claim it may have or may acquire to immunity on the grounds of sovereignty or otherwise (for itself and its property, present or subsequently acquired) to the fullest extent allowed by law in relation to any disputes arising out of or in connection with any Transaction Document under any law or in any jurisdiction, notwithstanding the dispute(s) relate(s) to acts of a sovereign or governmental character, from:

(a) the service and pursuit of any proceedings arising out of or in connection with any Transaction Document;

(b) procedural privileges relating to the obligation to disclose documents or information;

(c) any action, before or after proceedings have been commenced, including but not limited to proceedings for injunction, specific performance, or recovery of land or other property, any set off, attachment or execution or enforcement of a judgment or arbitral award against its property, or in an action in rem for its arrest, detention or sale irrespective of its use or intended use, commercial or otherwise.

36.3.3 Notwithstanding Clauses 36.2 and 36.3.2, the Borrower does not waive any right to immunity in relation to diplomatic, consular, military or defence assets, petroleum assets protected by the "Petroleum Revenue Management Act, 2011 (Act 815)" and assets which have been expressly recognised as belonging to the public domain of Ghana in accordance with the laws of the Republic of Ghana.

36.4 Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

(a) appoints the High Commission of the Republic of Ghana in the United Kingdom (currently located at 13 Belgrave Square, London SW1X 8PN, United Kingdom) as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Documents;

(b) will advise the Finance Parties of any changes made to the above named process agent. In the event the Borrower does not advise of such changes, the last process agent on record shall continue to apply; and
(c) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

This Agreement has been entered into on the date stated at the beginning of this Agreement.
<table>
<thead>
<tr>
<th>Name of Original Lenders</th>
<th>Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>HSBC Bank plc</td>
<td>EUR [4,500,000]</td>
</tr>
</tbody>
</table>
Schedule 2 - Conditions precedent

The documents and other evidence referred to in Clause 4.1 (Initial conditions precedent) are as follows:

Transaction Documents

1  Executed originals of the Finance Documents.

2  A certified copy of the EPC Contract duly executed by the parties thereto.

Obligors

3  An original or certified copy of the relevant approval of the parliament of the Republic of Ghana duly signed by the Clerk of Parliament, authorising the Borrower to enter into the Finance Documents and to perform its obligations thereunder.

4  An original or certified copy of the relevant approval of the parliament of the Republic of Ghana duly signed by the Clerk of Parliament, authorising the Buyer to enter into the EPC Contract and to perform its obligations thereunder.

5  A specimen signature of each person authorised by evidence referred to in paragraph 3 above, on behalf of the Borrower, to execute the Finance Documents to which it is a party, to sign and/or despatch all documents and notices (including any Utilisation Request) to be signed and/or despatched by it under or in connection to the Finance Documents to which it is a party. Such evidence shall be updated by the Borrower if there shall be any change of such persons and/or their authority.

6  A certificate of a duly authorised signatory of the Borrower:
   (a) certifying that each copy document relating to the Borrower specified in this Schedule 2 is correct, complete and in full force and effect and, if not in English, confirming that the English translation thereof is correct and complete;
   (b) certifying that no Default has occurred and is continuing as at the initial Utilisation Date;
   (c) confirming that the representations and warranties on the part of the Borrower contained in this Agreement are true and accurate;
   (d) confirming that the Obligors have obtained all consents, licenses, permits and authorisations and fulfilled all conditions of governmental and other authorities necessary to enable the Obligors to enter into the Transaction Documents and to make payment of all sums in euro or other foreign currency which become due from the Obligors under the Transaction Documents; and

7  A certificate of a duly authorised signatory of the Buyer:
   (a) setting out the full name, title and true signature of each representative of the Buyer authorised to countersign on behalf of the Buyer any Utilisation Request pursuant to this Agreement; [and]
   (b) certifying that the EPC Contract is in full force and effect; [and]
(c) setting out the full name and true signature of each representative of the Engineer (if one is appointed) authorised to sign payment certificates and countersign EPC Contractor invoices in respect of Eligible Services performed under the EPC Contract.

EPC Contractor and EPC Contract

8  A certificate, signed by a duly authorised officer of the EPC Contractor containing the names and signatures of each person authorised to sign (a) certificates, confirmations and undertakings required under this Agreement, and (b) any other document that the EPC Contractor may present to the Facility Agent or the Lenders from time to time. Such evidence shall be updated by the EPC Contractor if there shall be any change of such persons and/or their authority.

9  Written confirmation from the EPC Contractor confirming:

(a) that the EPC Contract is in full force and effect and constitutes its valid, legal and binding obligations;

(b) that all approvals, authorisations and consents required in the Republic of Ghana and any other relevant country in connection with the EPC Contract have been obtained and are in full force and effect, or that no such approvals, authorisations and consents are required; and

(c) the effective date of the EPC Contract.

10 Evidence that the EPC Contract complies with the Public Procurement Act of Ghana.

11 Evidence of the completion of a value for money audit in respect of the Project.

12 A copy of a certificate from:

(a) the insurers or insurance agents or brokers for the Project; or

(b) the relevant insurance company or supervisory entity,

confirming that the Buyer or the EPC Contractor has insurance for the goods and services supplied under the EPC Contract in such amounts for the period until the Project Commissioning Date and covering (without limitation) patrimonial, civil responsibility and transportation insurance (in a minimum amount equal to the replacement value of goods and services supplied under the EPC Contract) and associated risks and liabilities.

Process Agent

13 Evidence that any process agent referred to in Clause 36.4 (Service of Process) has accepted its appointment, and that the process agent has waived all rights, privileges, inviolabilities and immunities that the High Commission or its officers may have that might otherwise prevent or inhibit service of process.

Consents

14 Evidence that all governmental and other licences, approvals, consents, registrations and filings necessary for any matter or thing contemplated by the Transaction Documents and for the legality, validity, enforceability, admissibility in evidence and effectiveness thereof
(including, but without prejudice to the generality of the foregoing, any exchange control approvals that may be required and confirmation that this Agreement and the EPC Contract have been approved by the Parliament of the Republic of Ghana) have been obtained or effected on an unconditional basis and remain in full force and effect (or, in the case of effecting of any registrations and filings, that arrangements satisfactory to it have been made for the effecting of the same within any applicable time limit).

Legal opinions

15 A legal opinion of Dentons UK and Middle East LLP as to matters of English law in the form distributed to the Original Lenders prior to the Signing Date.

16 A legal opinion of ENSafrica as to matters of the laws of Ghana in the form distributed to the Original Lenders prior to the Signing Date.

17 A legal opinion of the Attorney General of the Republic of Ghana as to the capacity of the Borrower.

Other documents and evidence

18 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clauses 11 (Fees) and 16 (Costs and expenses) have been paid or will be paid on or by the first Utilisation Date.

19 Evidence that the ECA Facility Agreement is in full force and effect and that all conditions precedent to its effectiveness (other than the equivalent condition precedent relating to the conditions precedent under this Agreement) have been satisfied or waived.
Schedule 3 – Utilisation Documents

Part 1 - Form of Utilisation Request

From: The Government of the Republic of Ghana, acting through the Ministry of Finance

To: HSBC Bank plc as Facility Agent

Ref: [** ]

Dated:

Dear Sirs

Ministry of Finance, Ghana – [€4,500,000] term loan Facility Agreement dated [** ] (the Agreement)

1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2 This Utilisation Request is in respect of payments due under the EPC Contract.

3 We request a Utilisation in euro under the Agreement on the following terms:

   Proposed Utilisation Date: [** ] (or, if that is not a Business Day, the next Business Day)

   Utilisation Amount: [** ];

   Currency: euro

4 [We attach the following supporting documents as required by Clauses 4.2 (Further conditions precedent for each Utilisation) and 5.2 (Completion of a Utilisation Request): [** ]] 

5 This Utilisation Request is irrevocable. Notwithstanding the irrevocable nature of this Utilisation Request, our authorisation to you to disburse any Utilisation will only become effective once you have received (a) the bills of lading referred to in paragraph 4 above accompanied by the appropriate Exporter Declaration and (b) a Buyer Approval Letter in respect of the invoice[s] attached to this Utilisation Request.

6 We confirm that:

   (a) the amount referred to in paragraph 3 above does not include any amount for which a drawing has been made under any other loan facility agreement;

   (b) the proceeds of the requested Loan complies with Clause 3 (Purpose) of the Agreement;
(c) the amount referred to in paragraph 2 above does not include any amount in respect of any matter which is currently the subject of any legal proceedings, nor to the best of our knowledge and belief will it become the subject of legal proceedings;

(d) no Default is continuing or would result from the proposed Loan;

(e) the Repeating Representations are true in all material respects;

(f) you may rely on the accuracy and completeness of all information and documents contained in or supplied with this certificate or delivered pursuant hereto; and

(g) the timing of the proposed Utilisation Date and aggregate amount requested herein complies with Clause 5.2 (Completion of a Utilisation Request);

(h) all documents supplied by us in support of this Utilisation Request are true copies of the originals and are in all material respects in conformity with the EPC Contract and you may rely on (and have no obligation to verify the authenticity of) the accuracy and completeness of all information and documents contained in or supplied with or in connection with this Utilisation Request; and

(i) the EPC Contract is in full force and effect and has not been suspended, interrupted, cancelled, terminated, materially amended or materially modified (in whole or in part) and there is no default under the Contract which has occurred and is continuing.

7 The proceeds of the Utilisation should be credited to the following account of the EPC Contractor:

Beneficiary:  
Address:  
Bank:  
IBAN (EUR account):  
Swift Code:  

Yours faithfully

..............................................................

duly authorised by and for and on behalf of
The Government of the Republic of Ghana,
acting through the Ministry of Finance

17 May 2018
Part 2 - Form of Exporter Declaration

Exporter Declaration No.[** ]

To: HSBC Bank plc (as Facility Agent)
8 Canada Square
London
E14 5HQ
United Kingdom

Copy: The Government of the Republic of Ghana, acting through the Ministry of Finance (the Borrower)

From: Aqua Africa Limited

Dated: **

Ministry of Finance, Ghana – [€4,500,000] term loan Facility Agreement dated [** ] (the Agreement)

1  We refer to the Agreement and to the Utilisation Request dated [** ] on or about the date hereof. This is an Exporter Declaration issued under the Agreement. Terms used in this Exporter Declaration have the same meaning as defined in the Agreement unless otherwise defined in this Exporter Declaration.

2  We certify that the cumulative total amount invoiced by us under the EPC Contract and approved for payment by the Borrower in accordance with the EPC Contract is EUR[** ].

3  The total Contract Price is EUR[** ].

4  We also confirm that the cumulative total amount of payments received by us from the Borrower as at the date of this Exporter Declaration in respect of goods and/or services supplied or provided under the EPC Contract is EUR[** ].

5  We certify that we have not received payment of the amounts indicated in the invoices attached to the relevant Utilisation Request.

6  We certify that the EPC Contract is in full force and effect and has not been suspended, interrupted, cancelled, terminated, materially amended or materially modified (in whole or in part) and there is no default under the Contract which has occurred and is continuing.

