

**MEMORANDUM TO PARLIAMENT**

FROM THE

HON. MINISTER FOR FINANCE

REQUESTING FOR AN APPROVAL TO RAISE UP TO US\$750.00 MILLION IN  
SHORT TERM BRIDGE FINANCING FROM THE SOVEREIGN BOND  
PROGRAMME TRANSACTION ADVISORS IN ANTICIPATION OF  
THE 2019 EUROBOND ISSUANCE

7<sup>th</sup>  
.....MARCH, 2019

PARLIAMENT OF GHANA LIBRARY

## **Action Required**

1. Parliament is respectfully invited to consider and approve a bridge loan facility between the Republic of Ghana represented by the Ministry of Finance, and Standard Chartered Bank and Standard Bank for an amount of up to **US\$750.00 million**.

## **Background of the transaction**

2. Hon. Members of Parliament may recall that as stated in the 2019 Budget Statement and Economic Policy and as approved by the Parliament of Ghana on 21<sup>st</sup> December, 2018, the Ministry of Finance is to raise up to US\$3.00 billion from the International Capital Markets (ICM). The 2019 Budget also indicated Government's intention to explore the possibility and feasibility of issuing one or a combination of the following debt:

- Century bond;
- Green bond;
- Panda Bond;
- Samurai bond; and
- Commercial loan

3. Following the Parliamentary approval, the Ministry appointed Transaction Advisors through the quality based procurement process. It was the first time that we have used this process of engagement instead of the restrictive tendering process.

4. It is expected that the roadshow for the Eurobond would be executed by the second week of March, 2019.

## **Justification**

5. Over the past few weeks, there has been declining capital inflows from offshore investors and rollover risks for maturing domestic bonds. These external pressures have affected Government's domestic deficit financing and refinancing of outstanding debt securities. Due to these pressures, two (2) of the selected Advisors have proposed to provide this Ministry with a bridge loan facility in anticipation of the issuance of the Sovereign Bond in a few weeks.

6. The loan is a short term facility and is to be repaid with proceeds from the 2019 Sovereign Bond programme

7. The Transaction Advisors submitted the following terms:

|                        |   |  |
|------------------------|---|--|
| Bridge facility amount | : | US\$750.00 million                           |
| Interest rate          | : | 1 Month US LIBOR plus a margin of 3.50% p.a. |
| Tenor                  | : | up to 6 months                               |

**Arrangement fee : 0.32% p.a.**

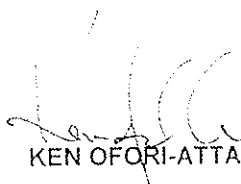
8. Kindly be informed that, consistent with the use of proceeds of the sovereign bond programme, the proceeds from the bridge financing would be applied as follows:

- a) finance critical infrastructure and Government's priority programmes on growth; and
- b) conduct liability management on maturing domestic bonds.

9. Please note that this bridge facility is within the US\$3.00 billion Sovereign Bond Issuance Programme as approved by Parliament.

#### Conclusion

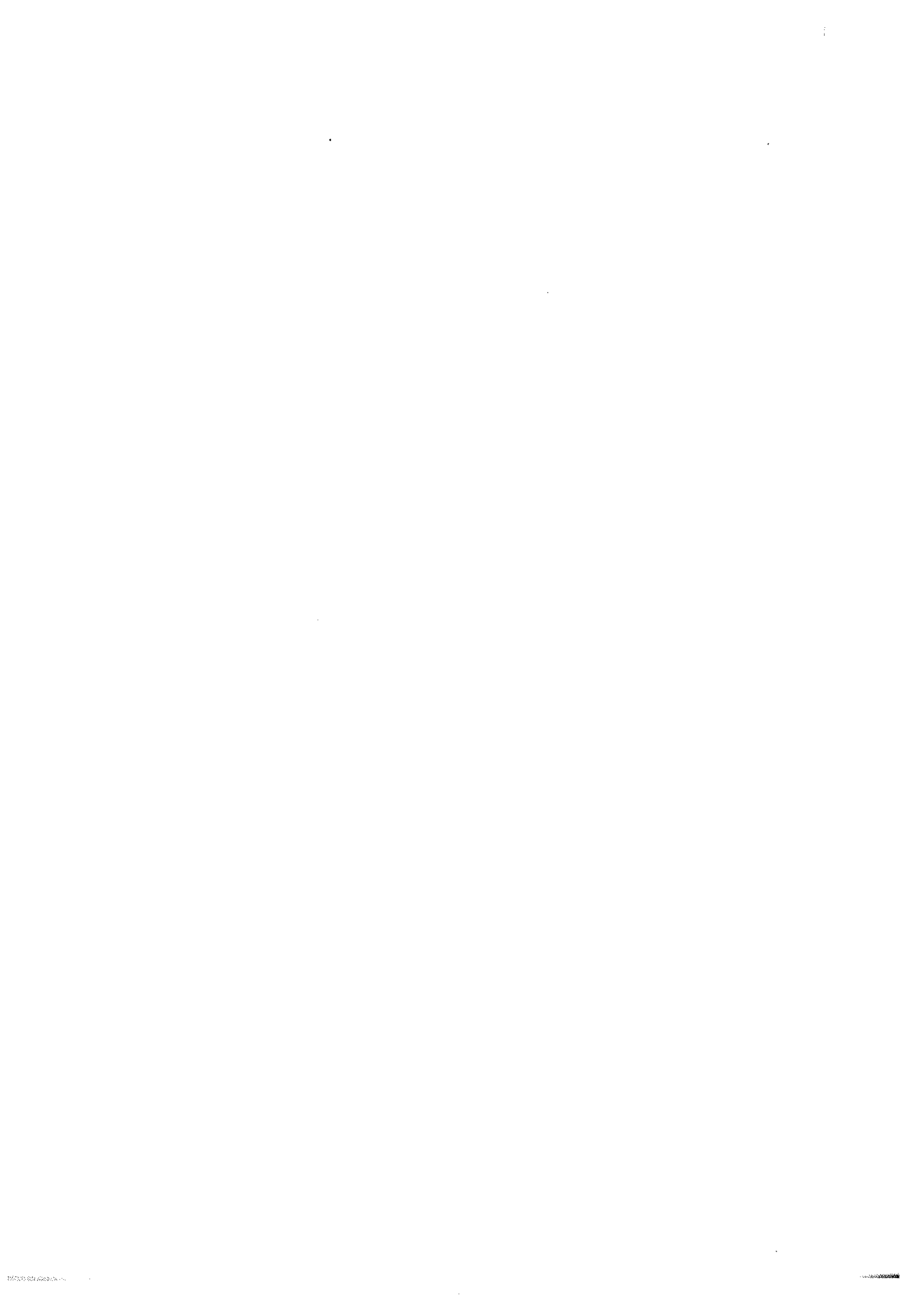
10. In view of the need to raise funds urgently in the light of tight external conditions that have had significant negative impact on domestic deficit financing and refinancing of outstanding debt securities, and thus the need for speed to urgently address the pressures, pending the issuance of a sovereign bond in the next few weeks to address the external market pressures, I respectfully request Parliament to consider and approve the short term bridge loan facility in paragraph 1 of this memorandum.



KEN OFORI-ATTA

MINISTER FOR FINANCE

DATED 27 JANUARY 2011





REPUBLIC OF GHANA

**OFFICE OF  
THE PRESIDENT**

SECRETARY TO THE PRESIDENT

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Ref. No.

*OPS 431 VOL 8 / 19 / 293*  
7<sup>th</sup> March, 2019

*Honourable Minister :*

**RE: REQUEST FOR EXECUTIVE APPROVAL FOR A SHORT-TERM BRIDGE FINANCE FACILITY BETWEEN THE REPUBLIC OF GHANA REPRESENTED BY THE MINISTRY OF FINANCE, AND STANDARD CHARTERED BANK AND STANDARD BANK FOR AN AMOUNT OF US\$750.00 MILLION UNDER THE 2019 SOVEREIGN BOND PROGRAMME**

I refer to your letter, dated 5<sup>th</sup> March, 2019, in respect of the above subject matter.

The President has granted executive approval for a bridge loan facility between the Republic of Ghana represented by the Ministry of Finance, and Standard Chartered Bank and Standard Bank for an amount of up to US\$750.00 million.

I shall be grateful if you could take requisite action on paragraph two (2) above.