7  We certify that there are no disputes under the EPC Contract and that no matter under the EPC Contact is subject to any legal proceedings[.] except as detailed below:[]

8  We certify that the information and documents provided by us to you are true and correct in all respects and you can rely on the information provided by us.

9  This Exporter Declaration is irrevocable.

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1 Details of proceedings to be inserted, if relevant.

17 May 2018
NOT-APPL - LML/PPEH/054318.00655/58853143.02
10 We shall have no obligation under, nor be third party beneficiary under, the Agreement or any other credit or financing agreement or third party document relating to the Agreement as a result of our provision of this Exporter Declaration and the certifications and confirmations we have made in this Exporter Declaration. Nothing in this Exporter Declaration shall modify, amend, limit or reduce in any way our rights or obligations under the EPC Contract.

11 This Exporter Declaration and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.

Yours faithfully

..............................................................
duly authorised for and on behalf of
Aqua Africa Limited
To: HSBC Bank plc (as Facility Agent)  
8 Canada Square  
London  
E14 5HQ  
United Kingdom  

Copy: The Government of the Republic of Ghana, acting through the Ministry of Finance (the Borrower)  

From: The Government of the Republic of Ghana, acting through the Ministry of Sanitation and Water Resources  

Dated: [ ]  

Dear Sirs  

Aqua Africa Project  

Ministry of Finance, Ghana – [€4,500,000] term loan Facility Agreement dated [** ] (the Agreement)  

1 We confirm that we have approved the following invoices issued by the Contractor in relation to the Contract, copies of which are attached to this letter:  

[insert invoice numbers].  

2 This letter is irrevocable.  

3 This letter and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.  

Yours faithfully  

[Signature]  

duly authorised for and on behalf of  
The Government of the Republic of Ghana,  
acting through the Ministry of Sanitation and Water Resources  

17 May 2018
Schedule 5 - Form of Transfer Certificate

To: HSBC Bank plc as Facility Agent
Reference: [** ]

From: ** (the Existing Lender) and ** (the New Lender)

Dated:

Ministry of Finance, Ghana – [€4,500,000] term loan Facility Agreement dated [** ] (the Agreement)

1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.

2 We refer to Clause 21.5 of the Agreement (Procedure for transfer):

(a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights, interests and obligations referred to in the Schedule in accordance with Clause 21.5.

(b) The proposed Transfer Date is [** ].

(c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 27.2 (Addresses) are set out in the Schedule.

3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 21.4.3 of the Agreement (Limitation of responsibility of Existing Lenders).

4 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.

5 English law governs this Transfer Certificate, its interpretation and any non-contractual obligations arising from or connected with it.

6 This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.
The Schedule – Commitment/rights and obligations to be transferred

All our Commitment and all our rights, interests and liabilities under the following documents:

(a) The Agreement

(b)

Facility Office address, fax number and attention details for notices and account details for payments,

Existing Lender New Lender

By: By:

This Transfer Certificate is accepted by the Facility Agent and the Transfer Date is confirmed as .

Facility Agent

By:
Schedule 6 – Form of Assignment Agreement

To: [Facility Agent] (Reference [** ])
And to: The Government of the Republic of Ghana, acting through the Ministry of Finance as Borrower
From: ** (the Existing Lender) and ** (the New Lender)
Dated:

Ministry of Finance, Ghana - Facility Agreement
dated [** ] (the "Agreement")

1 We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.

2 We refer to Clause 21.6 (Procedure for assignment):
   (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
   (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement specified in the Schedule.
   (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.

3 The proposed Transfer Date is [** ].

4 On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.

5 The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 27.2 (Addresses) are set out in the Schedule.

6 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 21.4.3 (Limitation of responsibility of Existing Lenders).

7 This Assignment Agreement acts as notice to the Facility Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 21.7 (Copy of Transfer Certificate or Assignment Agreement to Borrower), to the Borrower (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.

8 This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
9. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it, are governed by English law.

10. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.
THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender] [New Lender]

By: By:

This Assignment Agreement is accepted by the Facility Agent and the Transfer Date is confirmed as [** ].

Signature of this Assignment Agreement by the Facility Agent constitutes confirmation by the Facility Agent of receipt of notice of the assignment referred to herein, which notice the Facility Agent receives on behalf of each Finance Party.

[Facility Agent ]

By:
EXECUTION PAGE

The Borrower
Signed by
duly authorised for and
on behalf of
The Government of the Republic of Ghana,
acting through the Ministry of Finance

The Original Lender
Signed by
duly authorised for and
on behalf of
HSBC Bank plc

The Facility Agent
Signed by
duly authorised for and
on behalf of
HSBC Bank plc

The Arranger
Signed by
duly authorised for and
on behalf of
HSBC Bank plc
IMPLEMENTATION OF A RURAL COMMUNITIES AND SMALL TOWNS WATER SUPPLY PROJECT IN THE REPUBLIC OF GHANA

ANNEX 3

Supply Contract
DATED [insert date]

(1) MINISTRY OF SANITATION AND WATER RESOURCES FOR THE REPUBLIC OF GHANA

- and -

(2) AQUA AFRICA

SUPPLY CONTRACT
RELATING TO
RURAL & PERI-URBAN NANO-FILTRATION WATER PROJECTS IN GHANA

Pinsent Masons
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CONTRACT AGREEMENT

THIS Contract Agreement is made on [insert date]

BETWEEN:

(1) MINISTRY OF SANITATION AND WATER RESOURCES FOR THE REPUBLIC OF GHANA, [insert details and address of Employer] (the "Employer" which expression includes the Employer's successors and assigns) and

(2) AQUA AFRICA LIMITED (Company No. 08820766) of 201 Haverstock Hill, London, England, NW3 4QG (the "Contractor" which expression includes the Contractor's successors and permitted assigns).

WHEREAS:

(A) The Employer desires that the Works and Maintenance Services, known as the installation, commissioning and maintenance of 450 integrated R1 Nano-filtration units with AQtap payment at 450 worksites ("Project"), as more particularly described in the Employer's Requirements, should be designed, executed, provided and completed by the Contractor in accordance with the Contract.

(B) The Contractor has agreed to design, execute and complete the Works, provide the Maintenance Services and to remedy any defects in the Works in accordance with the Contract.

(C) HSBC Bank and UK Export Finance will provide funding for the Project, and the Parties agree to comply with their obligations in relation to the funding requirements as set out in the Contract.

THE EMPLOYER AND THE CONTRACTOR AGREE as follows:

1. In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to unless otherwise defined in this Contract Agreement.

2. The following documents shall be deemed to form and be read and construed as to mean the Contract (the "Contract"):  
   (a) this Contract Agreement;  
   (b) the Appendix (Special Conditions) appended hereto;  
   (c) the General Conditions of Contract appended hereto;  
   (d) the Employer's Requirements;  
   (e) the Schedule of Rates;  
   (f) the Contractor's Proposal; and  
   (g) the Completion Checklist.

3. If a conflict, ambiguity or discrepancy is found between any of the above documents forming the Contract, such conflict, ambiguity or discrepancy shall be resolved in the descending order of priority of the documents listed in paragraph 2 of this Contract Agreement.

4. The Employer hereby agrees to pay the Contractor the Contract Price in consideration of the Contractor designing, executing and completing the Works, providing Maintenance Services and remedying any defects in the Works in accordance with the Contract and performing all of its other obligations in accordance with the Contract.
5. Notwithstanding the date of the Contract Agreement, the Contract shall come into full force and effect on the date ("Effective Date") upon which each of the following conditions precedent has been satisfied:

(a) the Contractor has received written confirmation and evidence from the Employer that all the Loan Agreements have been executed;

(b) the Contractor has received written confirmation and evidence from the Employer that all the conditions precedent in the UKEF Loan Agreement have been satisfied or waived by the Bank to enable draw down on the UKEF Loan; and

(c) the Contractor has received payment of the advance payment under Sub-Clause 11.2 [Advance Payment]

6. Notwithstanding the provisions of paragraph 5 of this Contract Agreement, the respective rights and obligations of the Parties contained in the following provisions shall come into full force and effect at the date of this Contract Agreement:

(a) paragraphs 1 to 8 inclusive (excluding paragraph 4) of this Contract Agreement; and

(b) Sub-Clause 1 [Definitions], Sub-Clause 1.2 [Interpretation], Sub-Clause 1.4 [Law], Sub-Clause 1.5 [Communications], Sub-Clause 2.5 [Loan Agreements], Sub-Clause 2.7 [Employer's Financial Arrangements], Sub-Clause 4.9 [Confidentiality], Sub-Clause 11.2 [Advance Payment], Sub-Clause 13.3 [Limitation of Liability] and Clause 16 [Resolution of Disputes] of the Conditions.

7. If any part of the Works has been executed by the Contractor prior to the Effective Date such part of the Works shall be deemed to have been executed under the Contract.

8. The Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full original of this Contract for all purposes.

IN WITNESS WHEREOF, the Parties have caused the Contract to be executed the day and year stated above.

EXECUTED BY THE AUTHORISED SIGNATURE(S) OF THE EMPLOYER

Name ..................................................
Position ..................................................
Signature .............................................

EXECUTED BY THE AUTHORISED SIGNATURE(S) OF THE CONTRACTOR

Name ..................................................
Position ..................................................
Signature .............................................
<table>
<thead>
<tr>
<th>Item</th>
<th>Particulars of Contract</th>
<th>Conditions of Contract Clause / Sub-Clause No.</th>
<th>Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Phases and Time for Completion</td>
<td>1.22, 1.23 and 7.2</td>
<td>1. Installation of the Works at 75 Sites as more particularly described in the Employer's Requirements</td>
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<td>2. Installation of the Works at 150 Sites as more particularly described in the Employer's Requirements</td>
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<td>3. Installation of the Works at 225 Sites as more particularly described in the Employer's Requirements</td>
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<tr>
<td>2.</td>
<td>Language</td>
<td>1.5</td>
<td>English</td>
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<tr>
<td>3.</td>
<td>Authorised person</td>
<td>3.1</td>
<td>Name: [Insert]</td>
</tr>
<tr>
<td>4.</td>
<td>Employer's Representative (if known)</td>
<td>1.15 &amp; 3.2</td>
<td>Name: [Insert]</td>
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<td></td>
<td></td>
<td></td>
<td>Address: [Insert]</td>
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<tr>
<td>5.</td>
<td>Contractor's Representative (if known)</td>
<td>1.13 &amp; 4.2</td>
<td>Name: TBC</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Address: [Insert]</td>
</tr>
<tr>
<td>6.</td>
<td>Access Date to Project Sites</td>
<td>2.1</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>7.</td>
<td>Approved Subcontractors</td>
<td>4.3</td>
<td>The Contractor may engage the following Subcontractors who have sufficient expertise for the work to be allocated to them:</td>
</tr>
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<td></td>
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<td></td>
<td>• ASGC</td>
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<td></td>
<td></td>
<td>• Aqua Africa Ghana</td>
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<td>• H2Go</td>
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<td>• Grundfos</td>
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<td>• McDan</td>
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<td></td>
<td>• David Walter Ghana</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Others as required</td>
</tr>
<tr>
<td>Item</td>
<td>Particulars of Contract</td>
<td>Conditions of Contract Clause / Sub-Clause No.</td>
<td>Data</td>
</tr>
<tr>
<td>------</td>
<td>-------------------------</td>
<td>--------------------------------------------</td>
<td>------</td>
</tr>
</tbody>
</table>
| 8.   | Programme               | 7.3                                        | • Time for submission: Within 30 days of the Commencement Date  

• The Contractor shall submit a revised Programme to the Employer for approval if, for any reason, there are any changes to the approved Programme that might affect any the Time for Completion of the Works or Phase.  

• Form of programme: GANTT chart |
| 9.   | Delay to a Phase        | 7.5                                        | The Contractor's maximum liability for delay for failure to complete a Phase by the relevant Time for Completion is 1% of the Contract Price. |
| 10.  | Defects Notification Period | 1.19 & 9.1  | Three (3) months calculated from the date of each Taking-Over Certificate. |
| 11.  | Maintenance Services Period | 1.47 & 9.4  | Four (4) years calculated from the end of each Defects Notification Period |
| 12.  | Project Cost Plan Total | 1.52  | The Project Cost Plan Total is thirty million Euros (EUR30,000,000) |
| 13.  | Contract Price          | 1.24  | The Contract Price is thirty million Euros (EUR30,000,000) |
| 14.  | Retention               | 11.5  | 2.5% of the Contract Price |
| 15.  | Currency of payment     | 11.8  | Euros (EUR) |
| 16.  | Advance Payment         | 11.2  | The advance payment amount is 28.75% of the Contract Price. |
| 17.  | Delayed Payment         | 11.10 | 5% plus LIBOR |
| 18.  | Insurances              | 14    | As per the requirements of Clause 14. |
GENERAL CONDITIONS OF CONTRACT

1. GENERAL PROVISIONS

1.1 Definitions

In the Contract as defined below, the capitalised words and expressions listed below shall have the following meanings assigned to them, except where the context requires otherwise:

The Contract

1.1.1 "Annex" means any annex of this Contract.

1.1.2 "Appendix" means the document in this Contract that is so entitled.

1.1.3 "Clause" means, except where otherwise stated, any clause of these Conditions and the term "Clauses" shall be construed accordingly. "Sub-Clause" means, except where otherwise stated, any sub-clause of these Conditions, and the term "Sub-Clauses" shall be construed accordingly.

1.1.4 "Completion Checklist" means the list of criteria and tests which is to be used to determine whether the Works have been completed in accordance with this Contract, a pro-forma for which is set out in Annex 4.

1.1.5 "Conditions of Contract" or these "Conditions" mean Clause 1 [General Provisions] to Clause 16 [Resolution of Disputes] (inclusive).

1.1.6 "Contract" has the meaning given to it in paragraph numbered 2 of the Contract Agreement.

1.1.7 "Contract Agreement" means the document in this Contract that is so entitled.

1.1.8 "Contractor's Proposal" means the document entitled Contractor's Proposal, as set out in Annex 2 (Contractor's Proposal), showing and describing the Contractor's proposal for the design, execution and completion of the Works and the provision of the Maintenance Services.

1.1.9 "Employer's Requirements" means the document entitled Employer's Requirements, attached hereto as Annex 1 (Employer's Requirements) and including the sub-annexes thereto, specifying the Works, Maintenance Services or otherwise stating the Employer's requirements for the Works and Maintenance Services (including the testing and commissioning requirements for the Works) and which includes such requirements as may be modified from time to time by the Employer by a Variation.

1.1.10 "Schedule of Payment" means the document so named as set out in Annex 3 (Schedule of Payment).

Persons

1.1.11 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

1.1.12 "Bank" means HSBC bank with which the Employer has entered into or will enter into the Loan Agreements to facilitate the provision of the UKEF Loan and Commercial Loan.


1.1.14 "Certifier" means [insert] who has been retained by the Employer for the purpose as set out in Sub-Clause 8.2.

1.1.15 "Contractor" has the meaning given to it in the Contract Agreement.

1.1.16 "Contractor's Representative" means the person named in the Appendix as the Contractor's Representative or appointed from time to time by the Contractor under Sub-Clause 4.2 [Contractor's Representative], who acts on behalf of the Contractor for the purposes of the Contract.
1.1.17 "Employer" has the meaning given to it in the Contract Agreement.

1.1.18 "Employer's Representative" means the person named in the Appendix as the Employer's Representative or appointed from time to time by the Employer under Sub-Clause 3.2 [Employer's Representative], who acts on behalf of the Employer for the purposes of the Contract.

1.1.19 "Party" means the Employer or the Contractor, as the case may be, as the context requires and the term "Parties" means the Employer and the Contractor.

1.1.20 "Subcontractor" means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor by the Contractor for any part of the design, execution and/or completion of the Works, provision of Maintenance Services and/or the remedying of any defects in the Works under the Contract or which relate to the Contract; and the legal successors in title to each of these persons.

Dates, Times and Periods

1.1.21 "Commencement Date" means the date notified under Sub-Clause 7.1 [Commencement of Works].

1.1.22 "Defects Notification Period" has the meaning given to it in Sub-Clause 9.1 [Remedying Defects].

1.1.23 "Effective Date" has the meaning given to it in the Contract Agreement.

1.1.24 "day" means a calendar day.

1.1.25 "Phase" means a part the Works specified in the Appendix as a Phase.

1.1.26 "Time for Completion" means the time for completing the Works or Phase (as the case may be) in accordance with Sub-Clause 7.2 [Time for Completion] as specified in the Appendix (as may be extended from time to time in accordance with these Conditions), calculated from the Commencement Date.

Money and Payments

1.1.27 "Contract Price" means the fixed lump sum price identified in the Appendix, as may be adjusted in accordance with this Contract.

1.1.28 "Cost" means all expenditure reasonably and properly incurred (or to be incurred) by the Contractor, whether on or off the Sites for the design, execution and completion of the Works, provision of the Maintenance Services and the remedying of any defects in the Works, but excluding any overhead charges or any allowances or contingencies for the Contractor's profit (or loss of profit). Unless otherwise stated in the Contract, such Cost shall be evaluated in accordance with Sub-Clause 10.3 [Valuation of Variations].

1.1.29 "Losses" means losses, damages, penalties, fines, liabilities, claims, judgments, costs and expenses (including legal costs and the costs of proceedings).

Other Definitions

1.1.30 "Authority" means any public, semi public or private authority or any utility/service providers whose permission or services are required in order to execute the Works and to provide Maintenance Services and in accordance with this Contract and the Laws.

1.1.31 "Commercial Loan" means the loan made available to the Borrower through the Commercial Loan Agreement from which payment will be made to the Contractor on behalf of the Employer in accordance with this Contract.

1.1.32 "Commercial Loan Agreement" means the document evidencing the agreed terms of the loan entered into or to be entered into between the Borrower and the Bank whereby the Bank undertakes to make sums available to finance not more than 15% of the Project Cost Plan Total.

1.1.33 "Community Group" means:
Any individual, previous or present legal or beneficial owner or occupier, land-grabber or interloper or claimant, trade union;

(b) any local community groups or age grade groups; or

(b) other similar body or person or any of their representatives, consultants, advisors, agents and/or servants,
of or near or at the Sites or locations in transit to or from the Sites.

1.1.34 “Confidential Information” means:

(a) information concerning the business, strategy, services, tactical data vendors, marking plans, finance or data of the Employer or any of the Employer’s Affiliates; and

(b) any other information identify as confidential or that could reasonably be deemed as confidential, whether identified as confidential or not.

1.1.35 “Contractor’s Design” has the meaning given to it in Sub-Clause 5.1 [Contractor’s Design and Document Submission].

1.1.36 “Contractor’s Documents” means all data, designs (including the Contractor’s Design), drawings, models, plans, sketches, specifications, design detail, photographs, brochures, reports, notes of meetings, computer aided design, materials, labour records, programmes, information stored in electronic format and any other materials and documents developed or prepared by the Contractor under the Contract and all amendments or additions thereto and any works, designs or inventions of the Contractor incorporated or referred to therein, including the documents supplied by the Contractor in accordance with Sub-Clause 5.5 [As-Built documents] and Sub-Clause 5.6 [Operation and Maintenance Manuals].

1.1.37 “Contractor’s Equipment” means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works and provision of the Maintenance Services but does not include Materials or any other things intended to form or forming part of the permanent work to be executed as part of the Works.

1.1.38 “Country” means Ghana.

1.1.39 “Employer’s Liabilities” means those matters listed in Sub-Clause 6.1 [Employer’s Liabilities].


1.1.41 “EU Eligible Goods and Eligible Services” means, respectively, goods produced or manufactured and services rendered by persons ordinarily resident or carrying on business in the European Union, and such other goods and services as may be approved by the Bank for financing through the UKEF Loan Agreement.

1.1.42 “Errors” means any errors, mistakes, defects, inadequacies, inaccuracies, omissions, discrepancies, inconsistencies, divergence, conflict or design or construction impracticalities or deficiencies.

1.1.43 “Export Payment Request” means a certificate prepared in such form as the model template appended to the UKEF Loan Agreement, for the purposes of effecting payments to the Contractor from the UKEF Loan.

1.1.44 “Dispute” has the meaning given to it at Sub-Clause 16.1 [Amicable Settlement].

1.1.45 “Direct Payment” means any payment made or to be made directly by the Employer to the Contractor which is not a Qualifying Payment.

1.1.46 “Health and Safety Requirements” means the health and safety and environmental requirements
appended in the Employer’s Requirements, any health safety and environmental requirements imposed by UKEF and as applicable in the Country and/or such other health safety and environmental requirements notified by the Employer and/or the Contractor as may be amended from time to time.

1.1.47 “Laws” means all statutes, ordinances, decrees, proclamations, laws, orders, rules, regulations or amendments thereto having the force of law in the Country and with traditional customs prevailing in the Country.

1.1.48 “Materials” means all plant, materials and goods intended to form or forming part of the Works.

1.1.49 “Maintenance Services” means the maintenance of the permanent Works as set out in the Employer’s Requirements.

1.1.50 “Maintenance Services Period” means the maintenance services period stated in the Appendix.

1.1.51 “Part” means a part of the Works which comprises a cluster of 5 Sites (+/- 2).

1.1.52 “Procurement Process” means the prescribed processes for procurement of all Works in relation to the Project as set out in the Employer’s Requirements.

1.1.53 “Project” has the meaning given to it in the Contract Agreement.

1.1.54 “Project Cost Plan Total” the total amount stated in the Appendix as may be adjusted if and to the extent the Contract Price is adjusted in accordance with the Contract.