**NANA BEDIATUO ASANTE**  
**SECRETARY TO THE PRESIDENT**

**THE HON. MINISTER**  
**MINISTRY OF FINANCE**  
**ACCRA**

**ATTN: HON. KEN OFORI-ATTA**

Cc: The Vice President  
Jubilee House, Accra

The Chief of Staff  
Jubilee House, Accra

Secretary to Cabinet  
Jubilee House, Accra



Confidential

Dated

2019

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THE REPUBLIC OF GHANA acting through the Ministry of Finance  
(as Borrower)

arranged by

STANDARD CHARTERED BANK

and

THE STANDARD BANK OF SOUTH AFRICA LIMITED

(as Mandated Lead Arrangers)

with

THE FINANCIAL INSTITUTIONS

listed in Schedule 1 (Original Lenders)

(as Original Lenders)

and

STANDARD CHARTERED BANK

(as Agent)

SYNDICATED BRIDGE LOAN FACILITY AGREEMENT  
\$750,000,000

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THIS AGREEMENT is dated 2019 and made between:

- (1) **THE REPUBLIC OF GHANA acting through THE MINISTRY OF FINANCE** as borrower (the Borrower);
- (2) **STANDARD CHARTERED BANK** incorporated in England by Royal Charter 1853 (Reference No. ZC 18) at the principal office of 1 Basinghall Avenue, London EC2V 5DD, United Kingdom and **THE STANDARD BANK OF SOUTH AFRICA LIMITED, (ACTING THROUGH ITS CORPORATE AND INVESTMENT BANKING DIVISION)** incorporated in the Republic of South Africa at the principal office of Rosebank, Johannesburg, South Africa, as mandated lead arrangers (each a **Mandated Lead Arranger** and together, the **Mandated Lead Arrangers**);
- (3) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 as lenders (the **Original Lenders**); and
- (4) **STANDARD CHARTERED BANK** incorporated in England by Royal Charter 1853 (Reference No. ZC 18) of One Basinghall Avenue, London EC2V 5DD, United Kingdom as agent of the other Finance Parties (the **Agent**).

IT IS AGREED as follows:

## SECTION 1 INTERPRETATION

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Agreement:

**Accountant-General** means the person appointed as the "Controller and Accountant-General" (or their successor in title) in terms of the Public Financial Management Act, 2016 (Act 921) of Ghana, as may be amended from time to time

**Affiliate** means:

- (a) in relation to a Finance Party, a Subsidiary of that Finance Party or a Holding Company of that Finance Party or any other Subsidiary of that Holding Company (including head offices and branches of the above); and
- (b) in relation to the Borrower, Ghana or any ministry of Ghana

**Arrangement Fee** means the fee set out in clause 15.2 (*Arrangement Fee*)

**Assignment Agreement** means an agreement substantially in the form set out in Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation, lodgement or registration

**Availability Period** means a period of thirty (30) days from the date on which this Agreement has been entered into

**Available Commitment** means a Lender's Commitment minus any amount of its share of any Commitment cancelled pursuant to clause 7.4 (*Voluntary cancellation*)

**Available Facility** means the aggregate for the time being of each Lender's Available Commitment

**Break Costs** means the amount (if any) by which:

- (a) the interest (excluding Margin) which a Lender should have received pursuant to the terms of this Agreement for the period from the date of receipt of all or any part of the principal amount of the 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 of interest 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) for the purposes of determining LIBOR a day (other than a Saturday or Sunday) on which banks are open for the transaction of domestic and foreign exchange business in London;
- (b) for the purposes of making dollar payments, a day (other than a Saturday or a Sunday) on which the banks are open for the transaction of domestic and foreign exchange business in London, Accra, Johannesburg and New York; and
- (c) for all other purposes, a day (other than a Saturday or a Sunday) on which banks are open for general business in London, Accra, Johannesburg and New York

**Code** means the US Internal Revenue Code of 1986

**Commitment** means:

- (a) in relation to an 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 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 the Borrower, 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 32 (*Confidentiality*); or
- (ii) is identified in writing at the time of delivery as non-confidential by the Borrower 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 the Borrower, 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

**Confidentiality Undertaking** means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Borrower and the Agent

**Control** means where one person (either directly or indirectly and whether by share capital, voting power, contract or otherwise) has the power to appoint and/or remove the majority of the members of the governing body of another person or otherwise controls or has the power to control the affairs and policies of that other person and that person is taken to be **Controlled** by the first person

**Default** means an Event of Default or any event or circumstance specified in clause 19 (*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

**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

**Event of Default** means any event or circumstance specified as such in clause 19 (*Events of Default*)

**External Indebtedness** means all indebtedness which (i) is denominated or payable (or, at the option of the payee, creditor or holder thereof, may be payable) in a Foreign Currency and (ii) was not originally incurred or assumed under an agreement or instrument made with or issued to creditors substantially all of whom were residents of Ghana or entities having their head office or principal place of business within the territory of Ghana

**Facility** means the bridge loan facility made available under this Agreement as described in clause 2 (*The Facility*)

**Facility Office** means the office or offices notified by a Lender to the 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:

- (a) sections 1471 to 1474 of the Code or any associated regulations or other official guidance;
- (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 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 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 Letter** means the fee letter dated on or about the date of this agreement setting out the arrangement fees payable pursuant to this Agreement.

**Finance Document** means:

- (a) this Agreement;
- (b) the Fee Letter; and
- (c) any other document designated as such by the Agent and the Borrower

**Finance Party** means the Agent, a Mandated Lead Arranger or a Lender

**Financial Indebtedness** means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to 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 GAAP, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with GAAP in force prior to 1 January 2019, have been treated as an operating lease);

- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (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 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; and
- (i) 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

**Foreign Currency** means any currency other than the lawful currency of Ghana

**GAAP** means generally accepted accounting principles in Ghana including IFRS

**Ghana** means the Republic of Ghana

**Holding Company** means, in relation to a person, any other person in respect of which it is a Subsidiary

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

**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 (*Default interest*)

**Interpolated Screen Rate** means, in relation to LIBOR for the 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 the Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of the Loan,

each as of 11 a.m. on the Quotation Day for the currency of the Loan

**Legal Reservations** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law which are specifically referred to in any legal opinion delivered pursuant to Clause 4.1 (*Initial conditions precedent*)

**Lender** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with clause 20 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement

**LIBOR** means, in relation to any Loan:

- (a) the applicable Screen Rate;
- (b) (if no Screen Rate is available for dollars for the Interest Period of the Loan) the Interpolated Screen Rate for the Loan; or
- (c) if:
  - (i) no Screen Rate is available for dollars; or
  - (ii) no Screen Rate is available for dollars for the Interest Period of the Loan and it is not possible to calculate an Interpolated Screen Rate for the Loan,

the Reference Bank Rate,

as of, in the case of paragraphs (a) and (c) above, 11 a.m. on the Quotation Day for dollars and for a period equal in length to the Interest Period of the Loan and if that rate is less than zero, LIBOR shall be deemed to be zero

**Limitation Acts** means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984

**LMA** means the Loan Market Association

**Loan** means the Loan made or to be made under the Facility or the principal amount outstanding for the time being of the Loan

**Majority Lenders** means a Lender or Lenders whose Commitments aggregate more than 66 $\frac{2}{3}$ % of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 $\frac{2}{3}$ % of the Total Commitments immediately prior to the reduction)

**Margin** means:

- (a) from and including the date of this Agreement until but excluding the date falling 3 Months after the date of this Agreement, 3.50% per annum;
- (b) from and including the date falling 3 Months after the date of this Agreement until but excluding the date falling 4 Months after the date of this Agreement, 4.00% per annum;
- (c) from and including the date falling 4 Months after the date of this Agreement until but excluding the date falling 5 Months after the date of this Agreement, 4.50% per annum;
- (d) from and including the date falling 5 Months after the date of this Agreement until all amounts are repaid under this Agreement, 5.00% per annum

**Material Adverse Effect** means in the reasonable opinion of the Majority Lenders a material adverse effect on:

- (a) the ability of the Borrower to perform its obligations under the Finance Documents; or

- (b) the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under the Finance Documents

**Maturity Date** means the date falling 6 months after the date of this Agreement, provided that if such date is not a Business Day, the Maturity Date shall be the immediately preceding Business Day

**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) (subject to paragraph (c) below) 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;
- (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; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period

**New Lender** has the meaning given to that term in clause 20 (*Changes to the Lenders*)

**Party** means a party to this Agreement

**Programme** means the 2019 international capital market funding programme for the issuance of up to USD 3 billion of eurobonds by the Borrower

**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 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 Rate** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks as the rate at which the relevant Reference Bank could borrow funds in the London interbank market in dollars for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period

**Reference Banks** means the principal London offices of Standard Chartered Bank and two (2) other banks as may be appointed by the 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 adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund

**Relevant Interbank Market** means the London interbank market

**Repeating Representations** means each of the representations set out in clause 16 with the exception of those set out in clauses 16.11 (*Pari passu ranking*), 16.12 (*No proceedings pending or threatened*) and 16.14 (*Anti-corruption law*)

**Representative** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian



**Restricted Party** means a person that is:

- (a) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, any Sanctions List;
- (b) (other than with respect to individuals involved in diplomatic or military activity<sup>1</sup>) located in, incorporated under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a person located in or organized under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions; or
- (c) otherwise a target of Sanctions (**target of Sanctions** signifying a person with whom a US person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities)

**Sanctions** means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by:

- (a) the United States government;
- (b) the United Nations;
- (c) the European Union;
- (d) the United Kingdom; or
- (e) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury (OFAC), the United States Department of State, and Her Majesty's Treasury (HMT)

(together the **Sanctions Authorities**)

**Sanctions List** means the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by HMT, or any similar list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities

**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 dollars for the relevant period displayed on pages LIBOR01 or LIBOR02 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 Agent may specify another page or service displaying the relevant rate after consultation with the Borrower

**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

**Subsidiary** means in relation to a person, any other person:

- (a) which is Controlled, directly or indirectly, by the first named person;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first named person; or
- (c) which is a Subsidiary of another Subsidiary of the first named person

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<sup>1</sup> HSF Note: Subject to confirmation by SCB.

**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 \$750,000,000 (seven hundred and fifty million dollars) at the date of this Agreement

**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 Agent and the Borrower

**Transfer Date** means, in relation to an assignment or 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 Agent executes the relevant Assignment Agreement or Transfer Certificate

**Treaty Obligations** means any obligation of the Borrower under the articles of agreement with the International Monetary Fund, African Development Bank and the World Bank

**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 the Borrower if some or all of its payments under the Finance Documents are from sources within the US for US federal income tax purposes

**Utilisation** means the utilisation of the Facility

**Utilisation Date** means the date of the Utilisation, being the date on which the Loan is to be made

**Utilisation Request** means a notice substantially in the form set out in Schedule 3 (*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

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) the **Agent**, any **Mandated Lead Arranger**, any **Finance Party**, any **Lender**, the **Borrower** 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) a document in **agreed form** is a document which is previously agreed in writing by or on behalf of the Borrower and the Agent or, if not so agreed, is in the form specified by the Agent;
  - (iii) **assets** includes present and future properties, revenues and rights of every description;

- (iv) 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;
  - (v) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - (vi) **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;
  - (vii) 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);
  - (viii) 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;
  - (ix) a provision of law is a reference to that provision as amended or re-enacted; and
  - (x) a time of day is a reference to London time.
- (b) Section, clause and Schedule headings are for ease of reference only;
  - (c) 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;
  - (d) 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 remedied or waived.

### 1.3 Currency symbols and definitions

\$, **USD** and **dollars** denote the lawful currency of the United States of America.

**GH¢**, **GHS** and **Ghana Cedi** denote the lawful currency of Ghana.

### 1.4 Third Party Rights

- (a) Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of any Finance Document the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

## SECTION 2 THE FACILITY

### 2 The Facility

#### 2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a dollar term bridge loan facility in an aggregate amount equal to the Total Commitments.

## **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 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(c) below. 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 the 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 Agent on its behalf) is a debt owing to that Finance Party by the Borrower.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

## **3 Purpose**

### **3.1 Purpose**

The Borrower shall apply all amounts borrowed by it under the Facility:

- (a) towards payment of any fees and expenses related to the Facility; and
- (b) to fund or refinance various infrastructure development projects and for liability management in Ghana which have been approved in Ghana's 2019 budget.

### **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**

The Borrower may not deliver the Utilisation Request unless the Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied, unless the Majority Lenders have instructed the Agent not to do so.

### **4.2 Further conditions precedent**

The Lenders will only be obliged to comply with clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would result from the proposed Loan; and
- (b) the Repeating Representations to be made by the Borrower are true in all material respects.

**4.3 Maximum number of Loans**

The Borrower may not deliver the Utilisation Request if as a result of the proposed Utilisation more than one (1) Loan would be outstanding.

## **SECTION 3 UTILISATION**

### **5 Utilisation**

#### **5.1 Delivery of the Utilisation Request**

The Borrower may utilise the Facility, by delivery to the Agent of the duly completed Utilisation Request not later than 11 a.m. (London time) on the date falling three (3) Business Days prior to the proposed Utilisation Date.

#### **5.2 Completion of the Utilisation Request**

(a) The Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (i) the proposed Utilisation Date is a Business Day within the Availability Period; and
- (ii) the currency and amount of the Utilisation comply with clause 5.3 (*Currency and amount*).

(b) Only one Loan may be requested in the Utilisation Request.

#### **5.3 Currency and amount**

(a) The currency specified in the Utilisation Request must be dollars.

(b) The amount of the proposed Loan must be an amount which is not more than the Available Facility on the proposed Utilisation Date and which is a minimum of \$50,000,000 (fifty million dollars) or, if less, the Available Facility on the proposed Utilisation Date.

#### **5.4 Lenders' participation**

(a) 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.

(b) The amount of each Lender's participation in the Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

(c) The Agent shall notify each Lender of the amount of the Loan and the amount of its participation in the Loan by 4 p.m. on the date falling three (3) Business Days prior to the proposed Utilisation Date.

#### **5.5 Cancellation of Commitment**

Any Commitments which, at that time, are unutilised shall be immediately cancelled on the earlier of the Utilisation Date and the last day of the Availability Period.

## **SECTION 4 REPAYMENT, PREPAYMENT AND CANCELLATION**

### **6 Repayment**

#### **6.1 Repayment of Loans**

Subject to clause 7 (*Prepayment and Cancellation*), the Borrower shall repay the Loan on the Maturity Date.

#### **6.2 Reborrowing**

No part of the Facility which is repaid may be reborrowed.

### **7 Prepayment and Cancellation**

#### **7.1 Mandatory Prepayment - Illegality**

if:

- (a) in any applicable jurisdiction, it becomes unlawful for any 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 or; or
- (b) the Borrower does not provide to the Agent (in sufficient copies for all the Lenders, if the Agent so requests) within a reasonable amount of time (having regard to the type and volume of information being sought), such additional information as required by any Finance Party under any applicable banking supervisory law (provided compliance with such information request is or would be in breach of any Ghanaian law or regulation):
  - (i) that Lender shall promptly notify the Agent upon becoming aware of that event;
  - (ii) upon the Agent notifying the Borrower, the Available Commitment of that Lender will be immediately cancelled; and
  - (iii) the Borrower shall repay that Lender's participation in the Loan on the last day of the Interest Period for the Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participations repaid.

#### **7.2 Mandatory Prepayment - Market Issuance**

If there is any international capital markets issuance by Ghana:

- (a) the Borrower shall promptly notify the Agent upon becoming aware of that event; and
- (b) the Borrower shall, not later than 14 Business Days after receipt of any proceeds from such capital markets issuance, repay the Loan and interest accrued thereon:
  - (i) in full if the net proceeds (after deduction of all applicable tax, fees, costs and expenses) raised by such issuance are equal to or larger than the aggregate amount of the Loan and accrued interest thereon; or
  - (ii) in part and in an amount equal to the net proceeds (after deduction of all applicable tax, fees, costs and expenses) raised by such issuance, if such net proceeds are less than the aggregate amount of the Loan and accrued interest thereon.

### 7.3 Mandatory Prepayment – Sanctions

If:

- (a) the Borrower does not comply with Clause 18.10 (*Sanctions*); or
- (b) any representation made or deemed to be made by the Borrower pursuant to Clause 16.18 (*Sanctions*) proves to have been incorrect or misleading, then:
  - (i) the Borrower shall promptly notify the Agent upon becoming aware of that event; and
  - (ii) if a Lender so requires and notifies the Agent within 5 Business Days of the Borrower notifying the Agent of the event the Agent shall, by not less than 5 Business Days' notice to the Borrower, cancel the Commitment of that Lender and declare the participation of that Lender in all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of that Lender will be cancelled and all such outstanding Loans and amounts will become immediately due and payable.

### 7.4 Voluntary cancellation

The Borrower may, if it gives the Agent not less than three (3) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of \$25,000,000 (twenty five million dollars) of the Available Facility. Any cancellation under this clause 7.4 shall reduce the Commitments of the Lenders rateably.

### 7.5 Voluntary prepayment of Loans

- (a) The Borrower may, if it gives the Agent not less than three (3) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loan (but, if in part, being an amount that reduces the amount of the Loan by a minimum amount of \$25,000,000 (twenty five million dollars).
- (b) Any prepayment under this clause 7.5 (*Voluntary prepayment of Loans*) shall be applied rateably among the participations of all Lenders.

### 7.6 Right of replacement or repayment and cancellation in relation to a single Lender

- (a) If:
  - (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph 11.2(c) of clause 11.2 (*Tax gross-up*); or
  - (ii) any Lender claims indemnification from the Borrower under clause 11.3 (*Tax indemnity*) or clause 12.1 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Agent notice of its intention to replace that Lender in accordance with paragraph (d) below.

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in the Loan.
- (d) The Borrower may, in the circumstances set out in paragraph (a) above, on three (3) Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring



that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to clause 20 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with clause 20 (*Changes to the Lenders*) for a purchase price in cash or other cash payment payable at the time of the transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under clause 20.9 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
  - (i) the Borrower shall have no right to replace the Agent;
  - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender; and
  - (iii) the Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (f) A Lender shall perform the checks described in paragraph (e)(iii) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

#### 7.7 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) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) 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 affected Lender, as appropriate.
- (g) If all or part of any Lender's participation in the Loan is repaid or prepaid and is not available for redrawing, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of 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 which is the aggregate of the applicable:

- (a) Margin; and
- (b) LIBOR.

#### **8.2 Payment of interest**

The Borrower shall pay accrued interest on the Loan to which that Interest Period relates on the last day of each Interest Period.