1.1.55 “Qualifying Payments” means any payment for Eligible Goods and Eligible Services made or to be made directly to the Contractor from the UKEF Loan as determined in accordance with the requirements of UKEF.

1.1.56 “Recourse Agreement” means the agreement entered into or to be entered into between the Contractor and UKEF on or about the Effective Date pursuant to which the Contractor undertakes to UKEF that it will observe a number of covenants in relation to the Project.

1.1.57 “Senior Officers” has the meaning given to it at Sub-Clause 16.1 [Amicable Settlement].

1.1.58 “Senior Officers’ Notice” has the meaning given to it at Sub-Clause 16.1 [Amicable Settlement].

1.1.59 “Sites” means the places where the Works and Maintenance Services are to be executed and to which Materials are to be delivered, and any other places specified in the Contract as forming part of the Sites.

1.1.60 “Snagging Items” mean minor defects, deficiencies or omissions of a snagging nature relating to the Works (or any part of them) which do not prevent or interfere with the Employer using the Works (or any part of them).

1.1.61 “Taking-Over Certificate” means the certificate issued by the Employer under Sub-Clause 8.2 [Taking-Over Certificate] certifying that the Works or a Phase or a Part are completed and in accordance with the Contract.

1.1.62 “Tests” means the tests or testing which are specified in the Completion Checklist.

1.1.63 “Third Countries” means those countries (other than the Country and the UK) stated in the UKEF Loan Agreement.

1.1.64 “Third Country Eligible Goods and Eligible Services” means, respectively, goods produced or manufactured and services rendered by persons ordinarily resident or carrying on business in those Third Countries stated in the UKEF Loan Agreement, and such other goods and services as may be approved by the Bank for financing through the UKEF Loan Agreement.

1.1.65 “UK” means, the United Kingdom of Great Britain and Northern Ireland and includes the Channel Islands and the Isle of Man.
1.1.66 "UK Eligible Goods and Eligible Services" means, respectively, goods produced or manufactured and services rendered by persons ordinarily resident or carrying on business in the UK, and such other goods and services as may be approved by the Bank for financing through the UKEF Loan Agreement.

1.1.67 "UKEF" means the UK Export Finance Department of HM Treasury.

1.1.68 "UKEF Procurement Strategy" means the procurement of goods and services from sources of origin within the permitted threshold values set out in the UKEF Loan Agreement.

1.1.69 "UKEF Loan" means the loan made available to the Borrower through the UKEF Loan Agreement from which payment will be made directly to the Contractor on behalf of the Employer in accordance with this Contract.

1.1.70 "UKEF Loan Agreement" means the document evidencing the agreed terms of the loan entered into or to be entered into between the Borrower and the Bank whereby the Bank undertakes to make sums available to finance not more than 85% of the Project Cost Plan Total in relation to Eligible Goods and Eligible Services.

1.1.71 "Unforeseeable Physical Conditions" means natural physical conditions and man-made and other physical obstructions and pollutants (including sub-surface and hydrological conditions but excluding climatic conditions) which:

(a) the Contractor encounters at the Sites when executing the Works; and

(b) are not reasonably foreseeable by an experienced contractor taking into account information obtainable from a visual inspection of the Sites and their surroundings prior to the date of the Contract.

1.1.72 "Variation" means any change to the Works, Maintenance Services or any other modification to the Employer's Requirements that is instructed or approved as a variation by the Employer under Sub-Clause 10.1 [Right to Vary].

1.1.73 "VAT" means Value Added Tax.

1.1.74 "Works" means all the work and design to be performed by the Contractor under the Contract including temporary work and any Variation.

1.2 Interpretation

Words importing persons or parties shall include firms and organisations. Words importing singular or one gender shall include plural or the other gender where the context requires. The reference to "include", "includes", "including" and "included" shall not be construed restrictively but mean "including but not limited to" or "including without limitation". A reference to a law includes regulations and other instruments enacted under it and consolidations, amendments, re-enactments or replacements of any of them.

1.3 Priority of Documents

The documents forming this Contract are to be taken as mutually explanatory of one another. If there is a conflict, ambiguity or discrepancy between the documents forming this Contract such conflict, ambiguity or discrepancy shall be resolved in accordance with the paragraph numbered 2 of the Contract Agreement.

1.4 Law

The governing law of the Contract shall be the laws of England and Wales.

1.5 Communications

Wherever the Contract provides for the giving or issuing of approvals, certificates, instructions, consents, determinations, notices and requests and/or any other communications are given or issued under or in connection with the Contract, unless otherwise specified in the Contract these
communications shall be written in the language stated in the Appendix and shall comply with the procedures and requirements specified in the Employer’s Requirements.

1.6 Statutory Obligations

The Contractor shall comply with the laws of the countries where any activities in respect of the Contract and/or the Works and/or Maintenance Services are performed. Unless otherwise specified in the Contract and without prejudice to Sub-Clause 11.9 [Tax], the Contractor shall give all notices, pay all taxes, duties and fees as required by the applicable Laws in relation to the design, execution and completion of the Works, provision of the Maintenance Services and the remedying of any defects in the Works.

1.7 UKEF Loan

As between the Parties, the Contractor shall be responsible for carrying out the Works such that the percentage of Eligible Goods and Eligible Services is achieved and maintained at a level not less than that provided under the UKEF Loan Agreement and the UKEF Procurement Strategy.

Notwithstanding the paragraph above, the Employer shall ensure that the Borrower at all times complies with the requirements imposed upon it under the UKEF Loan Agreement, and shall not, whether by act or omission, do anything that will place the Borrower in default under the UKEF Loan Agreement. The Employer shall indemnify and hold harmless the Contractor for all Losses incurred or arising as a result of any breach or default of the UKEF Loan Agreement by the Borrower, except to the extent that such breach or default is attributable to an act or breach of the Contract by the Contractor.

Following the entering into of the UKEF Loan Agreement:

a) the Contractor and the Employer shall take all steps necessary on their respective parts to ensure that the terms of the UKEF Loan Agreement are complied with (including that when the Works are procured, the Works comprise the proportions of Eligible Goods and Eligible Services required by or in connection with the UKEF Loan Agreement);

b) the Employer shall ensure that the Borrower complies with all the obligations imposed on the Borrower under the UKEF Loan Agreement irrespective of any default by the Contractor and/or termination of this Contract; and

c) the Employer shall ensure that at all times the Borrower does all things necessary to ensure that the funds to be made available under the UKEF Loan are received for the benefit of the Employer in order to enable the Employer to satisfy its payment obligations to the Contractor under this Contract.

The obligations set out in this Sub-Clause 1.7 [UKEF Loan] shall survive termination of this Contract, in accordance with the terms of this Contract or otherwise.

Any payments properly payable in accordance with the UKEF Loan Agreement shall be made by Direct Payment if:

a) the amount available under the UKEF Loan Agreement is exhausted;

b) the Bank ceases to be under an obligation to make funds available, provided this is not due to an act or omission of the Contractor;

c) the payments are required to pay the VAT amount or duties due under Sub-Clause 11.9 [Tax]; or

d) the Employer has failed to ensure that the Borrower has done all things necessary to ensure that funds under the UKEF Loan are made available to make payment to the Contractor under this Contract.

2. THE EMPLOYER

2.1 Provision of Sites
The Employer shall procure that the Contractor (including any of its subcontractors) is provided with a non-exclusive right of access to, and possession of, all parts of the Sites on or before the access dates stated in the Appendix. If no access dates are stated in the Appendix, the Employer shall give the Contractor right of access to, and possession of, the Sites within such dates as may be required to enable the Contractor to proceed with the execution and completion of the Works in accordance with the programme submitted under Sub-Clause 7.3 [Programme], and to perform the Maintenance Services.

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right of access or possession within such time, the Contractor shall be entitled to an extension of time for any such delay and payment of any Cost.

2.2 Permits, Licences and Approvals

The Employer shall obtain all permits, permissions, licences, approvals or 'no objection' certificates required by the Contractor in respect of the Project which, under the Laws, only the Employer can apply for and obtain in the name of the Employer, or on behalf of the Contractor (as the case may be).

The Contractor shall obtain all necessary permits, licenses and approvals required by the Laws and any Authority if and to the extent specified in the Employer's Requirements in relation to the design, execution and completion of the Works, provision of the Maintenance Services and the remedying of any defects in the Works.

The Employer shall (at its cost and where it is required to do so) provide all reasonable assistance to the Contractor in connection with the Contractor's applications for any permits, permissions, licenses, or approvals that it is required to obtain as set out in the Employer's Requirements.

2.3 Electricity and Water

The Contractor will procure the supply of water and electricity at the Sites throughout the duration of the execution of the Works at no additional cost to the Employer. The Employer shall provide electricity at the Sites throughout the duration of the provision for Maintenance Services at no cost to the Contractor.

2.4 Employer's Instructions

The Contractor shall comply with instructions given by the Employer in respect of the Works and Maintenance Services.

2.5 Approvals

No approval or consent or absence of comment by the Employer or the Employer's Representative shall affect any of the Contractor's obligations, responsibilities and/or liabilities under or in connection with the Contract.

2.6 Loan Agreements

The Employer shall procure that the Borrower enters into the Commercial Loan Agreement prior to the Effective Date.

Following the entering into the Commercial Loan Agreement the Employer shall ensure that at all times the Borrower:

a) complies with all the obligations imposed on the Borrower under the Commercial Loan Agreement irrespective of any default by the Contractor and/or termination of this Contract; and

b) does all things necessary to ensure that the funds to be made available under the Commercial Loan are received for the benefit of the Employer in order to enable the Employer to satisfy its payment obligations to the Contractor under this Contract.

The Contractor and the Employer shall co-operate with each other and the Bank to take all steps reasonably necessary on their part to enable the entering into of the UKEF Loan Agreement, including entering into the Recourse Agreement and, on the Employer's part, ensuring that the Borrower
co-operates with the Contractor and the Bank to take all steps reasonably necessary to enable the entering into of the UKEF Loan Agreement and the Commercial Loan Agreement, prior to the Effective Date.

2.7 Employer's Financial Arrangements

The Employer shall submit, within 14 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price (as estimated at the time) in accordance with Clause 11 [Contract Price and Payment]. If the Employer intends to make any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

3. EMPLOYER'S REPRESENTATIVE

3.1 Authorised Person

One or more of the Employer's personnel or authorised representatives shall have authority to act for it. This authorised person or representative shall be as stated in the Appendix, or as otherwise notified by the Employer to the Contractor from time to time.

3.2 Employer's Representative

The Employer may also appoint an independent firm (which is not the Employer's Affiliate) to carry out certain duties in respect of the Works. The appointee may be named in the Appendix, or notified by the Employer to the Contractor from time to time. The Employer shall notify the Contractor of the delegated duties and authority of the Employer's Representative. The Employer's Representative may issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works, provision of the Maintenance Services, the remedying of any defects, and for the Contractor to perform its obligations under the Contract.

4. THE CONTRACTOR

4.1 General Obligations

The Contractor shall design, execute and complete the Works in accordance with the Contract and shall remedy any defects in the Works in accordance with the Contract. The Contractor shall provide all supervision, labour, Materials, and the Contractor's Equipment which may be required for the Works.