#### **8.3 Default interest**

- (a) 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 paragraph (b) below, is two (2) per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted the 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 8.3 shall be immediately payable by the Borrower on demand by the Agent.
- (b) 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 relating to the Loan:
  - (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 the Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two (2) per cent. 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 Lenders and the Borrower of the determination of a rate of interest under this Agreement.

### **9 Interest Periods**

#### **9.1 Interest Periods**

- (a) Subject to the other provisions of this clause 9 (*Interest Periods*), each Interest Period for the Loan will be one (1) Month or such shorter period as the Borrower and the Agent (acting on the instructions of the Majority Lenders) may agree.
- (b) The first Interest Period for the Loan shall start on the Utilisation Date for the Loan and each subsequent Interest Period shall begin upon the expiry of the previous Interest Period.

- (c) The final Interest Period for the Loan shall end on the Maturity Date.

## 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 Absence of quotations

Subject to clause 10.2 (*Market disruption*), if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by 11 a.m. on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

### 10.2 Market disruption

- (a) If a Market Disruption Event occurs in relation to the Loan for any Interest Period, then the rate of interest on each Lender's share of the Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Margin; and
  - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before 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 that Lender of funding its participation in the Loan from whatever source it may reasonably select.
- (b) In relation to a Market Disruption Event under clause 10.2(d)(ii) below, if the percentage rate per annum notified by a Lender pursuant to clause 10.2(a)(ii) above shall be less than LIBOR or if a Lender shall fail to notify the Agent of any such percentage rate per annum, the cost to that Lender of funding its participation in the Loan for the relevant Interest Period shall be deemed, for the purposes of clause 10.2(a)(ii) above, to be LIBOR.
- (c) If a Market Disruption Event occurs the Agent shall, as soon as is practicable, notify the Borrower.
- (d) In this Agreement **Market Disruption Event** means:
  - (i) at or about noon on the Quotation Day for the relevant Interest Period LIBOR is to be determined by reference to the Reference Banks and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR for dollars for the relevant Interest Period; or
  - (ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders that the cost to them of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR.

### 10.3 Alternative basis of interest or funding

- (a) If a Market Disruption Event occurs and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than 30 (thirty) days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

**10.4 Break Costs**

- (a) The Borrower shall, within 15 Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of the Loan or 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.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

## SECTION 6 ADDITIONAL PAYMENT OBLIGATIONS

### 11 Tax Gross Up and Indemnities

#### 11.1 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.

**Tax Payment** means either the increase in a payment made by the Borrower to a Finance Party under clause 11.2 (*Tax gross-up*) or a payment under clause 11.3 (*Tax indemnity*).

- (b) Unless a contrary indication appears, in this clause 11 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

#### 11.2 Tax gross-up

- (a) The Borrower 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 it 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, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower 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 the Borrower is required to make a Tax Deduction, the Borrower shall 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.
- (e) Within 30 (thirty) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

#### 11.3 Tax indemnity

- (a) Without prejudice to clause 11.2 (*Tax gross-up*), if any Finance Party is required to make any payment of or on account of Tax on or in relation to any sum received or receivable under the Finance Documents (including any sum deemed for purposes of Tax to be

received or receivable by such Protected Party whether or not actually received or receivable) or if any liability in respect of any such payment is asserted, imposed, levied or assessed against any Protected Party, the Borrower shall (within 15 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 is compensated for by an increased payment under clause 11.2 (*Tax gross-up*), or 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 the Borrower under this clause 11.3, notify the Agent.

#### 11.4 Stamp taxes

The Borrower shall pay and, within 15 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 other than any stamp duty, registration or other similar Tax arising on a transfer or assignment of a Finance Document by a Finance Party.

#### 11.5 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 must 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 must 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. The Recipient must (where this paragraph (i) 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; 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) 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.
- (d) Any reference in this clause 11.5 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).
- (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.

#### 11.6 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;
  - (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 (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.
- (e) If the Borrower is a US Tax Obligor or the Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten Business Days of:
  - (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, on the date of this Agreement;
  - (ii) where the Borrower is a US Tax Obligor on a Transfer Date and the relevant Lender is a New Lender, on the relevant Transfer Date; or
  - (iii) where the Borrower is not a US Tax Obligor, the date of a request from the Agent, supply to the Agent:
    - (A) a withholding certificate on Form W-8 or Form W-9 or any other relevant form; or
    - (B) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.

The Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Lender pursuant to this paragraph (e) to the Borrower and shall be entitled to rely on any such withholding certificate, withholding statement, documentation, authorisations and waivers provided without further verification. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (e).

- (f) The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.
- (h) The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with paragraph (e), (f) or (g) above.
- (i) Without prejudice to any other term of this Agreement, if a Lender fails to supply any withholding certificate, withholding statement, document, authorisation, waiver or information in accordance with paragraph (e) above, or any withholding certificate, withholding statement, document, authorisation, waiver or information provided by a



Lender to the Agent is or becomes materially inaccurate or incomplete, then such Lender shall indemnify the Agent, within three Business Days of demand, against any cost, loss, Tax or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (including any related interest and penalties) in acting as Agent under the Finance Documents as a result of such failure.

#### 11.7 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), and in any case at least three (3) Business Days prior to making a FATCA Deduction, notify the Party to whom it is making the payment and, on or prior to the day on which it notifies that Party, shall also notify the Borrower, the Agent and the other Finance Parties.

### 12 Increased Costs

#### 12.1 Increased costs

- (a) Subject to clause 12.3 (*Exceptions*) the Borrower shall, within 15 Business Days of a demand by the 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 or (ii) compliance with any law or regulation made after the date of this Agreement.
- (b) In this Agreement Increased Costs means:
  - (i) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
  - (ii) an additional or increased cost; or
  - (iii) 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.

#### 12.2 Increased cost claims

- (a) A Finance Party intending to make a claim pursuant to clause 12.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

#### 12.3 Exceptions

- (a) Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
  - (i) attributable to a Tax Deduction required by law to be made by the Borrower;
  - (ii) attributable to a FATCA Deduction required to be made by a Party;

- (iii) compensated for by clause 11.3 (*Tax indemnity*) (or would have been compensated for under clause 11.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of clause 11.3 (*Tax indemnity*) applied);
  - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
  - (v) 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 date of this Agreement (but excluding any amendment arising out of Basel III) ("**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)
- (b) In this clause 12.3, a reference to a **Tax Deduction** has the same meaning given to the term in clause 11.1 (*Definitions*) and "**Basel 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.

### 13 Other Indemnities

#### 13.1 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,

the Borrower shall as an independent obligation, within 15 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.

- (b) 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.

#### 13.2 Other indemnities

The Borrower shall, within 15 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, including without limitation, 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 the 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.

### 13.3 Indemnity to the Agent

- (a) The Borrower indemnifies the Agent against and shall within 15 Business Days of written demand, pay to the Agent an amount equal to any cost, loss or liability incurred by it (acting reasonably) as a result of:
  - (i) upon the instructions of the Majority Lenders and after good faith consultations with the Borrower (to the extent commercially practicable), investigating any event which it reasonably believes is an Event of Default or a Default;
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes (acting in good faith) 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) Without prejudice to Clause 25.10 (*Disruption to Payment Systems etc.*), paragraph (d), the Borrower indemnifies the Agent against and shall within 15 Business Days of written demand, pay to the Agent an amount equal to any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) 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.

## 14 Mitigation by the Lenders

### 14.1 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*), clause 11 (*Tax gross-up and indemnities*) or clause 12 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

### 14.2 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 14.1 (*Mitigation*).

- (b) A Finance Party is not obliged to take any steps under clause 14.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **15 Costs and Expenses**

### **15.1 Transaction expenses**

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

- (a) this Agreement and any other documents referred to in this Agreement; and
- (b) any other Finance Documents executed after the date of this Agreement.

### **15.2 Arrangement Fee**

The Borrower shall pay an arrangement fee to the Mandated Lead Arrangers in the amount set out in the Fee Letter.

### **15.3 Amendment costs**

if:

- (a) the Borrower requests an amendment, waiver or consent;
- (b) an amendment is required pursuant to clause 25.9 (*Change of currency*); or
- (c) any amendment or waiver is contemplated or agreed pursuant to clause 31.4 (*Replacement of Screen Rate*),

the Borrower shall, within 15 Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with or implementing that request or requirement or actual or contemplated agreement.

### **15.4 Enforcement costs**

The Borrower shall, within 15 Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

## **SECTION 8 REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

### **16 Representations**

The Borrower makes the representations and warranties set out in this clause 16 to each Finance Party on the date of this Agreement.

#### **16.1 Status**

It has the power to own its assets and carry on its affairs as it is being conducted.

#### **16.2 Binding obligations**

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

#### **16.3 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 law or regulation applicable to it;
- (b) any agreement or instrument binding upon it or any of its assets; or
- (c) any borrowing restrictions applicable to it.

#### **16.4 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 indemnities contemplated by the Finance Documents to which it is a party.
- (c) All signatories who have or will sign the Finance Documents are duly authorised to do so at the time of signature.