The Contractor shall carry out the production and manufacture of Materials, and all other execution of the Works in a proper workmanlike and careful manner, the Laws and exercising reasonable skill and care to ensure the Works are in compliance with the Contract.

4.2 Contractor's Representative

The Contractor may also appoint a firm or individual to carry out certain duties in respect of the Works. The appointee may be named in the Appendix, or notified by the Contractor to the Employer from time to time. The Contractor's Representative may receive from the Employer (at any time) instructions which may be necessary for the execution of the Works, provision of the Maintenance Services, the remedying of any defects, and for the Contractor to perform its obligations under the Contract.

4.3 Subcontracting

The Contractor shall:

(a) not subcontract the whole of the Works;

(b) be responsible for the acts, omissions or defaults of any Subcontractor as if they were the acts, omissions or defaults of the Contractor;
(c) appoint Subcontractors with sufficient expertise to perform the work allocated to them, and it is agreed that the Subcontractors identified in the Appendix have such expertise;

(d) only subcontract part of the Works and Maintenance Services to a Subcontractor in accordance with Sub-Clause 4.8 [Procurement Process]; and

(e) at the request of the Employer, use reasonable endeavours to (as soon as reasonably practicable after the Employer's request) procure collateral warranties from Subcontractors in favour of the Employer in the form agreed between the Parties acting reasonably.

4.4 Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

(a) the convenience of the public; or

(b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of any other third party.

4.5 Access Routes, Safety Procedures and Environment

The Employer shall make available suitable access routes to and from the Sites.

The Contractor shall promptly provide all reasonable assistance to the Employer to enable it to prepare and issue to UKEF periodical reports relating to environmental and health and safety standards on the Sites and the performance of the Works in accordance with any requirements imposed by UKEF. The Contractor shall when carrying out the Works comply with UKEF requirements in respect of environmental and health and safety standards provided by the Employer.

4.6 Community Groups and Labour

The Employer shall engage, communicate, and resolve issues directly with any Community Group in relation to or in connection with the Sites, the Contract and the Project.

The Contractor shall use its reasonable endeavour to give opportunity in employment on the Works and provision of the Maintenance Services to Ghanaian nationals whenever is possible and in accordance with any UKEF guidelines notified by the Employer.

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out and in accordance with UKEF guidelines. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

4.7 Restriction of Access to the Employer's Property

Except with the approval of the Employer, the Contractor (including its employees, agents and Subcontractors) shall not enter or disrupt any part of the premises of the Employer not needed for the execution and completion of the Works or provision of the Maintenance Services.

4.8 Procurement Process

The Parties agree to comply at all times with the Procurement Process and UKEF Procurement Strategy. Where requested by the Employer, the Contractor shall issue to the Employer a written statement, together with supporting documents, confirming that any part of the Works which are to be subcontracted as included in the Contractor's procurement strategy submitted in accordance with the Procurement Process and such part has been subcontracted in accordance with this Sub-Clause.

The statement (including supporting documents) to be issued under the first paragraph of this Sub-Clause 4.8 [Procurement Process], shall be provided as soon as reasonably practicable after the Employer issues a request to the Contractor.
4.9 Confidentiality

From time to time during the performance of the Contract:

(a) the Employer may provide the Contractor with certain Confidential Information for the purposes of assisting the Contractor in performing the Works and providing the Maintenance Services; or

(b) in performing the Works and providing the Maintenance Services the Contractor may have access to Confidential Information.

The Contractor must not publish, disseminate or otherwise disclose the Confidential Information, or any other information provided to it by the Employer to any third party without the prior written consent of the Employer.

The Contractor is permitted to use the Confidential Information solely to perform the Works and provide the Maintenance Services.

All Confidential Information including copies of any Confidential Information, will remain the sole property of the Employer. Upon expiration or termination of the Contract, the Contractor must either continue to keep such Confidential Information confidential or promptly return it to the Employer or destroy it and provide written confirmation to the Employer of its election in this regard.

Notwithstanding anything to the contrary in this Sub-Clause 4.9 [Confidentiality], the Contractor will not be restricted from disclosing information that:

(a) is or becomes generally available to the public other than by means of the Contractor's breach of its obligations under the Contract;

(b) was independently obtained by the Contractor from a third party whose disclosure violates no duty of confidentiality;

(c) is disclosed with the prior written consent of the Employer; or

(d) is disclosed pursuant to the order or requirement of a court, administrative agency or other governmental body having jurisdiction over the Contractor, provided, however, that the Contractor:

(i) may disclose only such information as is legally required; and

(ii) must provide prompt notice to the Employer of such requirement.

The provisions of this Sub-Clause 4.9 [Confidentiality], will survive the expiration or termination of the Contract.

4.10 Physical Conditions and Fossils

All fossils, coins, articles of value or antiquity and structures and other remains or items of geological or archaeological interest ("Findings") found on the Sites shall be placed under the care and authority of the Employer.

The Contractor shall, upon discovery of any Findings or upon encountering any Unforeseeable Physical Conditions, give notice to the Employer as soon as possible. Upon receipt of such notice, the Employer shall give the Contractor instructions on the reasonable measures that the Contractor should take in dealing with the Findings and Unforeseeable Physical Conditions.

If the Contractor suffers any delays and/or incurs any cost as a result of encountering any Unforeseeable Physical Conditions and/or complying with the Employer's instructions under this Sub-Clause 4.10 [Physical Conditions and Fossils], the Contractor shall be entitled to an extension of time for any such delay and payment of any Cost.

5. DESIGN BY CONTRACTOR
5.1 Contractor's Design and Document Submission

The Contractor will prepare the design documents for the Works to the extent that such documents are required to enable the Works to be constructed and/or installed (the "Contractor's Design").

5.2 Responsibility for Design

The Contractor shall:

(a) be responsible for the Contractor's Design and accepts full responsibility for the design of the Works (including any design criteria, calculations and any drawings, if any) which may be contained in the Contractor's Design;

(b) be responsible for ensuring that the Works are in accordance with the requirements of the Contract; and

(c) if required by the Employer, provide at no cost to the Employer any design criteria, calculations or such other information as may be requested by the Employer relating to the Works.

5.3 Errors in the Employer's Requirements

If the Contractor identifies any Errors in the Employer's Requirements, the Contractor shall immediately give notice to the Employer. Thereafter, the Contractor shall submit revised documents to the Employer in accordance with the procedure in Sub-Clause 5.1 [Contractor's Design and Document Submission] with its proposals for the correction of such Errors. The Contractor shall be entitled to an extension of time for any such delay and payment of any Cost for the correction of such Errors.

If the Contractor becomes aware of any Errors in or between any of the documents forming the Contract the Contractor shall give notice to the Employer of such Errors and the Employer shall issue an instruction to resolve such Errors unless they are in the design of the Works in which case such Errors shall be resolved by the Contractor in accordance with this Sub-Clause 5.3. The Contractor shall be entitled to an extension of time for any such delay and payment of any Cost for complying with an instruction issued by the Employer arising out of the matters described in this Sub-Clause.

5.4 Intellectual Property Rights

The Contractor grants to the Employer a non-exclusive, royalty-free license, to use the Contractor's Documents for the purpose of operating and maintaining the Works.

The Employer acknowledges that the Contractor does not own the intellectual property rights in the works to be provided or supplied by the Subcontractors, but that the Contractor will use its best endeavours to procure that the Subcontractors will grant to the Employer a non-exclusive, royalty-free license for the purpose of operating and maintaining the Works. The Employer agrees to enter into any license or other agreement reasonably requested by any Subcontractor in respect of the Subcontractor's intellectual property rights.

For the avoidance of doubt the Employer acknowledges that under this Agreement it shall not obtain the ownership of any intellectual property rights of the Contractor or its Subcontractors.

The obligations of the Contractor under this Sub-Clause 5.4 [Intellectual Property Rights] shall continue notwithstanding any termination, suspension or otherwise under the Contract or at Law.

5.5 As-built documents

The Contractor shall provide a schematic diagram of the configuration of the Works at completion.

5.6 Operation and Maintenance Manuals

The Contractor shall supply to the Employer the operating instructions for the Works installed at each Site upon completion.
5.7 Ownership of Materials

Each item of Material shall, to the extent consistent with the Laws, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

(a) when it is delivered to the Sites; and
(b) when the Contractor is entitled to payment of the value of the Materials under Clause 11 [Contract Price and Payment].

6. EMPLOYER'S LIABILITIES

6.1 Employer's Liabilities

In this Contract, "Employer's Liabilities", insofar as they directly affect the design, execution and completion of the Works, provision of Maintenance Services and remedying any defects in the Works, mean:

(a) a Variation (except if a Variation has been issued under Sub-Clause 10.2 [Variation Procedure] and the extension of time and/or Cost has been agreed or disapproved by the Employer);
(b) an event, circumstance, cause or delay expressly giving an entitlement to an extension of time and/or Cost under a Sub-Clause of these Conditions;
(c) any delay, impediment or prevention to the extent caused by or attributable to the Employer or the Employer's Representative or any Community Group;
(d) a suspension under Sub-Clause 12.6 [Suspension] unless it is attributable to a fault, breach or default of the Contractor (including any Subcontractor);
(e) war, hostilities (whether war be declared or not), invasion, or act of foreign enemies, within the Country;
(f) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country;
(g) riot, commotion or disorder by the Community Group or by any persons other than the Contractor, Subcontractor or employees of the Contractor, affecting the Sites and/or the Works and/or the Maintenance Services;
(h) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly, except to the extent to which the Contractor may be responsible for the use of any radio-active material;
(i) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
(j) use or occupation by the Employer of any Part of the Works or Phase, except as may be specified in the Contract;
(k) any operation of the forces of nature affecting the Sites, the Works and/or Maintenance Services, which was unforeseeable or against which an experienced contractor could not reasonably have been expected to take precautions;
(l) Force Majeure; and
(m) any change in Laws (including the introduction of new Laws and the repeal or modification of existing Laws) or change in the judicial or official governmental interpretation of such Laws, made after the date of the Contract, which affect the Sites, the Works and/or the Maintenance Services.
7. TIME FOR COMPLETION

7.1 Commencement of the Works

The Employer shall give the Contractor not less than 30 days' notice of the Commencement Date. The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

7.2 Time for Completion

The Contractor shall complete the Works, and each Phase, on or before the Time for Completion, including completing all work which is stated in the Completion Checklist as being required for the Works or Phase to be considered to be completed for the purposes of Sub-Clause 8.2 [Taking-Over Certificate].

7.3 Programme

Within the time stated in the Appendix, the Contractor shall submit to the Employer a programme for the Works and each Phase in the form stated in the Appendix and in accordance with the requirements stated in the Employer's Requirements. The Contractor shall also submit a revised programme to the Employer for approval at no longer interval than the interval stated in the Appendix until the whole of the Works are completed in accordance with Sub-Clause 8.2 [Taking-Over Certificate]. The Contractor shall also submit progress reports to the Employer for review at no longer intervals than the intervals stated in the Appendix until the whole of the Works are completed in accordance with Sub-Clause 8.2 [Taking-Over Certificate].

7.4 Extension of Time for Completion

The Contractor shall be entitled to claim an extension to the Time for Completion if it is or will be delayed by any of the Employer's Liabilities provided that the Contractor has complied with Sub-Clause 10.6 [Claims].

On receipt of an application from the Contractor under Sub-Clause 10.6 [Claims], the Employer shall consider all supporting details provided by the Contractor. The Employer shall then proceed to determine such extension of the Time for Completion as reasonable in the circumstances and the Time for Completion shall be adjusted accordingly. The Employer shall notify the Contractor of the adjusted Time for Completion whereupon within 28 days of the Employer's notification, the Contractor shall submit a revised programme with the adjusted Time for Completion to the Employer for approval.

7.5 Delay to the Works or Phase

If the Contractor fails to complete the Works or a Phase for the purposes of Sub-Clause 8.2 [Taking-Over Certificate], the Employer shall not be required to pay the proportional final milestone payment to the Contractor in respect of each Site that has not achieved completion until 7 days after the date stated in the Taking-Over Certificate issued under Sub-Clause 8.2 [Taking-Over Certificate] in respect of such Site. The total amount of payments that may be withheld under this Sub-Clause 7.5 [Delay Damages for the Works or Phase] shall not exceed the maximum amount stated in the Appendix. The Employer's entitlement to withhold payment under this Sub-Clause 7.5 [Delay to the Works or Phase] shall be the Employer's sole remedy for the Contractor's failure to complete the Works or a Phase for the purposes of Sub-Clause 8.2 [Taking-Over Certificate], and no other compensation or damages shall be payable in respect of such failure.

8. Completion and Testing

8.1 Completion of the Works or Phase

The Contractor shall apply by notice to the Employer for a completion certificate not earlier than 7 days before the Works or a Phase (or a Part of a Phase) will, in the Contractor's opinion, be complete for the purposes of Sub-Clause 7.2 [Time for Completion].

8.2 Taking-Over Certificate
Within 7 days of receiving the Contractor's notice under Sub-Clause 8.1, the Employer shall arrange for the Certifier to attend the Sites the subject of the notification, and to make a determination as to whether or not the Works at each of those Sites has achieved completion, by reference to the tests and criteria set out in the Completion Checklist in Annex 4. The Certifier shall complete the Completion Checklist for each Site and provide a signed copy of the completed Completion Checklist to the Contractor and the Employer.

If and to the extent that the Certifier has determined that the Works are completed in accordance with the Completion Checklist, the Employer shall, within 14 days after receiving the Contractor's application under Sub-Clause 8.1 [Completion of the Works or Phase], issue a certificate stating the date the Contractor has completed the Works, Phase or Part in such certificate ("Taking-Over Certificate").

If and to the extent that the Certifier has determined that the Works have not been completed in accordance with the Completion Checklist, the Employer shall, within 14 days after receiving the Contractor's application under Sub-Clause 8.1 [Completion of the Works or Phase] notify the Contractor:

(a) if it considers that the Works, Phase or Part, although not fully complete in all respects, are complete save for any Snagging Items, the Employer may (at its discretion) issue the Taking-Over Certificate subject to the Snagging Items which are to be completed in accordance with Sub-Clause 8.5 [Snagging Items]; or

(b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued for the Works, Phase or Part.

The Contractor shall complete the work referred to in Sub-Clause 8.2(c) before making a further application under Sub-Clause 8.1 [Completion of the Works or Phase] for the Works or Phase or Part.

The Employer shall take possession of the Works or Phase or Part upon the issue of the Taking-Over Certificate issued under sub-paragraph (a) or (b) of Sub-Clause 8.2 when responsibility for the care of the Works or Phase or Part shall pass to the Employer. The Contractor shall promptly complete any outstanding work and defects referred to in such notice and, subject to Sub-Clause 8.5 [Snagging Items] (if applicable) and Clause 9 [Remedying Defects], clear the Sites to the satisfaction of the Employer.

8.3 Partial Completion

Not used.

8.4 Tests

The Contractor shall carry out the Tests in accordance with the Employer's Requirements prior to completion.

8.5 Snagging Items

In the event the Taking-Over Certificate for the Works or Phase or Part is issued subject to Snagging Items, the Employer shall, at the same time it issues the Taking-Over Certificate, issue to the Contractor a list of the Snagging Items. Within 14 days of receipt from the Employer of the Taking-Over Certificate with the list of the relevant Snagging Items, the Contractor shall provide to the Employer a programme for rectifying each of the Snagging Items identifying when it anticipates to start and complete rectification of each Snagging Item.

The Contractor shall ensure that each and every Snagging Item is rectified as soon as reasonably practicable after the issue of the Taking-Over Certificate so as to ensure that the Works or Phase or Part are in accordance with the requirements of the Contract. If the Contractor fails to rectify such Snagging Item in accordance with the this Sub-Clause, the Employer may (at its sole and absolute discretion) carry out the rectification of the Snagging Item by itself or by others, in a reasonable manner and at the Contractor's cost and risk, and the Contractor shall pay to the Employer the costs reasonably and properly incurred by the Employer in rectifying such Snagging Item.
9. REMEDYING DEFECTS AND MAINTENANCE SERVICES

9.1 Remedying Defects

The Employer may at any time prior to the expiry of the periods stated in the Appendix ("Defects Notification Period"), notify the Contractor of any defects, damage or outstanding work in the Works or Phase (including any Part of the Works or Phase). The Contractor shall promptly remedy at no cost to the Employer any outstanding work, defects or damage arising due to the Contractor's Design, Materials, or workmanship or any part of the Works or Phase otherwise not being in accordance with the Contract. If a defect or outstanding work appears or damage occurs, the Employer shall notify the Contractor of the defect, outstanding work or damage and shall fix a date by which such defect, outstanding work or damage is to be remedied by the Contractor.

9.2 Failure to Remedy Defects or Damage

If the Contractor fails to remedy any defect or damage within such time as is notified and fixed by the Employer as referred to in Sub-Clause 9.1 (Remedying Defects), the Employer may (at its sole and absolute discretion) carry out the work itself or by others, in a reasonable manner and at the Contractor's cost and risk, and the Contractor shall pay to the Employer the costs reasonably and properly incurred by the Employer in remedying the defect or damage.

9.3 Uncovering and Testing

The Employer may give instructions to the Contractor as to the uncovering and/or testing of any work carried out by the Contractor or any Subcontractor within [5] days after the Contractor has mobilised to a Site to undertake work. Unless as a result of any uncovering and/or testing it is established that the Contractor's Design, Materials, or workmanship are not in accordance with the Contract, the Contractor shall be paid for such uncovering and/or testing as a Variation and Clause 10 [Variations and Claims] shall apply.

9.4 Maintenance Services

The Contractor shall provide the Maintenance Services for the duration of the Maintenance Period. The Contractor shall have such right of access to the Works as is reasonably required in order to provide the Maintenance Services in accordance with this Contract, except as may be inconsistent with the Employer's reasonable security, operation and health and safety restrictions.

10. VARIATIONS AND CLAIMS

10.1 Right to Vary

The Employer may at any time prior to the date of the Taking-Over Certificate in respect of the Works or Phase or Part, or at any time prior to the end of the Maintenance Period in respect of the Maintenance Services, issue Variations either by an instruction to the Contractor or by a request for the Contractor to submit a proposal.

The Contractor shall not make any alteration and/or modification to the Works or Maintenance Services, unless and until the Employer instructs or approves a Variation.

The Employer shall not issue a Variation to omit any work or services and instruct other contractors, consultants or other persons to carry out such omitted work or services.

10.2 Variation Procedure

If the Employer instructs a Variation or requests a proposal prior to instructing a Variation, the Contractor shall respond in writing as soon as reasonably practicable by submitting a notice containing the following items to the Employer:

(a) a description of the work or services to be performed in an instruction to execute a Variation or a description of the proposed work or services to be performed (as the case may be) and a programme for the execution of such work or services;
(b) the Contractor's proposal for any necessary alterations to the programme referred to in Sub-Clause 7.3 [Programme] and to the Time for Completion; and

(c) the Contractor's proposal for evaluation of the cost for the Variation which shall be valued in accordance with Sub-Clause 10.3 [Valuation of Variations]

The Employer shall, as soon as reasonably practicable, after receiving the items listed in sub-paragraphs (a), (b) and (c) of Sub-Clause 10.2 [Variation Procedure] respond with approval, disapproval or comments (as the case may be). The Contractor shall not delay execution of the Works and the provision of the Maintenance Services whilst awaiting a response unless otherwise instructed by the Employer.

The Employer may (at his option) instruct the Contractor to provide further or additional information or instruct the Contractor to revise the previously submitted items listed under sub-paragraphs (a), (b) and (c) of Sub-Clause 10.2 [Variation Procedure] and state a date for re-submitting such revised items to the Employer. If the Employer notifies the Contractor of its disapproval of the Contractor's re-submitted revised items, the Employer shall be entitled to proceed to agree or determine such extension of the Time for Completion and any adjustments to the Contract Price (if any) as a result of the Variation and such determination shall be binding between the Parties unless it is referred as a Dispute under Clause 16 [Resolution of Disputes].

Each instruction to execute a Variation, with any requirements for recording the extension of the Time for Completion and any adjustments to the Contract Price (if any) as a result of the Variation shall be issued by the Employer to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Sub-Clause 10.3 [Valuation of Variations] unless the Employer instructs or approves otherwise in accordance with this Sub-Clause.

10.3 Valuation of Variations

All Variations shall be valued in the following order:

(a) at a lump sum price agreed between the Parties; or

(b) using the rates in the Schedule of Payment including an allowance for overheads and profit; or

(c) if there is no specified rate or item in the Schedule of Payment a new rate or price as may be agreed or which the Employer considers appropriate (as the case may be) including an allowance for overheads and profit.

10.4 Works not forming part of the Contract

Where the Employer requires work to be carried out on the Sites which do not form part of the Works or Maintenance Services and which is to be carried out by the Employer himself or by any Employer's contractors or consultants:

(a) the Employer shall warrant to the Contractor that the procurement of such work will not breach any of the requirements of the UKEF Loan Agreement, including the requirement to maintain the percentage of Eligible Goods and Eligible Services at a level not less than that provided under the UKEF Loan Agreement and the UKEF Procurement Strategy;

(b) the Employer shall indemnify the Contractor for all Losses incurred as a result of any breach of the warranty set out at Sub-Clause 10.4 (a) above including any sums that may become payable by the Contractor to UKEF under the Recourse Agreement; and

(c) notwithstanding the provisions of this Sub-Clause 10.4 [Works not forming part of the Contract], the Employer shall ensure that any persons performing the work contemplated in this Sub-Clause 10.4 [Works not forming part of the Contract] at all times comply with the reasonable instructions of the Contractor in respect of:

(i) co-ordination of the Works and Maintenance Services on the Sites; and
(ii) the Health and Safety Requirements and any other access or logistics requirements of the Contractor during the execution of the Works.