#### **16.5 Validity and admissibility in evidence**

- (a) All Authorisations required:
  - (i) 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; and
  - (ii) to make the Finance Documents to which it is a party admissible in evidence in Ghana,have been obtained, effected, done, fulfilled or performed and are in full force and effect.
- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of the Borrower have been obtained or effected and are in full force and effect.

#### **16.6 Governing law and enforcement**

- (a) The choice of the law stated to be the governing law of each Finance Document will be recognised and enforced in Ghana.

- (b) Any judgment obtained in relation to a Finance Document in the jurisdiction of the stated governing law of that Finance Document will be recognised and enforced in Ghana.
- (c) Any arbitral award obtained in relation to a Finance Document in the seat of that arbitral tribunal as specified in that Finance Document will be recognised and enforced in Ghana without re-examination of the merits.

**16.7 Deduction of Tax**

Except for withholding tax on fees and interest payable on loans to non-resident persons, it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

**16.8 No filing or stamp taxes**

Under the laws of Ghana, except for the stamping of the Finance Documents as exempt in 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.

**16.9 No default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of the Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its assets are subject which might have a Material Adverse Effect.

**16.10 No misleading information**

- (a) Any written information provided by the Borrower was true, complete 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 and is not misleading in any respect.
- (b) Nothing has occurred or been omitted and no information provided by the Borrower has been given or withheld that results in the information being untrue or misleading in any material respect.

**16.11 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 generally.

**16.12 No proceedings pending or threatened**

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

**16.13 No breach of laws**

It has not breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

**16.14 Anti-corruption law**

The Borrower has not engaged in any activity or conduct which would violate any applicable anti-bribery or anti-corruption law or regulation and has instituted and maintains as at the date of this

Agreement policies and procedures designed to prevent bribery and unlawful payments by the Borrower and by persons associated with the Borrower.

**16.15 No adverse consequences**

- (a) It is not necessary under the laws of Ghana:
  - (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 should be licensed, qualified or otherwise entitled to carry on business in Ghana.
- (b) 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.

**16.16 Treaty Obligations**

- (a) The Treaty Obligations of the Borrower do not contain any provisions which, expressly or impliedly, limit the ability of the Borrower to enter into, deliver or perform its obligations under the Finance Documents.
- (b) No negative sanctions are or could be made against the Borrower under the Treaty Obligations as a result of the Borrower entering into, delivering or performing its obligations under the Finance Documents to which it is a party.

**16.17 No immunity**

- (a) The Borrower is subject to civil and commercial law with respect to its obligations under the Finance Documents to which it is a party.
- (b) It is not entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in any proceedings taken in Ghana in relation to the Finance Documents except in respect of:
  - (i) property or assets used by a diplomatic or consular mission of the Borrower;
  - (ii) property or assets of a military character and under the control of a military authority or defence agency of the Borrower;
  - (iii) property, assets and infrastructure located in Ghana and dedicated to a public or governmental use (as distinct from property, assets or infrastructure dedicated to a commercial use) by the Borrower; or
  - (iv) petroleum assets protected in the Petroleum Revenue Management Act, 2011 (Act 815 as amended).

**16.18 Sanctions**

Neither the Borrower, nor any of its Affiliates or joint ventures, nor any of their respective officers or employees nor, to the knowledge of the Borrower, any persons acting on any of their behalf:

- (a) is a Restricted Party; or
- (b) has received notice of or is aware of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanctions Authority.

**16.19 US Tax Obligor**

The Borrower is not a US Tax Obligor.

**16.20 No material adverse change**

There has been no change in the fiscal or economic position of the Borrower or its Affiliates since the date of this Agreement which would have a Material Adverse Effect.

**16.21 Annual Budget Statement**

The Borrower has made provision in its annual budget statement for all amounts payable under the Finance Documents for the relevant period and the annual budget statement does not place any restriction upon the ability of the Borrower to meet its obligations under the Finance Documents.

**16.22 Membership of International Monetary Fund and World Bank**

Ghana is a member of the World Bank and is a member in good standing of the International Monetary Fund and is eligible to use the general resources of the International Monetary Fund.

**16.23 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.

**17 Information Undertakings**

The undertakings in this clause 17 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.

**17.1 Information: miscellaneous**

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- (a) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings relating to the External Indebtedness of the Borrower which are current, threatened or pending against the Borrower, and which might, if adversely determined, have a Material Adverse Effect;
- (b) promptly, such further information regarding the External Indebtedness of the Borrower as any Finance Party (through the Agent) may reasonably request where an event or circumstance has occurred which in the reasonable opinion of the Majority Lenders may result in a Material Adverse Effect; and
- (c) promptly, such further information regarding the Borrower's use of proceeds of the Loan as any Finance Party (through the Agent) may reasonably request where an event or circumstance has occurred which in the reasonable opinion of the Majority Lenders may result in a Material Adverse Effect.

**17.2 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 its Accountant-General or senior officers on his/her 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).

### 17.3 Use of websites

(a) The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the **Website Lenders**) who accept 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 each of the Lenders) 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.

If any Lender (a **Paper Form 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 sufficient copies for each Paper Form Lender) 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.

(b) The Agent shall supply each Website 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.

(c) 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.

If the Borrower notifies the Agent under paragraph (c)(i) or (c)(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 each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

(d) Any Website 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.

### 17.4 "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) any change in the status of the Borrower after the date of this Agreement; or
- (iii) 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 Agent or any Lender (or, in the case of paragraph (iii) 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 any 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 any Lender) or any Lender (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in paragraph (iii) 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 laws and regulations pursuant to the transactions contemplated in the Finance Documents.

- (b) Each 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 laws and regulations pursuant to the transactions contemplated in the Finance Documents.

## 18 General Undertakings

The undertakings in this clause 18 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.

### 18.1 Authorisations

The Borrower 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 law or regulation of Ghana to:
  - (A) enable it to perform its obligations under the Finance Documents;
  - (B) ensure the legality, validity, enforceability or admissibility in evidence in Ghana of any Finance Document; and
  - (C) carry on its business.

### 18.2 Compliance with laws

The Borrower shall comply in all respects with all laws to which it may be subject, if failure so to comply would have a Material Adverse Effect.

### 18.3 Anti-corruption and anti-money laundering laws

- (a) The Borrower shall not directly or indirectly use the proceeds of the Facility for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation promulgated by other Sanctions Authorities.
- (b) The Borrower shall:

- (i) conduct its businesses in compliance with all applicable anti-corruption and anti-money laundering laws; and
- (ii) maintain policies and procedures designed to prevent bribery and unlawful payments by the Borrower and by persons associated with the Borrower.

#### 18.4 Borrowings limit

The Borrower shall ensure that the borrowing of the Loan would not cause any borrowing, guaranteeing or similar limit binding on the Borrower to be exceeded.

#### 18.5 Negative Pledge

- (a) The Borrower shall not, without the prior written consent of the Majority Lenders, create or permit to subsist any Security on any of its assets to secure its External Indebtedness except as provided under paragraph (b) of this Clause.
- (b) The Borrower may create or permit to subsist:
  - (i) any Security on property to secure External Indebtedness arising in the ordinary course of business to finance export, import or other trade transactions, which matures (after giving effect to renewals and refinancing) no more than one (1) year after it was originally incurred;
  - (ii) any Security upon property to secure the purchase price of such property or to secure any External Indebtedness incurred solely for the purpose of financing the acquisition of such property;
  - (iii) any Security on property arising by operation of law (or pursuant to any agreement establishing a security equivalent to one which would otherwise exist under relevant local law), including without limitation any right of set-off with respect to demand or time deposits with financial institutions and bankers' liens with respect to property held by financial institutions;
  - (iv) any Security existing on such property at the time of its acquisition;
  - (v) any Security in existence as of the date of this Agreement;
  - (vi) any Security securing External Indebtedness issued upon surrender or cancellation of the principal amount of such indebtedness to the extent the Security is created to secure the External Indebtedness;
  - (vii) any Security created in connection with any project financing External Indebtedness, provided that the properties to which any such Security applies are solely with respect to:
    - (A) properties which are the subject of such project financing; or
    - (B) revenues or claims which arise from the operation, failure to meet specifications, failure to complete, exploitation, sale or loss of, or damage to, such properties.

#### 18.6 Loans and guarantees

The Borrower shall not, make any loan, grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged to (actually or contingently) assume liability in respect of any obligation of any other person, other than in the ordinary course of government business and as authorised pursuant to the approved annual budget of the government of Ghana.

#### 18.7 Taxation

- (a) The Borrower shall pay and discharge all Taxes (including FATCA) imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
- (i) such payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed; and
  - (iii) such payment can be lawfully withheld.
- (b) The Borrower shall not change its residence for Tax purposes.

#### 18.8 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 unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application.

#### 18.9 Refinancing

- (a) The Borrower will appoint the Mandated Lead Arrangers and certain other banks to arrange a eurobond issuance pursuant to the Programme which, subject to market conditions, is expected to raise sufficient funds to repay the Loan and accrued interest by the Maturity Date.
- (b) If, on the date falling 90 days after this Agreement, no eurobond has been issued and after discussion with the Borrower, the Mandated Lead Arrangers are of the opinion that the Borrower is unlikely to find conditions conducive to issuing a eurobond in an amount at least sufficient to repay the Loan within the following 30 days on terms acceptable to the Borrower, the Borrower and the Mandated Lead Arrangers shall agree (to the satisfaction of the Mandated Lead Arrangers) an alternative repayment strategy to repay the Loan and accrued interest by the Maturity Date.

#### 18.10 Sanctions

The Borrower shall not, and shall not permit or authorise any other person to, directly or indirectly, use, lend, make payments of, contribute or otherwise make available, all or any part of the proceeds of any Loan or other transactions contemplated by this Agreement to fund any trade, business or other activities

- (a) involving or for the benefit of any Restricted Party; or
- (b) in any other manner that would reasonably be expected to result in the Borrower or any Lender being in breach of any Sanctions (if and to the extent applicable to either of them) or becoming a Restricted Party.

#### 18.11 Stamping

The Borrower shall procure that the Finance Documents are duly stamped as exempt and the relevant presentation fee paid in Ghana promptly following the date of this Agreement and that evidence of the same is delivered to the Agent (in form and substance satisfactory to it) by no later than the date falling thirty (30) days after the date of this Agreement.

## **19 Events of Default**

Each of the events or circumstances set out in clause 19 is an Event of Default (save for clause 19.15 (*Acceleration*)).

### **19.1 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 five (5) Business Days of its due date.

### **19.2 Other obligations**

- (a) The Borrower does not comply with any provision of the Finance Documents (other than those referred to in clause 19.1 (*Non-payment*) and clause 18.11 (*Stamping*)).
- (b) The Borrower does not comply with clause 18.11 (*Stamping*).
- (c) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 14 (fourteen) 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.

### **19.3 Misrepresentation**

- (a) 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.
- (b) Paragraph (a) above, does not apply where the circumstances giving rise to an incorrect or misleading representation, warranty or statement is capable of remedy and is so remedied within 14 (fourteen) days of the day on which it was originally made or deemed to have been made.

### **19.4 Cross default**

- (a) Any Financial Indebtedness of the Borrower which exceeds USD 50,000,000 in aggregate is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of the Borrower which exceeds USD 50,000,000 in aggregate is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of the Borrower which exceeds USD 50,000,000 in aggregate is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- (d) Any creditor of the Borrower becomes entitled to declare any Financial Indebtedness of the Borrower which exceeds USD 50,000,000 in aggregate due and payable prior to its specified maturity as a result of an event of default (however described).

### **19.5 Moratorium**

- (a) The Borrower commences negotiations with any of its creditors, by reason of actual or anticipated financial difficulties, with a view to the general readjustment or rescheduling of any of its External Indebtedness.
- (b) A general moratorium is declared with respect to payment of External Indebtedness of the Borrower.

**19.6 Rescheduling of external foreign currency obligations**

Rescheduling or restructuring of any external foreign currency commercial debt of the Borrower or its Affiliates occurs by reason of actual or anticipated financial difficulties.

**19.7 Membership of IMF**

Ghana ceases to be a member of the International Monetary Fund or the World Bank (including International Bank for Reconstruction and Development) or ceases to have the ability to use the general resources of the International Monetary Fund.

**19.8 Creditors' process**

Any attachment, sequestration, execution or other enforcement action outside of Ghana affects any assets or asset of the Borrower which is reasonably likely to have a Material Adverse Effect.

**19.9 Failure to comply with court judgment or arbitral award**

The Borrower fails to comply with or pay by the required time any sum due from it under any final judgment or any final order made or given by a court or arbitral tribunal or other arbitral body, in each case of competent jurisdiction and outside of Ghana, which is reasonably likely to have a Material Adverse Effect.

**19.10 Unlawfulness and invalidity**

- (a) It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.
- (b) Any obligation or obligations of the Borrower under any Finance Documents are not (subject to the Legal Reservations) or 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.
- (c) Any Finance Document ceases to be in full force and effect or is alleged by a party to it (other than a Finance Party) to be ineffective.

**19.11 Repudiation and rescission of agreements**

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

**19.12 Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against the Borrower or its assets which have or are reasonably likely to have a Material Adverse Effect.

**19.13 Convertibility/Transferability**

Any foreign exchange law is amended, enacted or introduced or is reasonably likely to be amended, enacted or introduced in Ghana that (in the reasonable opinion of the Majority Lenders):

- (a) has or is reasonably likely to have the effect of prohibiting, or restricting or delaying in any material respect any payment that the Borrower is required to make pursuant to the terms of any of the Finance Documents; or
- (b) is materially prejudicial to the interests of the Finance Parties under or in connection with any of the Finance Documents.

**19.14 Material adverse change**

Any event of circumstance occurs which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect.

**19.15 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 Majority Lenders, 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 Majority Lenders.

## SECTION 9 CHANGES TO PARTIES

### 20 Changes to the Lenders

#### 20.1 Assignments and transfers by the Lenders

Subject to this clause 20, a Lender (the **Existing Lender**) may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations:
  - (i) to any transferee that is an Affiliate of an Existing Lender;
  - (ii) to another Existing Lender; or
  - (iii) following the occurrence of an Event of Default, to any other bank or financial institution, or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets,

without the consent of the Borrower. An Existing Lender must obtain the consent of the Borrower for a transfer to any other prospective assignee or transferee, provided that such consent must not be unreasonably withheld by the Borrower and shall be deemed to have been given if such Existing Lender does not receive an objection by the Borrower within 10 Business Days of requesting the Borrower's consent. Each permitted assignee or transferee pursuant to this Clause shall be referred to as the "**New Lender**".

#### 20.2 Conditions of assignment or transfer

- (a) An assignment will only be effective on:
  - (i) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
  - (ii) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.
- (b) A transfer will only be effective if the procedure set out in clause 20.5 (*Procedure for transfer*) is complied with.
- (c) If:
  - (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower would be obliged to make a 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. This paragraph (c) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility.

- (d) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the 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.

### 20.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of \$2,000 (two thousand dollars).

### 20.4 Limitation of responsibility of Existing Lenders

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
- (ii) the financial condition of the Borrower;
- (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
- (iv) 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.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower 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
- (ii) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

- (c) Nothing in any Finance Document obliges an Existing Lender to:

- (i) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this clause 20; or
- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

### 20.5 Procedure for transfer

- (a) Subject to the conditions set out in clause 20.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the

New Lender. The Agent shall, subject to paragraph (b) below, 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, execute that Transfer Certificate.

- (b) The 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 all applicable laws and regulations in relation to the transfer to such New Lender.
- (c) Subject to clause 20.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) 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 Borrower 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**);
  - (ii) each of the Borrower 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 as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
  - (iii) the Agent, the Mandated Lead Arrangers, the New Lender and 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 Agent, the Mandated Lead Arrangers and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (iv) the New Lender shall become a Party as a "Lender".

#### 20.6 Procedure for assignment

- (a) Subject to the conditions set out in clause 20.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, 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.
- (b) The 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.
- (c) Subject to clause 20.9 (*Pro rata interest settlement*), on the Transfer Date:
  - (i) 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;
  - (ii) the Existing Lender will be released by the Borrower 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

- (iii) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Lenders may utilise procedures other than those set out in this clause 20.6 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with clause 20.5 (*Procedure for transfer*), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) **provided that** they comply with the conditions set out in clause 20.2 (*Conditions of assignment or transfer*).

#### 20.7 Copy of Transfer Certificate or Assignment Agreement to Borrower

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

#### 20.8 Security over Lenders' rights

In addition to the other rights provided to Lenders under this clause 20, each Lender may without consulting with or obtaining consent from the Borrower, 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 representatives 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 the Borrower 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.

#### 20.9 Pro rata interest settlement

- (a) If the 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 20.5 (*Procedure for transfer*) or any assignment pursuant to clause 20.6 (*Procedure for assignment*) 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):
  - (i) 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 further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six (6) Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
  - (ii) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:

- (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
  - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this clause 20.9, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this clause 20.9 references to **Interest Period** shall be construed to include a reference to any other period for accrual of fees.

## **21 Changes to the Borrower**

### **21.1 Assignments and transfer by the Borrower**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

## **SECTION 10 THE FINANCE PARTIES**

### **22 Role of the Agent and the Mandated Lead Arrangers**

#### **22.1 Appointment of the Agent**

- (a) Each other Finance Party appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each other Finance Party authorises the Agent 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.

#### **22.2 Duties of the Agent**

- (a) Subject to paragraph (b) 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.
- (b) Without prejudice to clause 20.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (a) above shall not apply to any Transfer Certificate or to any Assignment Agreement.
- (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 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 Finance Parties.
- (e) If the Agent is aware of the non-payment of any principal or interest payable to a Finance Party (other than the Agent or the Mandated Lead Arrangers) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

#### **22.3 Role of the Mandated Lead Arrangers**

Except as specifically provided in the Finance Documents, the Mandated Lead Arrangers have no obligations of any kind to any other Party under or in connection with any Finance Document.