10.5 Right to Claim

If the Contractor incurs a Cost as a direct result of any of the Employer's Liabilities, the Contractor shall be entitled to claim such Cost which shall be added to the Contract Price provided that the Contractor has complied with Sub-Clause 10.6 [Claims]. If as a result of any of the Employer's Liabilities, it is necessary to change the Works and/or Maintenance Services, this shall be dealt with as a Variation.

10.6 Claims

If the Contractor considers itself entitled to any extension of the Time for Completion and/or any additional payment under any Sub-Clause of these Conditions or otherwise in connection with this Contract, the Contractor shall give notice to the Employer describing the event or circumstance giving rise to the claim as a result of the Employer's Liabilities. The notice shall be given as soon as reasonably practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance giving rise to the claim as a result of the Employer's Liabilities. The notice shall include the basis of the Contractor's claim with full particulars in support of its claim for an extension of time and/or additional payment claimed.

11. CONTRACT PRICE AND PAYMENT

11.1 The Contract Price

The Contract Price is a fixed lump sum for the design, execution and completion of the Works, the provision of Maintenance Services, the remedy of defects in the Works and for the Contractor's obligations under the Contract and the Contract Price shall only be subject to adjustments agreed in accordance with the Contract.

11.2 Advance Payment

The Employer shall make an advance payment to the Contractor, or procure that such advance payment is made, in the amount stated in the Appendix. The Employer shall procure that the Contractor is paid the advance payment by Direct Payment as soon as possible after the date of this Contract but in any event such payment shall be made within 7 days after the Commercial Loan Agreement has been executed before the Effective Date.

11.3 Statement

The Contractor shall be entitled to be paid for the Works in accordance with this Sub-Clause 11.3 [Statement].

The Contractor shall be entitled to be paid the amounts payable for each milestone (as identified and stated in the Schedule of Payment) which have been completed in accordance with the Contract subject to any additions or deductions which may be due to the Employer.

The Contractor shall, on completion of each milestone, submit a statement to the Employer showing the amounts to which he considers himself entitled and comply with the procedures and requirements imposed by UKEF and/or the Bank. The statement shall include a break down to Identify the value of the Eligible Goods and Eligible Services and the value of all other goods, services and works executed for each milestone.

11.4 Interim Payments

Within 7 days of delivery of each statement, the Employer shall pay, or procure that the Contractor is paid, the amount shown in the Contractor's statement less any amount for which the Employer has specified his reasons for disagreement in a notice to the Contractor. Such payment shall be made in accordance with Sub-Clause 11.7 [Payments].

The Employer shall be entitled to correct any amount shown in the Contractor's statement to reflect any
amount which has previously been paid by the Employer.

11.5 Payment of Retention

One half of the retention specified in the Appendix shall be paid by the Employer to the Contractor within 14 days after issuing the Taking-Over Certificate under Sub-Clause 8.2 [Taking-Over Certificate].

The remainder of the retention specified in the Appendix shall be paid by the Employer to the Contractor within 14 days after either the expiry of the last Defects Notification Period, or the remedying of notified defects or the completion of outstanding work, all as referred to in Sub-Clause 9.1 [Remedying Defects], whichever is the later.

11.6 Final Payment

Within 30 days after the last Taking Over Certificate has been issued, the Contractor shall submit a final account to the Employer together with any documentation reasonably required to enable the Employer to ascertain the Contract Price (including all adjustments to the Contract Price under the Contract).

Within 7 days after the submission of this final account, the Employer shall pay to the Contractor, or procure that the Contractor is paid, any amount due. Such payment shall be made in accordance with Sub-Clause 11.7 [Payments]. If the Employer disagrees with any part of the Contractor's final account, he shall specify his reasons for disagreement when making payment.

11.7 Payments

On or before the dates specified in Sub-Clause 11.3 [Interim Payments] and Sub-Clause 11.6 [Final Payment], the sum stated in the statement and final account shall be paid in full by Qualifying Payment to the Contractor into the bank account reasonably notified by the Contractor and in the currency stipulated in the Appendix. Notwithstanding that payment is to be made to the Contractor by Qualifying Payment, the Employer shall remain responsible and liable for payment of the full amount stated in the statement and final account.

When sums are due for payment as Qualifying Payments, the Contractor shall, in accordance with the Employer's Requirements, prepare and submit the Export Payment Request to the Bank in order to facilitate such payments.

Upon receipt of the final account under Sub-Clause 11.6 [Final Payment], the Contractor shall subsequently prepare an Export Payment Request for the amount certified in the final account. The Export Payment Request shall include all necessary particulars to substantiate the amounts included therein with regards to the Eligible Goods and Eligible Services. The Contractor shall submit the completed Export Payment Request to the Bank together with a copy of the final account.

The Employer shall, and shall also procure that the Borrower shall, authorise the Bank to pay the amounts due from the Employer under Sub-Clause 11.3 [Interim Payments] and Sub-Clause 11.6 [Final Payment] directly to the Contractor. To the extent any payments are received by the Contractor directly from the Bank in connection with such sums due from the Employer, such payments that are received by the Contractor shall when issued in an equivalent sum, discharge the Employer's obligation to pay the Contractor any sums due to the Contractor under the Contract.

11.8 Currency

Payment shall be in the currency stated in the Appendix.

11.9 Tax

The Employer shall, in addition to paying any amounts due and owing by it under the Contract, pay the amount of any VAT and any duties properly chargeable in respect of any sums to be paid by the Employer under Clause 11 [Contract Price and Payment]. The Contract Price is exclusive of, and does not include any allowance for, VAT, duties or any other similar tax.

The Parties agree that they will co-operate and do all things necessary to assist one another comply with their obligations in respect of the administration, reporting or remittance of any VAT or any other similar
tax including providing, upon request, any invoice, statement, receipt or other accounting document or record prepared in accordance with the Laws to substantiate the amount of VAT or any other similar tax paid (or received) under or in accordance with this Contract.

11.10 Delayed Payment

The Contractor shall be entitled to interest at the rate stated in the Appendix for each day the Employer fails to pay beyond the prescribed payment period.

11.11 Set-off

Except as expressly stated in these Conditions, the Employer shall not be entitled to set off or deduct the amount which the Employer is entitled to be paid by the Contractor under the Contract from any amounts due, or to become due, to the Contractor under the Contract or any other contract between the Employer and the Contractor.

12. TERMINATION AND SUSPENSION

12.1 Default by Contractor

If the Contractor

(a) abandons the Works or Maintenance Services,
(b) fails to proceed or continue with the Works or Maintenance Services in accordance with this Contract;
(c) is, despite a written notice, in breach of the Contract;
(d) causes or contributes to the termination of the UKEF Loan Agreement; or
(e) causes or contributes to an event of default, acceleration agreement or similar under the UKEF Loan Agreement,

the Employer may give notice referring to this Sub-Clause and stating the default.

If the Contractor has not taken all practicable steps to remedy the default within 42 days after the Contractor's receipt of the Employer's notice, the Employer may by a second notice given within a further 14 days, terminate the Contract.

Notwithstanding the provisions above, if the default arises under Sub-Clause 12.1 (d) or Sub-Clause 12.1 (e) the Employer may immediately terminate by giving written notice.

12.2 Default by the Employer

If the Employer:

(a) fails to pay any amount properly due to Contractor in accordance with the Contract;
(b) fails to comply with Sub-Clause 2.7 [Employer's Financial Arrangements];
(c) suspends the Works under Sub-Clause 12.6 [Suspension of Work] and the suspension has continued for more than 84 days unless the suspension is attributable to a fault, breach or default of the Contractor (including any Subcontractor);
(d) causes or contributes to the termination of the UKEF Loan Agreement;
(e) causes or contributes to an event of default, acceleration agreement or similar under the UKEF Loan Agreement; or
(f) causes or contributes to termination of the Recourse Agreement,
the Contractor may give notice referring to this Sub-Clause and stating the default.

If the default is not remedied within 42 days after the Employer's receipt of the Contractor's notice, the Contractor may by a second notice given within a further 30 days, terminate the Contract.

Notwithstanding the provisions above, if the default arises under Sub-Clause 12.2 (d), Sub-Clause 12.2 (e) or Sub-Clause 12.2 (f) the Contractor may immediately terminate by giving written notice.

12.3 Insolvency

If a Party:

(a) is declared insolvent under any applicable Law, or

(b) goes into liquidation, or enters into administration, or receivership or is admitted to any procedure for a settlement of debts, or is declared bankrupt, or enters or becomes involved in any other similar insolvency stats or ceases to carry on business; or

(c) other than for the purposes of a bona fide reconstruction or amalgamation, passes a resolution for its winding up, or a court of competent jurisdiction makes an order for it to be wound up or dissolved; or

(d) is otherwise dissolved

the other Party may by notice terminate the Contract immediately.

12.4 Payment upon Termination

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed, Maintenance Services provided and of the Materials delivered to the Sites using the rates in the Schedule of Payment for the purposes of valuation, adjusted by the following:

(a) if the Employer has terminated under Sub-Clause 12.1 [Default by Contractor] or Sub-Clause 12.3 [Insolvency] or under Sub-Clause 12.9 [Corrupt or Fraudulent Practices], any sums incurred by the Employer for executing and completing, or procuring other contractors to execute and complete, the Works, complete the Maintenance Services remedying the defects in the Works and for performing the Contractor's obligations; or

(b) if the Contractor has terminated under Sub-Clause 12.2 [Default by the Employer] or Sub-Clause 12.3 [Insolvency] or under Sub-Clause 12.9 [Corrupt or Fraudulent Practices] or the Employer has terminated under Sub-Clause 12.7 [Termination for Convenience]:

(i) the Cost of the Contractor's demobilisation;

(ii) the Cost to which the Contractor is entitled under Clause 10.5 [Right to Claim]; and

(ii) any Losses incurred or suffered by the Contractor under the Recourse Agreement as a result of the termination.

The net balance due shall be paid or repaid within 28 days of receipt of the notice of termination.

12.6 Suspension

In the event of force majeure as per Sub-Clause 13.2, the Employer may instruct the Contractor to suspend progress of all or any part of the Works. During such suspension, the Contractor shall protect, store and secure such Materials and any part of the Works against any deterioration, loss or damage, all as instructed by the Employer.

The Contractor shall be entitled to payment of the value (as at the date of suspension) of the Materials, if:
(a) the suspension has continued for more than 28 days; and

(b) the Contractor has marked the Materials as the Employer's property in accordance with the Employer's instructions and delivered such Materials to the Sites,

unless the suspension is attributable to a fault, breach or default of the Contractor (including any Subcontractor).

If permission or instruction to proceed is given by the Employer, the Parties shall jointly examine the Works and the Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Materials, which has occurred during the suspension.