#### **22.4 No fiduciary duties**

- (a) Nothing in this Agreement constitutes the Agent or a Mandated Lead Arranger as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor a Mandated Lead 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 Agent and the Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower.

## 22.6 Rights and discretions of the Agent

- (a) The Agent may rely on:
  - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
  - (ii) any statement made by the Accountant-General, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under clause 19.1 (*Non-payment*)); and
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised.
- (c) The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.
- (d) The Agent may act in relation to the Finance Documents through its personnel and agents.
- (e) The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (f) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor any Mandated Lead 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.

## 22.7 Majority Lenders' instructions

- (a) Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- (b) Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.
- (c) The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) The 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.
- (f) The Agent shall act on the instructions of a Lender provided in connection with any split of its Commitment under clause 31.5 (*Split voting*) and shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with such instructions.

## 22.8 Responsibility for documentation

Neither the Agent nor any Mandated Lead Arranger:

- (a) is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Mandated Lead Arrangers, the Borrower or any other person given in or in connection with any Finance Document or the Information Memorandum;
- (b) is responsible for 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) is responsible for 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

- (a) Without limiting paragraph (b) below (and without prejudice to the provisions of paragraph (e) of clause 25.10 (*Disruption to Payment Systems etc.*)), the Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for any action taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.
- (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 any Mandated Lead Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Mandated Lead Arrangers 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 Mandated Lead Arrangers.

## 22.10 Lenders' indemnity to the Agent

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 Agent, within three (3) Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence, in relation to any FATCA-related liability or any other category of 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 25.10 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or 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 the Borrower pursuant to a Finance Document).

## 22.11 Resignation of the Agent

- (a) The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively the Agent may resign by giving 30 (thirty) days' notice to the other Finance Parties and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 20 (twenty) days after notice of resignation was given, the retiring Agent (after consultation with the Borrower) may appoint a successor Agent.
- (d) 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.
- (e) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring 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. Any 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.
- (g) After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above. If the Agent is removed by the Majority Lenders then it shall be at the cost of the Lenders.
- (h) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:
  - (i) the Agent fails to respond to a request under clause 11.6 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Agent pursuant to clause 11.6 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Agent notifies the Borrower and the Lenders that the 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) a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by notice to the Agent, requires it to resign.

#### **22.12 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.



**22.13 Relationship with the Lenders**

- (a) Subject to clause 20.9 (*Pro rata Interest Settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
- (i) entitled to or liable for any payment due under any Finance Document on that day; and
  - (ii) 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 (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the 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, phone 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, phone number, electronic mail address, department and officer by that Lender for the purposes of clause 27.2 (*Addresses*) and paragraph (a)(ii) of clause 27.5 (*Electronic communication*) and the 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.

**22.14 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 Agent and the Mandated Lead Arrangers 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 the Borrower;
- (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 that 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 and/or completeness of the Information Memorandum and any other information provided by the Agent, 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.

**22.15 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.

## 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.

## 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 from the Borrower other than in accordance with clause 25 (*Payment mechanics*) (a **Recovered Amount**) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the 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 Agent and distributed in accordance with clause 25 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with clause 25.5 (*Partial payments*).

### 24.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) (the **Sharing Finance Parties**) in accordance with clause 25.5 (*Partial payments*) towards the obligations of the Borrower to the Sharing Finance Parties.

### 24.3 Recovering Finance Party's rights

On a distribution by the Agent under clause 24.2 (*Redistribution of payments*) of a payment received by a Recovering Finance Party from the Borrower, as between the Borrower and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Borrower.

### 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 Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the 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) (the **Redistributed Amount**); and
- (b) as between the Borrower and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Borrower.

#### 24.5 Exceptions

- (a) 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 Borrower.
- (b) 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:
  - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## SECTION 11 ADMINISTRATION

### 25 Payment Mechanics

#### 25.1 Payments to the Agent

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or 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 with such bank as the Agent specifies.

#### 25.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to clause 25.3 (*Distributions to the Borrower*) and clause 25.4 (*Clawback*) be made available by the 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 Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency.

#### 25.3 Distributions to the Borrower

The Agent may (with the consent of the Borrower or in accordance with clause 26 (*Set-off*)) apply any amount received by it for that 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.

#### 25.4 Clawback

- (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) 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 Lenders 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 a Lender in respect of a sum which it paid to the Borrower:
  - (i) the Agent shall notify the Borrower of that Lender's identity and the Borrower shall on demand refund it to the Agent; and
  - (ii) the Lender by whom those funds should have been made available or, if that 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 that Lender.

**25.5 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, the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
  - (i) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent under the Finance Documents;
  - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
  - (iii) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
  - (iv) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(i) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by the Borrower.

**25.6 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.

**25.7 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.

**25.8 Currency of account**

- (a) Subject to paragraphs (b) and (c) below, dollars 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 dollars shall be paid in that other currency.

**25.9 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 Interbank Market and otherwise to reflect the change in currency.

#### **25.10 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) 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) 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 31 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses 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 25.10; and
- (f) the 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 letter.

##### **27.2 Addresses**

The address and phone 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, that identified with its name below;
- (b) in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, that identified with its name below,

or any substitute address or phone 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 is made by the Agent) by not less than five (5) Business Days' notice.

#### The Borrower

The Republic of Ghana acting through its Ministry of Finance

[•]

[•]

Phone: [•]

Email: [•]

Attention: [•]

#### The Agent

Standard Chartered Bank  
Loans & Agency, 6<sup>th</sup> Floor  
One Basinghall Avenue  
London EC2V 5DD

Email: loansagencyuk@sc.com.

Attention: Asset Servicing Manager

### 27.3 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, 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 27.2 (*Addresses*), 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 below (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) All notices from or to the Borrower shall be sent through the Agent.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### 27.4 Notification of address and phone number

Promptly upon receipt of notification of an address or phone number or change of address or phone number pursuant to clause 27.2 (*Addresses*) or changing its own address or phone number, the Agent shall notify the other Parties.

#### **27.5 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, 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 and if those two Parties:
  - (i) 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
  - (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 electronic communication made between those two Parties will be effective only when actually received 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.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) 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**

- (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.

### **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 (three hundred and sixty) 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 the Finance Documents 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 Finance Document. No election to affirm any Finance Document 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.

## 31 Amendments and Waivers

### 31.1 Required consents

- (a) Subject to clause 31.2 (*All Lender matters*) and clause 31.3 (*Other exceptions*), any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower 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 31.

### 31.2 All Lender matters

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of "Majority Lenders" in clause 1.1 (*Definitions*);
  - (ii) an extension to the date of payment of any amount under the Finance Documents;
  - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
  - (iv) an increase in any Commitment or the Total Commitments, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
  - (v) a change to the Borrower;
  - (vi) any provision which expressly requires the consent of all the Lenders;
  - (vii) Clause 2.2 (*Finance Parties' rights and obligations*), clause 20 (*Changes to the Lenders*), this clause 31, the governing law of any Finance Document or clause 35.1 (*Arbitration*),

shall not be made without the prior consent of all the Lenders.

### 31.3 Other exceptions

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

### 31.4 Replacement of Screen Rate

Subject to clause 31.3 (*Other exceptions*), any amendment or waiver which relates to:

- (a) providing for the use of a Replacement Benchmark; and
- (b)
  - (i) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
  - (ii) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
  - (iii) implementing market conventions applicable to that Replacement Benchmark;
  - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
  - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation).

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrower.

**Relevant Nominating Body** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

**Replacement Benchmark** means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
  - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
  - (i) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;

- (b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or

- (c) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to a Screen Rate.

### **31.5 Split voting**

- (a) For the purposes of responding (or failing to respond) to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of the Lenders under the terms of this Agreement, a Lender may split its Commitment into any number of portions and may respond (or fail to respond) or otherwise exercise its rights in respect of each such individual portion on a several basis.
- (b) If a Lender exercises its rights under paragraph (a) above in respect of any part of its Commitment, such Lender shall notify the Agent of the portions into which it has split its Commitment.

## **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, service providers, auditors, insurers or insurance brokers, partners and Representatives in any jurisdiction 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 or which succeeds (or which may potentially succeed) it as Agent and, in each case, 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 the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers (including, without limitation, to any direct or indirect provider of credit protection (or its brokers));
  - (iii) appointed by any Finance Party or by a person to whom paragraph (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 paragraph (b) of clause 22.13 (*Relationship with the Lenders*));

- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v) to whom information is required or requested to be disclosed by any court or tribunal of competent jurisdiction or any governmental, quasi-governmental, administrative, banking, taxation or other regulatory or supervisory 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) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to clause 20.8 (*Security over Lenders' rights*);
- (viii) who is a Party; or
- (ix) with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(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 paragraph (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;
  - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(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; and
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(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 paragraph (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; and
  - (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 Borrower 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.

**32.3 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.

**32.4 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.

**32.5 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 paragraph (b)(v) clause 32.2 (*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 function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this clause 32 (*Confidentiality*).