12.7 Not used.

12.8 Cessation of Work and Removal of Contractor’s Equipment

After a notice of termination under this Clause 12 [Termination and Suspension] has taken effect, the Contractor shall promptly:

(a) cease all further work, except for such work as may have been instructed by the Employer for the protection of life or property or for the safety of the Works or in order to protect the Materials stored on Sites against loss, damage or deterioration or in order to protect any part of the Works against loss, damage or deterioration;

(b) hand over Contractor’s Documents, Materials and other work, for which the Employer has paid or discharged payment to the Contractor; and

(c) remove all rubbish and other temporary equipment from the Sites except as necessary for safety and leave the Sites clean, unless otherwise instructed by the Employer.

12.9 Corrupt or Fraudulent Practices

If either Party, Bank or UKEF determines, based on reasonable evidence, that the Contractor or Employer has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then either Party may, after giving 14 days notice to the other Party, terminate the Contract and expel the Contractor from the Sites.

Should any employee of either Party be determined by the other Party, UKEF or the Bank, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the Works or provision of the Maintenance Services then that employee shall be promptly removed from the Project.

For the purposes of this Sub-Clause 12.9 [Corrupt or Fraudulent Practices]:

(a) “corrupt practice” means offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in the contract execution; and

(b) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of the Contract to the detriment of the borrower, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the borrower of the benefits of free and open competition.

13. RISK AND RESPONSIBILITY

13.1 Contractor’s Care of the Works

The Contractor shall take full responsibility for the care of the Works or Phase from the Commencement Date until the date the Taking-Over Certificate is issued for the Works or Phase under Sub-Clause 8.2 [Taking-Over Certificate], after which responsibility for the care of the Works or Phase shall then pass to the Employer. If a Taking-Over Certificate is issued for a Part of the Works, responsibility for the care of
such Part of the Works shall then pass to the Employer. If any loss or damage happens to the Works or Phase or Part during the period for which the Contractor is responsible for the Works or Phase or Part, the Contractor shall rectify such loss or damage so that the Works or Phase or Part are in accordance with the Contract.

After responsibility for the care of the Works or Phase or Part has passed to the Employer, the Contractor shall remain responsible for its obligations under Clause 9 [Remedying Defects], and for any obligations that remain outstanding (including those obligations under Sub-Clause 8.5 [Snagging Items] (if applicable)).

13.2 Force Majeure

If a Party is or will be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately. If necessary, the Contractor shall suspend the execution of the Works and/or provision of Maintenance Services (as the case may be) and, to the extent agreed with the Employer, demobilise the Contractor’s Equipment. Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

If the event continues for a period of 6 months, either Party may then give notice of termination which shall take effect 28 days after the giving of the notice.

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials reasonably delivered to the Sites, adjusted by the following:

(a) any sums to which the Contractor is entitled under Clause 10.5 [Right to Claim],
(b) the Cost of his suspension and demobilisation; and
(c) any sums to which the Employer is entitled.

The net balance due shall be paid or repaid within 28 days of the notice of termination.

13.3 Limitation of Liability

Neither Party shall be liable to the other Party for loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than all indemnities under the Contract (including Clause 15 [Indemnities]) and liabilities under Clause 12 [Termination and Suspension].

The total liability of the Contractor to the Employer, under or in connection with the Contract shall not exceed twenty percent (20%) of the Contract Price.

This Sub-Clause shall not limit liability or exclude any liability of the Parties arising:

(a) from fraud, gross negligence, deliberate default or reckless misconduct;
(b) from death or personal injury; or
(c) other Losses that cannot be limited or excluded by the Laws.

14. INSURANCE

14.1 Extent of Cover

The Contractor shall, prior to commencing the Works, effect and thereafter maintain insurances in the joint names of the Parties:

(a) for loss and damage to the Works, Materials, and the Contractor’s Equipment,
(b) for liability of the Contractor and the Employer for loss, damage, death or injury to third parties or their property arising out of the Contractor’s performance of the Contract, including the
Contractor's liability for damage to the property of the Employer other than the Works, and

(c) for liability of the Contractor, the Employer and of any employee, officer or representative of the Employer for death or injury to the Contractor's personnel except to the extent that liability arises from the gross negligence of the Employer, and employees, officers or representatives of the Employer.

14.2 Arrangements

All insurances shall be placed with reputable insurers and have an appropriate limit of indemnity. If requested, the Contractor shall provide the Employer with evidence that any required policy is in force and that the premiums have been paid.

All payments received from insurers relating to loss or damage to the Works shall be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.

15. INDEMNITIES

15.1 The Contractor will indemnify and hold harmless the Employer to the fullest extent permitted by the Law for all Losses in respect of:

(a) bodily injury, sickness, disease or death, of any person during arising out of gross negligence, breach of the Contract or wilful act by the Contractor and/or Subcontractor; and

(b) damage to or loss of any property, real or personal arising out of gross negligence, breach of the Contract or wilful act by the Contractor and/or Subcontractor.

15.2 The Employer will indemnify and hold harmless the Contractor to the fullest extent permitted by the Law for all Losses in respect of:

(a) bodily injury, sickness, disease or death, of any person except those caused by gross negligence, breach of the Contract or wilful act by the Contractor or any of its Subcontractors;

(b) damage to or loss of any property, real or personal except those caused by gross negligence, breach of the Contract or wilful act by the Contractor or any of its Subcontractors.

16. RESOLUTION OF DISPUTES

16.1 Amicable Settlement

(a) Any dispute, controversy or claim arising out of or relating to this Agreement (including any amendments) including its formation, validity, binding effect, interpretation, performance, breach or termination, and/or any non-contractual claims (each a "Dispute") must first be referred to the respective Chief Executive Officers of the Parties (or, if they are not available, their appointed deputies) ("Senior Officers") for resolution by mutual agreement between those Senior Officers.

(b) Either Party may initiate a Dispute resolution process by serving a written notice (a "Senior Officer's Notice") upon the other Party requiring that the Dispute be referred to the Senior Officers.

(c) The Senior Officers must promptly meet in good faith and use their best efforts to resolve the Dispute amicably between the Parties.

(d) If the Senior Officers fail to so resolve the Dispute within ten (10) days of the date of the Senior Officer's Notice then either Party may refer the Dispute to arbitration in accordance with the provisions set out in Sub-Clause 16.2 [Arbitration].

16.2 Arbitration

(a) If either Party refers the Dispute to arbitration pursuant to Sub-Clause 16.1 [Amicable Settlement],
then the Dispute shall be finally resolved by arbitration in accordance with Sub-Clause 16.2 [Arbitration]. The Tribunal (which shall have the meaning given to it in the LCIA Rules of Arbitration (the "Tribunal")) shall consist of a sole arbitrator. The arbitrator(s) shall be appointed in accordance with the LCIA Rules of Arbitration in force as at the date of the Dispute.

(b) All arbitration proceedings shall be carried out in accordance with the LCIA Rules of Arbitration in force as at the date of the Dispute. The seat or legal place of arbitration shall be London, England and the language of the arbitration shall be English. The governing law of the arbitration agreement shall be the laws of England and Wales.

(c) Neither the existence of any Dispute nor any reference to arbitration in accordance with the provisions of Clauses 16 shall relieve either Party from observing and performing its obligations under the Contract, including the Contractor's obligation to carry out the Works and provide the Maintenance Services in accordance with the Contract.
ANNEX 1

EMPLOYER'S REQUIREMENTS

PART 1
GENERAL REQUIREMENTS

PART 2
WORKS

PART 3
MAINTENANCE SERVICES
## Annex 3

### Schedule of Payment

## Part 1

### Milestone Payments

<table>
<thead>
<tr>
<th>Payment Description</th>
<th>Payment %</th>
<th>Amount</th>
<th>Milestone</th>
<th>Cumulative Sites Delivered Before Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advance Payment</td>
<td>28.75%</td>
<td>€ 8,625,000</td>
<td>In accordance with Sub-Clause 11.2 [Advance Payment]</td>
<td>N/A</td>
</tr>
<tr>
<td>UKEF Project Payment 2</td>
<td>13.75%</td>
<td>€ 4,125,000</td>
<td>Time for Completion of 75 Sites under Sub-Clause 7.2 [Time for Completion] and not Sub-Clause 8.2 [Taking-Over of the Works or Phase]</td>
<td>75</td>
</tr>
<tr>
<td>UKEF Project Payment 3</td>
<td>13.75%</td>
<td>€ 4,125,000</td>
<td>Time for Completion of 50 Sites under Sub-Clause 7.2 [Time for Completion] and not Sub-Clause 8.2 [Taking-Over of the Works or Phase]</td>
<td>125</td>
</tr>
<tr>
<td>UKEF Project Payment 4</td>
<td>13.75%</td>
<td>€ 4,125,000</td>
<td>Time for Completion of 50 Sites under Sub-Clause 7.2 [Time for Completion] and not Sub-Clause 8.2 [Taking-Over of the Works or Phase]</td>
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</tr>
<tr>
<td>UKEF Project Payment 5</td>
<td>13.75%</td>
<td>€ 4,125,000</td>
<td>Time for Completion of 50 Sites under Sub-Clause 7.2 [Time for Completion] and not Sub-Clause 8.2 [Taking-Over of the Works or Phase]</td>
<td>225</td>
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<tr>
<td>UKEF Project Payment 6</td>
<td>13.75%</td>
<td>€ 4,125,000</td>
<td>Time for Completion of 125 Sites under Sub-Clause 7.2 [Time for Completion] and not Sub-Clause 8.2 [Taking-Over of the Works or Phase]</td>
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<td>Retention Payment (50%)</td>
<td>1.25%</td>
<td>€ 325,000</td>
<td>Time for Completion of 100 Sites under Sub-Clause 7.2 [Time for Completion] and not Sub-Clause 8.2 [Taking-Over of the Works or Phase]</td>
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<td>Retention Payment (25%)</td>
<td>0.625%</td>
<td>€ 162,500</td>
<td>End of the final Defects Notification Period</td>
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<td>Retention Payment (25%)</td>
<td>0.625%</td>
<td>€ 162,500</td>
<td>End of the Maintenance Period</td>
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PART 2

SCHEDULE OF RATES FOR VALUATIONS
## ANNEX 4
### COMPLETION CHECKLIST

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<thead>
<tr>
<th>No</th>
<th>Criteria / Item / Test</th>
<th>Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Construction of building works complete, to include:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Base for R1 unit</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• R1 Tower</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• AQ Tap Housing Unit</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Lighting for Housing Unit</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Drainage</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Solar energy supply functioning</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>H2Go R1 unit present</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Grundfos AQ tap payment system present and functioning</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Operating Instructions provided</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>AQ data connectivity functioning</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>2-hour trial period complete</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Maintenance procedures provided</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Water flowing at 13 litres per minute</td>
<td></td>
</tr>
</tbody>
</table>

On behalf of CWSA:

Date..................................................

Signature..........................................

Company............................................

Position ..........................................  

On behalf of community:

Date..................................................

Signature/thumbprint.............................

Position ..........................................