**32.6 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 12 (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 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 11 GOVERNING LAW AND ENFORCEMENT

### 34 Governing Law

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

### 35 Enforcement

#### 35.1 Arbitration

Subject to clause 35.5 (*English courts*), any dispute, claim or difference arising out of or in connection with any Finance Document (including a dispute relating to the negotiation, existence, validity, enforceability or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a **Dispute**) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (the **LCIA**) for the time being in force (the **Rules**), which Rules are deemed to be incorporated by reference in this clause.

#### 35.2 Formation of arbitral tribunal, seat and language of arbitration

- (a) The arbitral tribunal shall consist of three (3) arbitrators. The claimant(s), irrespective of number, shall nominate jointly one arbitrator; the respondent(s), irrespective of number, shall nominate jointly the second arbitrator, and a third arbitrator (who shall act as Chairman) shall be appointed by the arbitrators nominated by the claimant(s) and respondent(s) or, in the absence of agreement on the third arbitrator within five (5) days of the appointment of the second arbitrator, by the LCIA (as defined in the Rules).
- (b) The seat, or legal place, of arbitration shall be London, England.
- (c) The language of the arbitration shall be English.
- (d) The governing law of the arbitration agreement shall be English law.
- (e) The Parties undertake to keep confidential all awards in any arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.
- (f) By agreeing to arbitration in accordance with this clause, the Parties do not intend to deprive any competent court of Ghana to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of the arbitration proceedings, or the recognition and/or enforcement of any award. Any interim or provisional relief ordered by any competent court may subsequently be vacated, continued or modified by the arbitral tribunal on the application of any Party.
- (g) All awards shall be final and binding on the Parties. The Parties undertake to carry out any award immediately and without any delay and the Parties waive irrevocably their right to any form of appeal or review of the award by any state court or other judicial authority, insofar as such waiver may be validly made.

#### 35.3 Service of Process

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

- (a) irrevocably appoints the High Commissioner of the Republic of Ghana in London, presently located at 13 Belgravia Square, Westminster, London SW1X 8PN as its agent for service of process in relation to any proceedings before the LCIA or English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

#### 35.4 Recourse to courts

For the purposes of arbitration pursuant to clause 35.1 (*Arbitration*), the Parties waive any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 and 67 of the Arbitration Act 1996.

#### 35.5 English courts

Notwithstanding any other provision of this clause 35, each Finance Party may, at its sole option, refer a Dispute for resolution by the courts of England and each Party irrevocably agrees that if a Finance Party exercises such option, the courts of England shall have jurisdiction to settle such Disputes.

### 36 Waiver of immunity

- (a) The Borrower consents generally in respect of any proceedings (the **Proceedings**) taken pursuant to clause 35 (*Enforcement*) to the giving of any relief or the issue of any process in connection with such Proceedings including (without limitation) the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which is made or given in such Proceedings.
- (b) To the extent that the Borrower may in any jurisdiction claim for itself or its assets, property or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process in respect of any Proceedings and to the extent that such immunity (whether or not claimed) may be attributed in any such jurisdiction to the Borrower or its assets, property or revenues, the Borrower agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction (and consents generally for the purposes of the English State Immunity Act 1978 to the giving of any relief or the issue of any process in connection with any Proceeding). The Borrower does not hereby waive such immunity from execution or attachment in respect of:
  - (i) property or assets used by a diplomatic or consular mission of the Borrower;
  - (ii) property or assets of a military character and under the control of a military authority or defence agency of the Borrower;
  - (iii) property, assets and infrastructure located in the Republic of Ghana and dedicated to a public or governmental use (as distinct from property, assets or infrastructure dedicated to a commercial use) by the Borrower; or
  - (iv) petroleum assets protected in the Petroleum Revenue Management Act, 2011 (Act 815) of Ghana, as amended.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**Schedule 1**  
**The Original Lenders**

| Name of Original Lender                                    | Principal Address  | Commitment      |
|--|--|-----------------|
| Standard Chartered Bank                                    | 1 Basinghall Avenue, London EC2V 5DD, United Kingdom         | US\$375,000,000 |
| The Standard Bank South Africa Limited, Isle of Man Branch | Standard Bank House, One Circular Road, Douglas, Isle of Man | US\$375,000,000 |



## **Schedule 2 Conditions Precedent**

### **1 The Borrower**

- (a) A copy of the relevant approval of the parliament 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) A copy of the relevant appointment letter of the Minister of Finance.
- (c) Evidence of the Minister of Finance's authority to sign the Finance Documents (including any Utilisation Request) on behalf of the Ministry of Finance for the account of the Republic of Ghana in its capacity as Borrower.
- (d) Evidence that the Attorney-General of Ghana has advised the Borrower to execute the Finance Documents.
- (e) A specimen of the signature of each person authorised on behalf of the Borrower to sign the Finance Documents.
- (f) A copy of a certificate of the Borrower (signed by a its authorised signatory) confirming that:
  - (i) borrowing, the Total Commitments would not cause any borrowing, guaranteeing or similar limit binding on the Borrower to be exceeded;
  - (ii) no Default is existing or anticipated to occur;
  - (iii) the representations are true and correct;
  - (iv) each copy document relating to it specified in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement; and
  - (v) all relevant Authorisations required by the Borrower in connection with the Finance Documents have been obtained.
- (g) A copy of the letter of delegation of authority by the Minister of Finance (where the minister delegates his signing authority to another person).

### **2 Finance Documents**

This Finance Documents duly executed by all original parties to it.

### **3 Legal opinions**

- (a) A legal opinion of Herbert Smith Freehills, legal advisers to the Mandated Lead Arrangers and the Agent in England, substantially in the form distributed to the Original Lenders prior to signing this Agreement; and
- (b) A legal opinion of ENS Africa, the legal advisers to the Mandated Lead Arrangers and the Agent in Ghana, substantially in the form distributed to the Original Lenders prior to signing this Agreement.

### **4 Other documents and evidence**

- (a) 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 any Finance Document or for the validity and enforceability of any Finance Document.

- (b) Evidence that the costs and expenses then due from the Borrower pursuant to clause 15 (*Costs and expenses*) have been paid or will be paid by the Utilisation Date.
- (c) Suitable evidence to each Original Lender that all of their "know your customer" requirements have been satisfactorily completed.
- (d) Evidence that the Borrower has appointed an agent to accept service of process in London in satisfaction of the requirement under clause 35.3 (*Service of Process*) and of the acceptance by such agent of its appointment on terms acceptable to the Agent;
- (e) A copy of the written confirmation of the appointment of the Mandated Lead Arrangers (along with any additional financial institution the Borrower may elect) as international bookrunners and lead managers in respect of the Programme, on terms acceptable to the Mandated Lead Arrangers and consistent with the intended prepayment of the Loan.

**Schedule 3  
Utilisation Request**

From: The Ministry of Finance, Republic of Ghana

To: Standard Chartered Bank as Agent

Dated:

Dear Sirs

The Ministry of Finance, Republic of Ghana - \$750,000,000 syndicated bridge loan Facility Agreement

dated●     ] (the Agreement)

- 1 We refer to the Agreement. This is the 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 We wish to borrow the Loan on the following terms:  
  
Proposed Utilisation Date:                   [     ] (or, if that is not a Business Day, the next Business Day)  
  
Amount:   [     ] or, if less, the Available Facility
- 3 We confirm that each condition specified in clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
- 4 The proceeds of the Loan should be credited to [*account*].
- 5 This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

**The Ministry of Finance, Republic of Ghana**

**Schedule 4**  
**Form of Transfer Certificate**

To: [ ] as Agent

From: [*The Existing Lender*] (the **Existing Lender**) and [*The New Lender*] (the **New Lender**)

Dated:

**The Ministry of Finance, Republic of Ghana - \$750,000,000 syndicated bridge 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 20.5 (*Procedure for transfer*):
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with clause 20.5 (*Procedure for transfer*), all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in Loans under the Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [ ].
  - (c) The Facility Office and address, phone 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 paragraph (c) of clause 20.4 (*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 This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
- 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**

*[insert relevant details]*

*[Facility Office address, phone number and attention details for notices and account details for payments,]*

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [        ].

[Agent]

By:

**Schedule 5**  
**Form of Assignment Agreement**

To: [ ] as Agent and [ ] as Borrower

From: [the *Existing Lender*] (the **Existing Lender**) and [the *New Lender*] (the **New Lender**)

Dated:

**The Ministry of Finance, Republic of Ghana - \$750,000,000 syndicated bridge loan 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 20.6 (*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 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 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, phone 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 paragraph (c) of clause 20.4 (*Limitation of responsibility of Existing Lenders*).
- 7 This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with clause 20.7 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), to the Borrower 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, phone number and attention details for notices and account details for payments]*

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [    ].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

HSF draft - 6 March

## SIGNATURES

### THE BORROWER

The Republic of Ghana acting through its Ministry of Finance

By:

### THE MANDATED LEAD ARRANGERS

Standard Chartered Bank

By:

The Standard Bank Of South Africa Limited (acting through its Corporate and Investment Banking Division)

By:

### THE AGENT

Standard Chartered Bank

By:

### THE ORIGINAL LENDER

Standard Chartered Bank

By:

The Standard Bank South Africa Limited, Isle of Man Branch

By:

By:

