

JOINT MEMORANDUM TO PARLIAMENT



REPUBLIC OF GHANA

BY

**HON. OWUSU AFRIYIE AKOTO
MINISTER FOR FOOD AND AGRICULTURE**

AND

**KEN OFORI-ATTA
MINISTER FOR FINANCE**

ON

**APPROVAL OF THE TERMS AND WAIVER OF STAMP DUTY
ON UP TO US\$1,300,000,000 RECEIVABLES-BACKED TRADE
FINANCE FACILITY FOR THE 2022/23 COCOA PURCHASES
BY GHANA COCOA BOARD**



July, 2022

1.0 INTRODUCTION

Parliament is respectfully invited to consider and approve;

- i. the terms of the Agreement (negotiated Rates in the attachment to this Memorandum) for **up to One Billion, Three Hundred Million United States Dollars (US\$1,300,000,000.)** Receivables-Backed Trade Finance Facility to finance the purchase of cocoa for the 2022/23/ Crop season by the Ghana Cocoa Board; and
- ii. the waiver of Stamp Duty of 0.5% of the Facility, amounting to **US\$6,500,000 (Six Million, Five Hundred Thousand United States Dollars).**

2.0 BACKGROUND INFORMATION

- 2.1 The cocoa industry continue to play a crucial role in the economic development of the country. The industry contributes significantly to the Gross Domestic Product (GDP), employs over 2 million people along the supply chain, and remains a major source of Ghana's foreign exchange earnings. The cocoa sector supports infrastructural development in education, roads and highways among others. Most of the foreign exchange earnings from cocoa are retained in the country thereby boosting foreign exchange reserves of the country.
- 2.2 Cocoa purchasing operations by COCOBOD require over US\$ 2.0 billion within each year. The offshore syndicated facility is usually sourced by COCOBOD to enable prompt payment of cocoa and payment of margins to other stakeholders. The facility also allows COCOBOD to optimize sales and shipments so as to generate the optimal revenues for financing the cocoa supply.
- 2.3 For the 2022/23 cocoa season, Minister for Food and Agriculture gave approval for COCOBOD to borrow up to One Billion, Three Hundred Million United States Dollars.
- 2.4 The loan will be used to purchase about 850,000 tonnes of cocoa beans. The facility will be drawn in three installments between October 2022 and February 2023.

3.0 JUSTIFICATION

- 3.1 The Trade Facility is to enable COCOBOD raise adequate funds to purchase cocoa beans from farmers through licensed buying companies for the 2022/2023 cocoa season. The purchasing operations also involves payment of margins to stakeholders. Thus, the syndicated facility is integral to the successful management of operations related to the purchasing, quality assurance, storage and export of cocoa by COCOBOD.
- 3.2 The COCOBOD syndicated facility brings in foreign exchange, thereby aiding Government management of exchange rate. The schedule for the draw down is such that the full amount of the loan in United States Dollars is drawn over a period of three months. Over the years, the signing of the loan alone lowers the speculative pressures on the cedi-dollar exchange rate.

3.4 Section 32(6) of the Stamp Duty Act, 2005 (Act 689) makes it imperative to stamp a loan document at 0.5% of the facility. The Minister for Finance, in consultation with the Commissioner-General of the Ghana Revenue Authority (GRA) has assessed the stamp duty of **US\$6,500,000.00 (Six Million, Five Hundred Thousand Dollars)** on the Facility and, accordingly, given interim waiver of the assessed Stamp Duty. The waiver of the stamp duty is necessary to enable COCOBOB utilize the full amount of the facility for cocoa purchases.

4 TERMS OF THE FACILITY

4.41 Given the tightening and the relatively higher cost of borrowing on the international financial markets, COCOBOD assessed that a competitive bidding approach was the best option for the current syndication.

4.42 After examination of the options and negotiations, the following terms were agreed on between the Banks and COCOBOD:

Facility Amount	-	US\$1,300,000,000.00
Interest Rate	-	SOFR + a margin of 1.75% p.a.
Commitment fee	-	35% of margin
Commitment	-	560,000,000
Best Effort	-	740,000,000
Arrangement & Participation fee	-	1.25% flat
Security Margin	-	Assignment of Cocoa Contracts for 112% of Facility Amount

4.43 At the conclusion of negotiations, this year's facility will be at an estimated cost of US\$42.52 million.

4.5 Drawdown and Repayment plans

4.51 The facility will be drawn down in three instalments, based on the operational needs of COCOBOD, as detailed below.

Month	Amount (US\$ Million)
October 2022	910
November 2022 to February 2023	390
	1,300

4.62 Repayment of principal is to be affected by seven (7) monthly equal instalments beginning February 2023 to August 2023.

4.7 Light Crop Financing

The Light Crop is an integral part of the Main Facility. The Arranger group offered a sum of US\$250 Million in their bid, to be made available in May-July 2023 for the Light Crop purchases.

5 WAIVER OF STAMP DUTY

Section 32(6) of the Stamp Duty Act, 2005 (Act 689) makes it imperative to stamp a loan document at 0.5% of the facility. The Minister for Finance, in consultation with the Commissioner-General of the Ghana Revenue Authority (GRA) has assessed the stamp duty of **US\$6,500,000.00 (Six Million, Five Hundred Thousand Dollars)** on the Facility and, accordingly, given interim waiver of the assessed Stamp Duty. This, together with the terms of the loan facility, is pending final approval by Parliament as permitted under Section 36 of the Stamp Duty Act.

6 ACTION REQUIRED

In line with Section 24 of the Ghana Cocoa Board Act 1984 (PNDCL.81) and, in compliance with Article 181 and 174 (2) of the Constitution, Parliament is kindly requested to approve

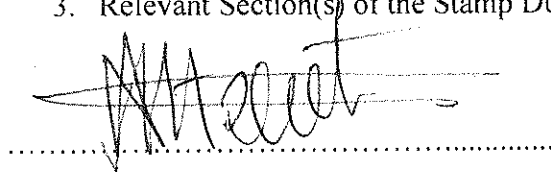
- i. The Terms of the Agreement; and
- ii. Waiver of Stamp Duty on the facility;

to enable COCOBOD secure up to **US\$1.3 billion** syndicated loan from the international financial market for cocoa purchases in the 2022/2023 cocoa season.

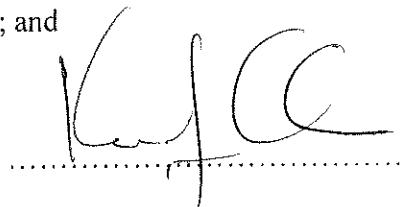
7 ATTACHMENTS

The following documents are, hereby, attached for the perusal of Honourable Members:

1. Assessment of Stamp Duty and Interim Waiver by the Ghana Revenue Authority (folio 3);
2. Terms of the Facility
3. Relevant Section(s) of the Stamp Duty Act (folio 4); and



HON. OWUSU AFRIYIE AKOTO
MINISTER FOR FOOD AND AGRICULTURE



KEN OFORI-ATTA
MINISTER FOR FINANCE

DATED ^{26th}..... JULY 2022

TREND ANALYSIS OF PREVIOUS FACILITIES

Since 1992/1993, COCOBOD's performance on the international money market has been excellent in terms of borrowing funds to purchase cocoa beans and repayments. Repayments on all facilities arranged have been met on due dates.

The table below shows trend analysis of facilities arranged between 2000/2001 and 2021/2022.

Crop Year	Facility (US\$M)		Facility Arranger	Margins BP	Collateral Provided			Security Ratio	Success Rate
	Committed	Utilised			Nature	Cocoa	US\$		
2000/01	260.00	260.00	Barclays	0.475	Fixed Contracts	299,500.00	286.00	1.10	Excellent
2001/02	300.00	300.00	Barclays	0.525	Fixed Contracts	272,200.00	330.00	1.10	Excellent
2002/03	420.00	420.00	Barclays	0.525	Fixed Contracts	244,300.00	462.00	1.10	Excellent
2003/04	650.00	650.00	Barclays	0.500	Fixed Contracts	324,675.00	715.00	1.10	Excellent
2004/05	850.00	500.00	Barclays	0.400	Fixed Contracts	357,143.00	550.00	1.10	Excellent
2005/06	550.00	550.00	SG	0.325	Fixed Contracts	392,857.00	605.00	1.10	Excellent
2006/07	810.00	810.00	Stanchart	0.200	Fixed Contracts	556,875.00	891.00	1.10	Excellent
2007/08	900.00	900.00	Stanchart	0.160	Fixed Contracts	559,322.00	990.00	1.10	Excellent
2008/09	1,000.00	1,000.00	Stanchart	0.450	Fixed Contracts	461,000.00	1,100.00	1.10	Excellent
2009/10	1,200.00	1,200.00	Stanchart	2.500	Fixed Contracts	441,000.00	1,320.00	1.10	Excellent
2010/11	1,500.00	1,500.00	Calyon	0.900	Fixed Contracts	500,000.00	1,650.00	1.10	Excellent
2011/12	2,000.00	2,000.00	Stanchart	0.650	Fixed Contracts	675,000.00	2,200.00	1.10	Excellent
2012/13	1,500.00	1,300.00	Stanchart	1.250	Fixed Contracts	555,900.00	1,430.00	1.10	Excellent
2013/14	1,200.00	1,200.00	Calyon	0.700	Fixed Contracts	535,900.00	1,320.00	1.10	Excellent
2014/15	1,700.00	1,700.00	Barclays	0.600	Fixed Contracts	624,500.00	1,870.00	1.10	Excellent

2015/16	1,800.00	1,800.00	Barclays	0.625	Fixed Contracts	660,000.00	1,980.00	1.10	Excellent
2016/17	1,800.00	1,800.00	Bank of Tokyo Mitsubitshi UFJ	0.675	Fixed Contracts	644,350.00	1,980.00	1.10	Excellent
2017/18	1,300.00	1,300.00	Credit Agricole	0.625	Fixed Contracts	659,000.00	1,430.00	1.10	Excellent
2018/19	1,300.00	1,300.00	Stanchart	0.600	Fixed Contracts	598,800.00	1,430.00	1.10	Excellent
2019/20	1,300.00	1,300.00	MUFG Bank	0.550	Fixed Contracts	577,600.00	1,430.00	1.10	Excellent
2020/21	1,300.00	1,300.00	MUFG Bank	1.750	Fixed Contracts	541,000.00	1,430.00	1.10	Excellent
2021/22	1,500.00	1,450.00	Stanchart	1.100	Fixed Contracts	639,721.00	1,595.00	1.10	Excellent



OFFICE OF
THE PRESIDENT

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Digital Address : GA-000-0288

Ref. No. OPS 182/22/757

27th July, 2022

Honourable Minister,

**RE: REQUEST FOR EXECUTIVE APPROVAL/CABINET APPROVAL OF THE TERMS AND
WAIVER OF PAYMENT OF STAMP DUTY ON A SYNDICATED LOAN AGREEMENT
RELATING TO US\$1,300,000,000 RECEIVABLES-BACKED TRADE FINANCE FACILITY**

I refer to your letter dated 26th July, 2022 with reference number TDMD/F&E/G-C-B/CM2022/1 in respect of the above subject matter.

The President has granted approval for the terms of the Facility Agreement in relation to a One Billion, Three Hundred Million United States Dollars (US\$1,300,000,000.00) Receivables-Backed Trade Finance Facility, to finance the purchase of cocoa for the 2022/2023 crop season by the Ghana Cocoa Board.

The President has also granted approval for the waiver of Stamp Duty of 0.5% of the Facility, amounting to Six Million, Five Hundred Thousand United States Dollars (US\$6,500,000.00).

I shall be grateful if you could take requisite action on the above.

For: **SECRETARY TO THE PRESIDENT
MERCY DEBRAH-KARIKARI
SECRETARY TO THE CABINET**

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

ATTN: MR. KEN OFORI-ATTA

Cc: The Vice President
Jubilee House, Accra

The Chief of Staff
Jubilee House, Accra

Secretary to the Cabinet
Jubilee House, Accra

The Chief Executive
Ghana Cocoa Board, Accra

GHANA REVENUE AUTHORITY

Our Ref. No. **DTRD/EXM-NR/07/26/22**

Your Ref. No.

Tel: 0302957272



GRA

Office of the Commissioner
Domestic Tax Revenue Division
Head Office, Accra

July 26, 2022

The Chief Executive Officer
Ghana Cocoa Board
Accra

Dear Sir,

**RE: 2022/23COCOBOD SYNDICATED LOAN FACILITY OF UP TO US\$1,300,000,000
REQUEST FOR ASSESEMENT AND INTERIM WAIVER OF PAYMENT OF STAMP DUTY**

This has reference to a letter dated July 25, 2022 and referenced DCE/FA/TFF/8/22-23/144 from Ghana Cocoa Board on the above subject in which the Commissioner General was requested to provide a Stamp Duty assessment of the above-mentioned facility, and to consider deferring the payment of the assessed Stamp Duty.

The assessed Stamp Duty at 0.5% on the Receivables – backed Trade Finance Facility (the annual syndicated loan facility) in the sum of **US \$1,300,000,000**, in accordance with Section 1 of the Stamp Duty Act, 2005(Act 689) as amended, is **US \$ 6,500,000**. Also, after careful consideration of the request for deferment of the assessed Stamp Duty, and on account of the Chief Executive's express indication that an application for the waiver of the duty in question will be made to Parliament through Cabinet in due course, the Commissioner General, on the strength of Section 37 of the Stamp Duty Act, 2005 (Act 689) as amended, hereby grants your request to defer the Stamp Duty liability of **US\$ 6,500,000**.

However, should the application for Parliamentary waiver fail, Ghana Cocoa Board will be obliged to earnestly pay the said duty, or to approach the Commissioner General to arrange a payment schedule in line with section 37(1)(b) of Act 689 for purposes of honoring same.

Please, do not hesitate to contact the undersigned for further clarification of this correspondence should the need arise, sir.

Yours faithfully,

Edward Apenteng Gyamerah
Head, Domestic Tax Revenue Division
For: Commissioner-General

Cc: Hon Minister, MoF
Hon. Minister, MOFA
Hon. Deputy Minister, MOF
Chief Director, MOF

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Domestic Tax Revenue Division (DTRD)

STAMP DUTY ACT, 2005 (ACT 689)

ARRANGEMENT OF SECTIONS

Section

Provisions applicable to instruments generally

1. Charge of duties in Schedule
2. Instruments to be separately charged with duty
3. Assessment of duty
4. Impressed and adhesive stamp
5. Instruments written on stamped material
6. Circumstances affecting duty to be set out in instruments
7. Mode of calculation of ad valorem duty in certain cases
8. Cancellation of adhesive stamps
9. Denoting stamp
10. Commissioner may be required to express opinion
11. Instruments to be stamped as assessed

Stamping of instruments after execution

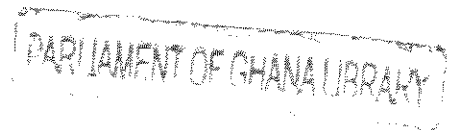
12. Stamping of instruments after execution

Particulars about land

13. Particulars about land
14. Instruments and title registered in the land or title registry

Provisions applicable to particular instruments

15. Calculation of ad valorem duty in respect of stock and securities



16. Calculation of ad valorem duty on periodical payments
17. Calculation of ad valorem duty on mortgage or conveyance in respect of a debt.
18. Direction as to duty in certain cases
19. Conveyance other than a sale
20. Stamp duty on gifts inter vivos
21. Stamping of duplicates and counterparts
22. Agreement chargeable as lease
23. Certain covenants not to increase duty
24. Cancellation of stamps on memorandum of hypothecation
25. Stamping of mortgages
26. Mortgages for undefined amounts
- Stamp duties management
27. Administration of Act
28. Act to apply to all stamp duties
29. Moneys received for duty
- Objections and appeals
30. Objection to assessment
31. Appeal against assessment
32. Admissibility of insufficiently stamped or unstamped instrument
- Proceedings
33. Compounding offences
34. Venue for trial
35. Amounts payable

(2) The Commissioner may delegate any function imposed on the Commissioner to an officer appointed by the Service or to any other public officer as may be considered necessary.

Section 28—Act to apply to all stamp duties

The provisions of this Act apply to the duties and to the fees which are directed to be collected or received by means of stamps.

Section 29—Moneys received for duty

(1) A person who

(a) receives a sum of money in respect of a duty; or

(b) collects a fee by means of a stamp

shall pay the monies to the Commissioner.

(2) The Commissioner shall, unless otherwise stated under any other enactment, pay into the Consolidated Fund moneys due to the State under this Act.

(3) A person who fails to pay or improperly withholds or retains money received or collected under subsection (1) shall account for it and the money shall be a debt due to the State.

Objections and appeals

Section 30—Objection to an assessment

(1) A person who is dissatisfied with an assessment made under this Act may lodge an objection to the assessment with the Commissioner within thirty days after receipt of the assessment.

(2) The Commissioner shall make a determination on an objection lodged against an assessment within twenty one days from the date of receipt of an objection to the assessment.

(3) The Commissioner may, in the determination of the objection, allow the objection in whole or in part and amend the assessment accordingly or disallow the objection.

Section 31—Appeal against an assessment

(1) A person who is dissatisfied with the decision of the Commissioner on an objection may within thirty days from the date of the decision and after payment of the duty in conformity with the assessment, appeal against the decision to the High Court.

(2) Order 54 of the High Court Civil Procedure Rules shall apply to an appeal under subsection (1).

(3) The Commissioner or the appellant may appeal against the decision of the High Court to the Appeal Court on a matter of law only.

Section 32—Admissibility of insufficiently stamped or unstamped instrument

(1) Where an instrument chargeable with a duty is produced as evidence

- (a) in a court in a civil matter; or
- (b) before an arbitration or referee,

the judge, arbitrator or referee, shall take notice of an omission or insufficiency of the stamp on the instrument.

(2) If the instrument is one which may legally be stamped after its execution, it may, on payment of the amount of the unpaid duty to the registrar of the Court or to the arbitrator or referee, and the penalty payable on stamping that instrument, be received in evidence subject to just exceptions on other grounds.

(3) An instrument which is sufficiently stamped under this Act shall be receivable in evidence although that instrument may not have been stamped or is insufficiently stamped according to the law in force in the place where that instrument was executed.

(4) The registrar, arbitrator or referee shall

- (a) give a receipt for moneys paid as duty or penalty;
- (b) make an entry in a book kept for recording payment of stamp duty and any penalties; and
- (c) communicate to the Commissioner, the
 - (i) title of the proceeding in which; and
 - (ii) name of the party from whom,

the registrar, arbitrator or referee received the duty and penalty.

(5) On the production to the Commissioner of an instrument in respect of which duty or a penalty has been paid under this section, together with the receipt of the registrar, arbitrator or referee, the payment of the duty shall be denoted on the instrument by an impressed stamp and the payment of the penalty shall also be denoted by a certificate signed and sealed by the Commissioner.

(6) Except as expressly provided in this section, an instrument

- (a) executed in Ghana; or

(b) executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana

shall except in criminal proceedings, not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it was first executed.

Proceedings

Section 33—Compounding offences

(1) Where a person commits an offence under this Act, other than an offence referred to in section 42, the Commissioner may at any time prior to the commencement of court proceedings, compound the offence and order the person to pay a sum of money specified by the Commissioner but the sum shall not exceed the amount of the fine prescribed for the offence.

(2) The Commissioner may only compound an offence under this section if the person concerned admits in writing to the Commissioner of the commission of the offence.

(3) Where the Commissioner compounds an offence under this section, the order

(a) shall

(i) be in writing and specify the offence committed;

(ii) state the sum of money to be paid;

(iii) state the date for payment; and

(iv) have attached, the written admission referred to in subsection (2);

(b) shall be served on the person who committed the offence;

(c) shall be final and not subject to an appeal; and

(d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order or this Act.

(4) Where the Commissioner compounds an offence under this section, the person concerned is not liable to prosecution or a penalty under this Act in respect of that offence.

Section 34—Venue for trial

Any

(a) offence committed by a person under this Act; or

(b) civil proceedings under this Act in relation to a person,

shall be instituted, tried, heard, disposed of and the person punished, as the case requires, at the court nearest to that person's usual place of residence or at a court with jurisdiction over the area in which the office of the Service which has primary responsibility for that person's affairs under this Act is situated.

Section 35—Amounts payable

(1) The institution of proceedings for a penalty or fine or the imposition of a penalty or fine under this Act shall not relieve a person from liability to pay duty which may include an amount treated by this Act as duty, for which the person is or may become liable under this Act.

(2) In proceedings under this Act, the production of a certificate signed by the Commissioner stating the name and address of a person liable and the amount of duty due or due and payable by the person is sufficient evidence of the amount of duty due or due and payable by that person.

Section 36—Waiver or variation of duty

The Minister responsible for Finance in consultation with the Commissioner may, subject to the prior approval of Parliament by resolution in accordance with clause (2) of article 174 of the Constitution, grant a waiver or variation of duty imposed by this Act in favour of a person or an authority.

Section 37—Deferment of duty due

(1) Where the Commissioner is of the opinion that the whole or part of the duty which is due by a person, including an amount considered as duty by this Act cannot be effectively recovered immediately by reason of the financial hardship that may be caused to the person, the Commissioner may on an application made to the Commissioner by the person,

(a) defer payment of the whole or part of the duty; and

(b) arrange a satisfactory payment schedule not exceeding six months at any particular time, with that person.

(2) The Commissioner shall denote on the instrument presented that either the whole or part of the duty due has been deferred and shall state the outstanding duty due.

Section 38—Refund of excess duty

(1) Where the Commissioner is satisfied that duty has been paid by a person in excess of the duty payable the Commissioner shall, not more than five months from the date of an application by a person for a refund, refund the excess payment to the person on being notified in writing that duty has been paid by a person in excess of the person's liability to which the payment relates.

Ghana Cocoa Board Act, 1984

(4) The internal auditor's report shall cover the financial and operational transactions of the departments, the divisions and the subsidiaries under the Board.

(5) Without prejudice to the general effect of subsection (3), the internal auditor shall make in each report the observations that appear to the internal auditor necessary as to the conduct of the financial affairs of the Board during the period to which the report relates.

(6) The internal auditor shall send a copy of each report prepared under this section to the Minister and

- (a) a copy to the Minister responsible for Finance,
- (b) a copy to the Auditor-General, and
- (c) a copy to the chairman of the board of directors.

(7) This section shall be read as one with the Internal Audit Agency Act, 2003 (Act 658) and where there is a conflict that Act shall prevail.

20. Prohibition on sponsoring appointments

A director shall not personally sponsor or recommend an application for employment of a person under this Act and a director who infringes this section is liable to be removed from office as a director.

Financial Provisions

21. Capital and funds of the Board

The Government may provide to the Board as working capital and as moneys required for carrying out the functions of the Board, the sums of money which the Minister, after consultation with the President, agrees, are the sums of money requested by the Board from the Government.

22. Estimates of income and expenditures

(1) The Board shall submit to the Minister at the times and in the form that the Minister may, in consultation with the Minister responsible for Finance direct, detailed estimates of the Board's income and expenditure for the following financial year.

(2) Subject to any other enactment, the expenditure of the Board shall be in accordance with the estimates approved by the Minister acting in consultation with the Minister responsible for Finance.

23. Financial year

The financial year of the Board shall end on the 30th day of September in each year.

24. Bank accounts and borrowing powers

(1) The Board may have bank accounts determined by the directors.

(2) Subject to any other enactment, the Board may open and operate foreign exchange accounts including accounts outside the Republic into which shall be paid not less than five percent of its earnings to the Republic through the export of Ghana cocoa and any other agricultural products and derived from the operations of the Board under this Act.

(3) Subject to article 181 of the Constitution and in compliance with clause (4) of that article, the Board may obtain loans and any other credit facilities on the guarantee of the Government from banks approved by the Minister responsible for Finance.

(4) In addition to the powers of the Board under subsection (3), the Board may, with the approval of the Minister responsible for Finance, borrow from any other source.

(5) The Board may borrow temporarily by way of overdraft or otherwise, the sums of money that it requires for meeting its current obligations or performing its functions.

(6) The Minister responsible for Finance may, on behalf of the Government, guarantee the performance of an obligation or undertaking of the Board under this Act.

(7) The Minister responsible for Finance may, in consultation with the Minister, prescribe the maximum sums of money which the Board may borrow under this Act.

(8) Loans derived whether from outside or within the Republic as well as the agreements providing for joint ventures involving the Board shall be subject to clause (4) of article 181 of the Constitution.

25. Exemption from income tax

Subject to clause (2) of article 174 of the Constitution, the Board is exempt from income tax imposed under the internal Revenue Act, 2000 (Act 592).

26. Contributory insurance for farmers

(1) The Board shall within one year after the coming into force of this Act establish a contributory insurance scheme for cocoa, coffee and shea farmers within the framework of the Social Security Scheme.

(2) The Board's contribution to the insurance scheme referred to in subsection (1) shall be charged to the operational funds of the Board.

(3) The directors shall, by legislative instrument, make Regulations to give full effect to this section.

27. Farmer's Welfare Fund

(1) The Board shall establish a fund to be known as the Farmer's Welfare Fund.

(2) At the end of each financial year, the Board

(a) shall transfer to the Farmer's Welfare Fund a sum of money not exceeding ten percent of the net profit of the Board for that year, and

(b) shall use the Farmer's Welfare Fund for

(i) development projects in cocoa, coffee or shea, and

(ii) the provision of other farmer's benefits such as low interest-bearing welfare loans, farmers' refresher courses, a scholarship scheme for farmers' wards, and for any other purposes aimed at enhancing the welfare of cocoa, coffee and shea farmers.

DATED

2022

- (1) GHANA COCOA BOARD (THE BORROWER)
- (2) THE BANKS AND FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1 (THE LENDERS)
- (3) COÖPERATIEVE RABOBANK U.A., INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED, LONDON BRANCH, MUGBANK, LTD., NATIXIS AND STANDARD CHARTERED BANK (THE CO-ORDINATING INITIAL MANDATED LEAD ARRANGERS AND BOOKRUNNERS)
- (4) STANDARD CHARTERED BANK (THE FACILITY AGENT)
- (5) GHANA INTERNATIONAL BANK PLC (THE INITIAL MANDATED LEAD ARRANGER AND THE COLLECTION AGENT)
- (6) THE BANKS AND FINANCIAL INSTITUTIONS LISTED ON PAGE 1 (THE [SENIOR MANDATED LEAD ARRANGERS, THE MANDATED LEAD ARRANGERS, THE LEAD ARRANGERS, THE ARRANGERS AND THE LEAD MANAGERS])

ORIGINAL/COUNTERPART

**FACILITY AGREEMENT IN RELATION TO A
\$[1,300,000,000] PRE-EXPORT
RECEIVABLES-BACKED TRADE FINANCE
FACILITY FOR THE PURCHASE OF COCOA
IN THE REPUBLIC OF GHANA**

Reed Smith LLP
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Facility Agreement

Dated 2022

Between

- (1) Ghana Cocoa Board (the **Borrower**);
- (2) The Banks and Financial Institutions listed in Schedule 1 (the **Lenders**);
- (3) Coöperatieve Rabobank U.A., Industrial and Commercial Bank of China Limited, London Branch, MUFG Bank, Ltd., Natixis and Standard Chartered Bank (the **Co-Ordinating Initial Mandated Lead Arrangers** and **Bookrunners**);
- (4) Ghana International Bank plc (the **Initial Mandated Lead Arranger** and the **Collection Agent**);
- (5) [] (the **Senior Mandated Lead Arrangers**);
- (6) [] (the **Mandated Lead Arrangers**);
- (7) [] (the **Lead Arrangers**);
- (8) [] (the **Arrangers**);
- (9) [] (the **Lead Managers**); and
- (10) Standard Chartered Bank (the **Facility Agent**).

Recitals

The Lenders have agreed to make available to the Borrower a loan facility of a maximum aggregate principal amount of \$[1,300,000,000 (one billion three hundred million Dollars)] comprising a main crop facility of \$[1,300,000,000 (one billion three hundred million Dollars)] and a light crop facility sub-limit of \$250,000,000 (two hundred and fifty million Dollars) for the purposes set out in Clause 2.1, upon and subject to the terms and conditions contained in this Agreement.

It is agreed:

1 Definitions and interpretation

1.1 In this Agreement, unless there is something in the subject or context inconsistent therewith, the following expressions shall have the following meanings:

2019 LT Facility means the USD 600,000,000 pre-export receivables-backed 7 year term loan facility granted pursuant to the facility agreement originally executed on 12 November 2019 and finalised as an amended and restated agreement executed on 6 March 2020 and which was declared effective as of 25 March 2020 and made between, among others, the Borrower and certain lenders.

Acceptable Bank means a bank or financial institution which has a rating for its long term unsecured and non credit enhanced debt obligations of (i) BBB+ or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd, (ii) Baa1 or higher by Moody's Investor Services Limited, or (iii) a comparable rating from an internationally recognised credit rating agency.

Account Charge Acknowledgement means a notice of acknowledgement substantially in the form set out in Appendix 4 or Appendix 6 (as applicable) of the Security Agreement (or in such other form as the Facility Agent after prior consultation with the Majority Lenders shall agree to).

Additional Business Day means any day specified as such in the Reference Rate Terms.

Advance means each Main Crop Advance and each Light Crop Advance.

Affiliate means in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company or any branch of that person.

Approved Purchaser means each purchaser which:

- (a) is listed in Schedule 5 (*Approved Purchasers*) (as such list is amended or supplemented from time to time in accordance with Clause 13.6); and
- (b) in respect of a purchaser incorporated in the Republic of Ghana, has a Parent Company incorporated outside the Republic of Ghana, which (i) is also a signatory to each Sales Contract to which such purchaser is a party, (ii) has agreed to be jointly and severally liable with the relevant purchaser to make payment under that Sales Contract; and (iii) is listed in Schedule 5 (*Approved Purchasers*) (as such list is amended or supplemented from time to time in accordance with Clause 13.6);

provided that no Approved Purchaser or Parent Company shall, at any time, (i) be a Prohibited Person or (ii) reside in a Restricted Country or (iii) be subject to sanctions by the government of the country of the relevant currency for payment under that Sales Contract.

Arranger Group means the Co-ordinating Initial Mandated Lead Arrangers and the Initial Mandated Lead Arranger.

Article 55 BRRD means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

Assignment Acknowledgement means a notice of acknowledgement substantially in the form set out in Appendix 2 of the Security Agreement (or in such other form as the Facility Agent after prior consultation with the Majority Lenders shall agree to).

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

Bail-In Action means the exercise of any Write-down and Conversion Powers.

Bail-In Legislation means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and
- (c) in relation to the United Kingdom, the UK Bail-In Legislation.

Bank of Ghana Facility means:

- (a) the facility granted under a facility agreement dated 2 July 2013 and made between the Borrower and the Bank of Ghana (as amended or varied from time to time); or
- (b) any replacement facility granted to the Borrower to refinance the facility referred to in paragraph (a) on substantially the same or equivalent terms and conditions as the facility referred to in paragraph (a) provided that:
 - (i) the Borrower's obligations under and in respect of such replacement facility have been subordinated to the Borrower's obligations to the Finance Parties under the Documents (other than the Subordination Agreement); and
 - (ii) such facility has been consented to in advance by the Majority Lenders (such consent not to be unreasonably withheld or delayed).

Borrower means Ghana Cocoa Board, a statutory corporation established under the Ghana Cocoa Board Law 1984 (PNDCL 81) or any statutory modification or re-enactment thereof (and includes its successors).

Borrowers and Lenders Act means the Borrowers and Lenders Act of the Republic of Ghana, 2020 (Act 1052) or any statutory modification or re-enactment thereof.¹

Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Accra and New York City [and in relation to (a) any date for payment or purchase of an amount relating to an Advance or the Loan or an Unpaid Sum (as the case may be) or (b) the determination of the first day or the last day of an Interest Period for an Advance or the Loan or Unpaid Sum (as the case may be), or otherwise in relation to the determination of the length of such an Interest Period) which is an Additional Business Day relating to that Advance, Loan or Unpaid Sum.].

Central Bank Rate has the meaning given to that term in the Reference Rate Terms.

Central Bank Rate Adjustment has the meaning given to that term in the Reference Rate Terms.

Central Bank Rate Spread has the meaning given to that term in the Reference Rate Terms.

Cocoa Bills Refinance Facility has the meaning given to that term in paragraph (f) of the definition of "Permitted Security Interest".

Cocoa Marketing means Cocoa Marketing Company (Ghana) Ltd., a company incorporated in the Republic of Ghana whose main place of business is at No. 41 Kwame Nkrumah Avenue, Cocoa House, Accra, the Republic of Ghana (and includes its successors).

COCOBOD Collection Accounts means:²

- (a) GBP account number [01155107];

¹ Note: Break Costs provisions have been deleted from the Agreement – Lenders to advise whether restrictions or limitations should be placed on prepayments during an Interest Period and/or a prepayment fee should apply.

² Account numbers to be confirmed

- (b) Euro account number [01155117]; and
- (c) USD account number [01155108],

and any renewal, re-designation or sub account thereof in the name of Cocoa Marketing with Ghana International Bank plc at its office at 1st Floor, 67 Cheapside, London, EC2V 6AZ, UK, and such further accounts in the name of Cocoa Marketing in other currencies as may be opened from time to time in relation to the Facility (each a **COCOBOD Collection Account**).

Code means the US Internal Revenue Code of 1986.

Collateral Registry means the public registry in the Republic of Ghana which is responsible for the registration of charges or collateral in accordance with the provisions of the Borrowers and Lenders Act.

Collection Accounts means together the SCB Collection Accounts, the Trustee Collection Account and the COCOBOD Collection Accounts (each a **Collection Account**).

Collection Agent means Ghana International Bank plc acting through its office at 1st Floor, 67 Cheapside, London, EC2V 6AZ, UK, or through any other branch notified to and agreed by the Borrower and the Majority Lenders (and includes its successors and assigns).

Collection and Conversion Agreement means an agreement between the Facility Agent, the Borrower, Cocoa Marketing and the Collection Agent dated on or about the date of this Agreement in the form agreed between the Facility Agent and the Borrower prior to the date of this Agreement.

Commitment means, in respect of each Lender, its Main Crop Commitment and/or its Light Crop Commitment.

Companies Act means the Companies Act of the Republic of Ghana, 2019 (Act 992) or any statutory modification or re-enactment thereof.

Companies Registry means the public registry in the Republic of Ghana which is responsible for the incorporation or registration of companies as well as the registration of particulars of charges of companies in accordance with the Companies Act.

Confidential Information means all information relating to any Obligor, the 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 Documents or the Facility from either:

- (a) an Obligor or any of its advisers;
- (b) another Finance Party, in the information was obtained by that Finance Party directly or indirectly from an Obligor 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:

- (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 27 (*Confidentiality*); or

- (B) is identified in writing at the time of delivery as non-confidential by an Obligor or any of its advisers; or
- (C) 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 Obligors 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 form recommended by the Loan Market Association or in any other form agreed between the Borrower and the Facility Agent.

Contribution means, in relation to a Lender, that part of the Loan owing to such Lender under this Agreement at any relevant time.

Credit Adjustment Spread means any rate specified as such in the Reference Rate Terms.

Credit Balance means the Dollar Value of the balances standing to the credit of the SCB Collection Accounts and the Trustee Collection Account (including, but not limited to, any amounts paid pursuant to Clause 11.2).

CRR means Regulation (EU) no. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) No. 648/2012 as amended, supplemented or restated.

Daily Non-Cumulative Compounded RFR Rate means, in relation to any RFR Banking Day during an Interest Period for an Advance or the Loan, the percentage rate per annum determined by the Facility Agent (or by any other Finance Party which agrees to determine that rate in place of the Facility Agent) in accordance with the methodology set out in Schedule 10 (*Daily Non-Cumulative Compounded RFR Rate*) or in any relevant Compounding Methodology Supplement.

Daily Rate means the rate specified as such in the Reference Rate Terms.

Default means an event or circumstance which, with the giving of notice and/or lapse of time or other applicable condition, might constitute an Event of Default.

Defaulting Lender means any Lender:

- (a) which has failed to make its participation in an Advance available or has notified the Facility Agent that it will not make its participation in an Advance available by the Drawdown Date of that Advance in accordance with Clauses 3.2 or 5.2 (as applicable); or
- (b) which has otherwise rescinded or repudiated a Document; or
- (c) with respect to which an Insolvency Event has occurred and is continuing; unless, in the case of paragraph (a) above:
 - (i) its failure to pay is caused by:

- (A) an administrative or technical error; or
- (B) a Disruption Event;

and payment is made within three (3) Business Days of its due date; or

- (ii) the Lender is disputing in good faith whether it is legally or contractually obliged to make the payment in question.

Determination Date means, in relation to any Drawdown Date or Repayment Date, the day falling two (2) Business Days prior to such Drawdown Date or Repayment Date.

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 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, or a relevant paying agent or correspondent bank, preventing that, or any other Party:
 - (i) from performing its payment obligations under the Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Documents,

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

Documents means this Agreement, the Security Documents, the Subordination Agreement and any other letter, instrument or document between the Facility Agent and/or the Collection Agent and the Borrower and/or Cocoa Marketing (each a **Document**).

Dollars, USD and \$ means the lawful currency for the time being of the United States of America.

Dollar Value means, in relation to an amount denominated in Dollars, such amount in Dollars and, in relation to an amount denominated in a currency other than Dollars, the equivalent thereof in Dollars as determined by the Facility Agent on the basis of the Facility Agent's spot rate of exchange for the purchase of Dollars with such other currency in the London foreign exchange market on the relevant Determination Date.

Drawdown Date means, in relation to an Advance, the date on which such Advance is actually advanced to the Borrower under this Agreement.

EEA Member Country means any member state of the European Union, Iceland, Liechtenstein and Norway.

Environment means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water).

Environmental Claim means any claim, proceeding, formal notice or investigation by any person in respect of any Environmental Law.

Environmental Law means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

Environmental Permits means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any of the Obligors conducted on or from the properties owned or used by any of the Obligors.

EU Bail-In Legislation Schedule means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

Euro and **€** means the single currency of the Participating Member States.

Event of Default means any one of the events listed in Clause 12.1.

Existing Loan means the facility agreement dated 23 September 2021 between the Borrower, the banks and financial institutions named therein, the arranger group, the facility agent and the collection agent, under which a loan facility of up to \$1,500,000,000 (one billion five hundred million Dollars) was made available to the Borrower for main crop advances, including a sub-limit of \$250,000,000 (two hundred and fifty million Dollars) for light crop advances as amended and restated from time to time.

Facility has the meaning given to it in Clause 2.2, as may be extended under Clause 2.4 if applicable.

Facility Agent means Standard Chartered Bank at its office at 1 Basinghall Avenue, 6th Floor, London, EC2V 5DD or through any other branch notified to the Borrower and the Lenders (and includes its successors and assigns).

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or

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

FATCA Application Date means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

FATCA Deduction means a deduction or withholding from a payment under a Document required by FATCA.

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

FATCA FFI means a foreign financial institution as defined in section 1471(d)(4) of the Code which, if any Finance Party is not a FATCA Exempt Party, could be required to make a FATCA Deduction.

Final Repayment Date means, subject to any extension of the Facility in accordance with Clauses 2.4 to 2.12 (inclusive), 31 August 2023 and if such date is not a Business Day, the Final Repayment Date shall be the immediately preceding Business Day.

Finance Lease means any lease or hire purchase contract which would, in accordance with the applicable accounting standards, be treated as a balance sheet liability.

Finance Party means a Co-ordinating Initial Mandated Lead Arranger and Bookrunner, the Initial Mandated Lead Arranger, the Collection Agent, the Facility Agent or a Lender (and "Finance Parties" shall be construed accordingly).

Financial Indebtedness means any indebtedness for or in respect of:

- (a) monies 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 and including any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);
- (d) the amount of any liability in respect of Finance Leases;
- (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) of a type not referred to in any other paragraph of this definition 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 (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; 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.

Financial Stability Board means the Financial Stability Board, which was established in April 2009 (with its original charter dated 25 September 2009), and any replacement thereof that promotes the reform of international financial regulation.

Financial Year means the annual accounting period of the Borrower or Cocoa Marketing ending on or about 30 September in each year.

Holding Company means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

Impaired Agent means either the Facility Agent or the Collection Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Documents by the due date for payment;
- (b) it otherwise rescinds or repudiates a Document;
- (c) it is a Defaulting Lender under paragraph (a) or (b) of the definition of Defaulting Lender; or
- (d) an Insolvency Event has occurred and is continuing in respect of it, unless, in the case of paragraph (a) above:
 - (i) its failure to pay is caused by:
 - (A) an administrative or technical error; or
 - (B) a Disruption Event,and payment is made within three (3) Business Days of its due date; or
 - (ii) the Facility Agent or the Collection Agent (as applicable) is disputing in good faith whether it is legally or contractually obliged to make the payment in question.

Increase Confirmation has the meaning given to it in Clause 23.3(b)(i).

Information Memorandum means the information memorandum dated [●] 2022 issued in connection with this Agreement.

Insolvency Event means, in relation to a Finance Party, that Finance Party:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:
 - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation; or
 - (ii) is not dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation thereof;
- (f) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or

- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

Interest Margin means 1.75% (one point seven-five per cent) per annum.

Interest Payment means the aggregate amount of interest that is, or is scheduled to become, payable under any Finance Document.

Interest Payment Date means each of the dates selected by the Borrower or as otherwise determined pursuant to Clauses 8.2 and 8.6 and each Repayment Date.

Interest Period means, in respect of an Advance or, as the case may be, the Loan, a period commencing on an Interest Payment Date (or, in the case of the first Interest Period for such Advance or, as the case may be, the Loan, the relevant Drawdown Date) and ending on the next following Interest Payment Date.

Lenders means the Main Crop Lenders and the Light Crop Lenders.

Light Crop Advance means each Advance drawn down or to be drawn down pursuant to Clause 5 (*Drawdown of Light Crop Advances*) or, as the context requires, the principal amount of such Advances for the time being outstanding under this Agreement.

Light Crop Availability Period means the period commencing on 1 May 2023 and terminating on the earlier of 31 July 2023 and the date on which the Light Crop Available Amount is reduced to zero.

Light Crop Available Amount means, subject to Clause 5.4, at any time, the Total Light Crop Commitments (being an amount of \$250,000,000 (two hundred and fifty million Dollars) at the date of this Agreement) less the amount of the Light Crop Outstandings at such time provided that the aggregate of the Main Crop Outstandings and the Light Crop Outstandings shall not exceed \$[1,300,000,000 (one billion three hundred million Dollars)] at any time.

Light Crop Commitment means, in relation to a Light Crop Lender, the amount set out opposite its name in Schedule 1 Part 2 (*Light Crop Lenders and Light Crop Commitments*) as such amount may be reduced, cancelled or terminated in accordance with the terms of this Agreement or assumed by it in accordance with Clauses 23 (*Defaulting Lenders*) or 26 (*Assignments and Transfers*) (and **Total Light Crop Commitments** means, at any given time, the aggregate of the Light Crop Commitments of all the Light Crop Lenders at such time).

Light Crop Lender means each of the banks and financial institutions listed in Schedule 1 Part 2 (*Light Crop Lenders and Light Crop Commitments*) or any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clauses 23 (*Defaulting Lenders*) or 26 (*Assignments and Transfers*), as applicable, and acting through its branch or other office as indicated in Schedule 1 Part 2 (*Light Crop Lenders and Light Crop Commitments*) or through any other branch or office as notified to the Facility Agent from time to time pursuant to Clause 26.3 (and includes its successors and assigns) (together, the **Light Crop Lenders**).

Light Crop Outstandings means the aggregate principal amount of Light Crop Advances for the time being advanced and outstanding under this Agreement.

Loan means the aggregate principal amount of the Advances for the time being advanced and outstanding under this Agreement.

Lookback Period means the number of days specified as such in the Reference Rate Terms

Main Crop Advance means each Advance drawn down or to be drawn down pursuant to Clause 3 (*Drawdown of Main Crop Advances*) or, as the context requires, the principal amount of such Advances for the time being outstanding under this Agreement.

Main Crop Availability Period means the period commencing on the later of (i) the date the Facility Agent confirms to the Borrower in writing that the conditions set out in Clause 9.1 have been satisfied and (ii) 1 October 2022 and terminating on the earlier of (a) 28 February 2023 and (b) the date on which the Main Crop Available Amount is reduced to zero.

Main Crop Available Amount means, subject to Clauses 3.1(c) and 3.4, at any time, the Total Main Crop Commitments (being an amount of \$[1,300,000,000 (one billion three hundred million Dollars)] at the date of this Agreement) less the Main Crop Outstandings at such time).

Main Crop Commitment means, in relation to a Main Crop Lender, the amount set out opposite its name in Schedule 1 Part 1 (*Main Crop Lenders and Main Crop Commitments*) as such amount may be reduced, cancelled or terminated in accordance with the terms of this Agreement or assumed by it in accordance with Clauses 23 (*Defaulting Lenders*) or 26 (*Assignments and Transfers*) (and **Total Main Crop Commitments** means, at any given time, the aggregate of the Main Crop Commitments of all the Main Crop Lenders at such time).

Main Crop Facility Amount means \$[1,300,000,000 (one billion three hundred million Dollars)] less any reduction, cancellation or termination of the Total Main Crop Commitments.

Main Crop Lender means each of the banks and financial institutions listed in Schedule 1 Part 1 (*Main Crop Lenders and Main Crop Commitments*) or any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clauses 23 (*Defaulting Lenders*) or 26 (*Assignments and Transfers*), as applicable, and acting through its branch or other office as indicated in Schedule 1 Part 1 (*Main Crop Lenders and Main Crop Commitments*), or through any other branch or office as notified to the Facility Agent from time to time pursuant to Clause 26.3 (and includes its successors and assigns) (together, the **Main Crop Lenders**).

Main Crop Outstandings means the aggregate principal amount of Main Crop Advances for the time being advanced and outstanding under this Agreement.

Majority Lenders means Lenders the aggregate of whose Commitments at any relevant time exceeds sixty-six and two-thirds per cent (66 2/3 %) of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than sixty-six and two-thirds per cent (66 2/3 %) of the Total Commitments immediately prior to that reduction), at such time or, if any Advance is outstanding, Lenders the aggregate of whose Contributions at any relevant time exceeds sixty-six and two thirds per cent (66 2/3 %) of the Loan.

Margin Assets means the aggregate of:

- (a) the aggregate Dollar Value of monies payable on or before the Final Repayment Date pursuant to those Sales Contracts under which the consignment of cocoa or cocoa beans is due to be delivered and which at all times satisfies the representation and warranty set out in Clause 10.1(w), which have been assigned under the Security Agreement and in respect of which an Assignment Acknowledgement signed by the relevant Approved Purchaser and, if applicable, its Parent Company has been received by the Facility Agent; and

- (b) specifies a calculation methodology for that rate; and
- (c) has been made available to the Borrower and each Finance Party.

Reference Rate Terms means the terms set out in Schedule 1 (Reference Rate Terms) or in any Reference Rate Supplement.

RFR means the rate specified as such in the Reference Rate Terms.

RFR Banking Day means the day specified as such in the Reference Rate Terms.

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 Market means [].

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.

Repayment Date means each of the dates specified in Clause 4.1.

Repayment Margin means, for any Repayment Margin Period, one hundred per cent (100%) of the amount of any principal and/or interest due on the last day of such Repayment Margin Period.

Repayment Margin Period means the period beginning upon the day falling five (5) Business Days prior to each Interest Payment Date and ending upon such Interest Payment Date.

Repayment Shortfall means, at any time, the amount of any shortfall between the Credit Balance and the Repayment Margin.

Reporting Day means the day (if any) specified as such in the Reference Rate Terms.

Reporting Time means the relevant time (if any) specified as such in the Reference Rate Terms.

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

Required Margin means 112% of the Loan or, in the case of Clauses 9.3(a)(iii) and 9.3(d), the amount of the proposed Advance as set out in the Notice of Drawing in respect of such Advance, together with the Loan or, in the case of the first Advance or where there is no Loan, the amount of the proposed Advance.

Resolution Authority means any body which has authority to exercise any Write-down and Conversion Powers.

Restricted Country means a country or territory that is the target of country-wide or territory-wide Sanctions including, but not limited to, Iran, Syria, Cuba, North Korea, and Crimea.

Sales Contracts means any firm fixed price contract or agreement for the sale of cocoa between Cocoa Marketing and any Approved Purchaser and where the monies payable under such contract by such Approved Purchaser are (i) payable no later than the date falling [5] Business Days prior to the Final Repayment Date and (ii) directly to the relevant COCOBOD Collection Account from a bank that is not or does not reside in a country which is the subject of Sanctions, on or prior to the Final Repayment Date, and are denominated in Dollars, Sterling, Euros or such other freely convertible currency as the Facility Agent may agree to from time to time with the Borrower and which (aa) has not had any delayed or missed deliveries and (bb) has been assigned under the Security Agreement and in respect of which an Assignment Acknowledgement signed by the Approved Purchaser and, if applicable, its Parent Company has been received by the Facility Agent (each a **Sales Contract**).

Sanctions means the trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctions Authority (whether or not the Borrower, an Approved Purchaser, or any other Affiliate of the Borrower or an Approved Purchaser is legally bound to comply with such laws, regulations, embargoes or measures).⁴

Sanctions Authority means the competent authority responsible for sanctions of any of:

- (a) Switzerland;
- (b) the United States of America;
- (c) the United Nations;
- (d) the United Kingdom;
- (e) the Republic of Ghana;
- (f) Japan;
- (g) the People's Republic of China; or
- (h) the European Union and its Participating Member States,

and such authorities shall include 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**).

Sanctions List means:

- (a) the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC;
- (b) the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by HMT; or
- (c) any similar list maintained by, or public announcement of Sanctions designation made by, any Sanctions Authority,

⁴ Note: Sanctions wording may require updating to reflect the internal sanctions policies of the Lenders

each as amended, supplemented or substituted from time to time.

SCB Collection Accounts means:⁵

- (a) the Euro account in the name of Cocoa Marketing held with the Facility Agent at 1 Basinghall Avenue, 6th Floor, London, EC2V 5DD, with account number EUR – [01274971896] with reference "COCOA MARKETING CO (GHANA) LIMITED – EUR COLLECTION ACCOUNT"; and
- (b) the GBP account in the name of Cocoa Marketing held with the Facility Agent at 1 Basinghall Avenue, 6th Floor, London, EC2V 5DD, with account number GBP – [01274969601] with reference "COCOA MARKETING CO (GHANA) LIMITED –GBP COLLECTION ACCOUNT",

and any renewal, re-designation or sub-account of either such account with the Facility Agent at such branch (each an **SCB Collection Account**).

Secured Assets has the same meaning ascribed to it in the Security Agreement.

Security Agreement means a security agreement between Cocoa Marketing and the Facility Agent in the form agreed between the Facility Agent and the Borrower prior to the date of this Agreement and dated on or about the date of this Agreement.

Security Documents means

- (a) the Collection and Conversion Agreement and the Security Agreement (including without limitation any applicable Notice of Assignment, Assignment Acknowledgement, Notice of Account Charge and Account Charge Acknowledgement) and (where the context so permits) this Agreement; and
- (b) any other document or agreement that may be executed at any time by the Obligors (or either of them) or any other person as security for all or any part of the Loan, interest thereon and any other monies payable to the Lenders under and/or in connection with this Agreement and/or any of the documents referred to in this definition.

Security Interest means any mortgage, charge, pledge, lien, hypothecation, assignment, trust, arrangement, title retention or other security interest or arrangement of any kind whatsoever.

Security Period means the period commencing on the date of this Agreement and terminating on the date upon which the Facility Agent certifies in writing to the Borrower that all monies payable or to become payable at any time and from time to time pursuant to the terms of this Agreement and/or any of the Documents have been paid and discharged in full.

Specified Time means 11:00 a.m. (London Time).

Stamp Duty has the meaning given to it in Clause 10.1(g).

Sterling and **GBP** means the lawful currency for the time being of the United Kingdom.

⁵ Account numbers to be confirmed

Subordination Agreement means a subordination agreement dated on or around the date of this Agreement between the Facility Agent, the Borrower and the Bank of Ghana with respect to the Bank of Ghana Facility.

Subsidiary means, in relation to any company or corporation, any company or corporation (an undertaking) where that first company or corporation:

- (a) holds a majority of the voting rights in the undertaking; or
- (b) holds a membership interest and has the right to appoint or remove the majority of the members of the executive body of the undertaking; or
- (c) has a right to exercise a dominant influence over the undertaking, by virtue of provisions contained in the undertaking's constitutional documents or in a control contract; or
- (d) is a member of the undertaking and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in the undertaking.

Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Document, other than a FATCA Deduction.

Taxes includes all present and future income, corporation and value-added taxes and all stamp and other taxes and levies, imposts, deductions, duties, charges and withholdings whatsoever together with interest thereon and penalties with respect thereto, if any, and charges, fees and other amounts made on or in respect thereof (and references to **Tax** and **taxation** shall be construed accordingly).

Tax Payment means either the increase in a payment made by an Obligor under Clause 17.1 or a payment under Clause 17.5.

Total Commitments means the aggregate of the Commitments of the Lenders.

Transfer Certificate means a transfer certificate for the purposes of Clause 26.4 substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) (or in such other form as the Facility Agent may approve).

Treasury Transaction means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

Trustee Collection Account means the Dollar account in the name of Cocoa Marketing held with the Facility Agent at 1 Basinghall Avenue, 6th London, EC2V 5DD, with account number [USD – 01274968850]⁶ with reference "COCOA MARKETING CO (GHANA) LIMITED – TRUSTEE COLLECTION ACCOUNT", and any renewal, re-designation or sub-account of such account, with the Facility Agent at such branch.

UK Bail-In Legislation means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

⁶ Account number to be confirmed

Unpaid Sum means any sum due and payable but unpaid by the Borrower under any of the Documents.

US means the United States of America.

US Tax Obligor means:

- (a) the Borrower, if resident for tax purposes in the US; or
- (b) an Obligor some or all of whose payments under the Documents are from sources within the US for US federal income tax purposes.

Write-down and Conversion Powers means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation (other than the UK Bail-In Legislation):
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to the UK Bail-In Legislation:

any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

1.2 In this Agreement:

- (a) references to periods of months shall mean a period beginning in one calendar month and ending in the relevant calendar month on the day numerically corresponding to the day of the calendar month in which such period started, provided that (a) if such period started on the last Business Day in a calendar month, or if there is no such numerically corresponding day, such period shall end on the last Business Day in the relevant calendar month, and (b) if such numerically corresponding day is not a Business Day,

such period shall end on the next following Business Day in the same calendar month or, if there is no such Business Day, such period shall end on the preceding Business Day (and **month** and **monthly** shall be construed accordingly);

- (b) any reference to the Facility Agent, the Collection Agent, any Finance Party, any Lender, any Obligor 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 Documents;
 - (c) a Lender's "**cost of funds**" in relation to its participation in an Advance, or as the case may be, the Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may reasonably select, an amount equal to the amount of that participation in that Advance, or as the case maybe, the Loan for a period equal in length to the Interest Period of that Advance, or as the case maybe, the Loan.
 - (d) clause headings are inserted for convenience only and shall not affect the construction of this Agreement and, unless otherwise specified, all references to Clauses and Schedules are to Clauses of, and Schedules to, this Agreement;
 - (e) unless the context otherwise requires, words denoting the singular number shall include the plural and vice versa;
 - (f) references to indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (g) references to persons include 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);
 - (h) references to assets include present and future properties, revenues and rights and assets of every description;
 - (i) references to any document are to be construed as references to such document as amended, varied, novated, restated, replaced or supplemented from time to time;
 - (j) a references to any provision of law or enactment is a reference to that provision or enactment as amended, re-enacted or extended;
 - (k) a reference to time of day is a reference to London time; and
 - (l) references to 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.
- 1.3 A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived and an Event of Default is "**continuing**" if it has not been waived.
- 1.4 A reference in this Agreement to a Central Bank Rate shall include any successor rate to, or replacement rate for, that rate.

- 1.5 Any Reference Rate Supplement relating to a currency overrides anything relating to that currency in:
- (a) Schedule 9 (Reference Rate Terms); or
 - (b) any earlier Reference Rate Supplement.
- 1.6 A Compounding Methodology Supplement relating to the Daily Non-Cumulative Compounded RFR Rate overrides anything relating to that rate in:
- (a) Schedule 10 (Daily Non-Cumulative Compounded RFR Rate); or
 - (b) any earlier Compounding Methodology Supplement.

2 Facility and Facility extension

- 2.1 The Borrower shall apply the proceeds of the Advances towards the purchase of cocoa beans and other direct costs in the Republic of Ghana pending the receipt of proceeds from Sales Contracts PROVIDED THAT the Borrower shall use the proceeds of (a) each Main Crop Advance towards the purchase of cocoa and other direct costs in the Republic of Ghana only during the main crop season from 1 October 2022 to 28 February 2023 or the refinancing of purchases already made for the main crop season and (b) each Light Crop Advance towards the purchase of cocoa and other direct costs in the Republic of Ghana only during the light crop season from 1 May 2023 to 31 July 2023 or the refinancing of purchases already made for the light crop season. Neither the Facility Agent nor any of the Lenders shall be required to verify the application thereof.
- 2.2 Subject to the terms of this Agreement, and in reliance (inter alia) on the representations and warranties of the Borrower set out in Clause 10.1 and of Cocoa Marketing in each of the Security Documents, the Lenders have agreed to make available to the Borrower a loan facility of up to \$[1,300,000,000 (one billion three hundred million Dollars)] (the **Facility**). This shall consist of the Main Crop Facility Amount whereby the Main Crop Lenders agree to make available to the Borrower a loan facility of up to a maximum aggregate amount of \$[1,300,000,000 (one billion three hundred million Dollars)] and the Light Crop Available Amount whereby the Light Crop Lenders agree to make available to the Borrower a loan facility of up to a maximum aggregate amount of \$250,000,000 (two hundred and fifty million Dollars), subject to the aggregate of the Main Crop Outstandings and the Light Crop Outstandings never exceeding \$[1,300,000,000 (one billion three hundred million Dollars)]. These facilities shall be made for the purpose described in Clause 2.1. Subject to the terms of this Agreement, each Main Crop Lender will participate in each Main Crop Advance in the proportion which its Main Crop Commitment, at the Drawdown Date relating to such Main Crop Advance, bears to the Total Main Crop Commitments at such Drawdown Date and each Light Crop Lender will participate in each Light Crop Advance in the proportion which its Light Crop Commitment, at the Drawdown Date relating to such Light Crop Advance, bears to the Total Light Crop Commitments at such Drawdown Date.
- 2.3 The obligations of each of the Lenders under this Agreement are several. The failure of a Lender to perform any of its obligations under this Agreement shall not:
- (a) increase the liability of any other Lender under this Agreement nor impose any liability on the Facility Agent as a result thereof; nor

- (b) relieve the Borrower, the Facility Agent or any other Lender from their respective obligations under this Agreement.

Notwithstanding any other term of this Agreement, the interests of each Lender are several and the aggregate of the amounts outstanding at any time under this Agreement from the Borrower to the Facility Agent for its own account or to each Lender shall be a separate and independent debt. The Facility Agent and each Lender shall have the right to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any Lender or (as the case may be) the Facility Agent to be joined as an additional party in any proceedings to this end.

- 2.4 The Borrower may request an extension of the Facility for a further period of 12 (twelve) months so that the Borrower shall be able to re-borrow an amount not exceeding the amount of the Total Commitments and with the applicable repayment and other dates and crop references being one year later by sending a notice to the Facility Agent (a **Facility Extension Notice**) requesting such extension. The Facility Extension Notice shall be delivered no earlier than the last Business Day in January 2023 and no later than the last Business Day in March 2023 or such later date as agreed by the majority in number of the Arranger Group. Only one Facility Extension Notice shall be permitted to be delivered by the Borrower. The Facility Extension Notice shall not be regarded as having been duly completed unless it is signed by the Borrower. Nothing shall require the Borrower to issue a Facility Extension Notice and the Borrower shall be entitled (but not obliged) to seek any alternative financing.
- 2.5 Any request by the Borrower for an extension of the Facility pursuant to Clause 2.4 shall be accompanied by the following documents:
 - (a) a certificate from the Borrower confirming that all stocks of cocoa grown in the Republic of Ghana for the 2023/2024 season shall be sold exclusively via Cocoa Marketing;
 - (b) the latest available audited reports and accounts of the Borrower and Cocoa Marketing;
 - (c) a copy of a letter sent by the Borrower to the Minister of Finance and Economic Planning of the Republic of Ghana requesting approval to borrow; and
 - (d) a copy of a letter sent by the Minister of Finance and Economic Planning of the Republic of Ghana to the Borrower approving the request to borrow,in each case in form and substance acceptable to the Facility Agent acting on the instructions of the Lenders.
- 2.6 The delivery by the Borrower of the Facility Extension Notice shall not affect the obligations of the Borrower to repay in full each instalment of the Loan on each Repayment Date and the Final Repayment Date in accordance with this Agreement.
- 2.7 Within five (5) days of receipt by the Facility Agent of the Facility Extension Notice, the Facility Agent shall give notice to each Lender, requesting its confirmation as to whether or not it is considering the proposed extension of the Facility subject to acceptable terms. Such confirmation shall be at the sole discretion of each Lender.
- 2.8 Not later than four (4) weeks after the date on which the Facility Agent sends the Facility Extension Notice to the Lenders under Clause 2.7, each Lender shall advise whether or not it is prepared to consider any proposed extension of the Facility.
- 2.9 The Facility Agent shall advise the Borrower of the Lenders that may be prepared to extend the Facility and in what amounts and on what terms as soon as reasonably possible following the

receipt by the Facility Agent of all such confirmations. In the event that a Lender fails to notify the Facility Agent within four (4) weeks of the date on which the Facility Agent sends the Facility Extension Notice to the Lenders, it shall be deemed to have not consented to any such extension of the Facility and accordingly, none of its Commitment shall be made available to be utilised by the Borrower following any extension of the Facility unless the Parties agree in writing to the contrary.

- 2.10 It is acknowledged and agreed by the Parties that any extension of the Facility will be on the same or substantially the same terms as in this Agreement and the Security Documents acceptable to the Facility Agent and the Lenders, and subject to agreement as to an extension fee, any other fees and margin and the provision of satisfactory conditions precedent, or as otherwise agreed by the Parties.
- 2.11 The Parties acknowledge that each Lender shall have full and unrestricted discretion in deciding whether to agree to any extension of the Facility, the amount of the Facility and any Commitment and the financial terms.
- 2.12 It is also agreed by the Parties that all or any of the Lenders may make a new facility instead of an extension, with any other parties but nothing shall commit any Party to agree to a new facility.

3 Drawdown of Main Crop Advances

- 3.1 The Borrower may make a request for a Main Crop Advance by sending to the Facility Agent a duly completed Notice of Drawing (which shall be irrevocable), such Notice of Drawing to be received by the Facility Agent not later than 10.00 a.m. (London time) three (3) Business Days prior to the proposed Drawdown Date relating to that Main Crop Advance, provided that:
- (a) a Main Crop Advance may only be made on a Business Day during the Main Crop Availability Period;
 - (b) each Main Crop Advance shall be an amount not less than \$100,000,000 (one hundred million Dollars) or, if higher, an integral multiple of \$10,000,000 (ten million Dollars) (or subject to the provisions of this Clause 3.1, an amount equal to the Main Crop Available Amount);
 - (c) the aggregate of the Main Crop Advances shall not exceed the Total Main Crop Commitments, and provided further that the aggregate of the Main Crop Advances drawn down on or before 31 October 2022 shall not exceed seventy per cent (70%) of the Main Crop Facility Amount;
 - (d) no Main Crop Advance shall be made if the making of that Main Crop Advance would result in the aggregate number of outstanding Main Crop Advance exceeding six (6); and
 - (e) no Main Crop Advance shall be made if the making of that Main Crop Advance would result in the aggregate of the Main Crop Outstandings exceeding \$[1,300,000,000 (one billion three hundred million Dollars)].
- 3.2 Upon receipt of a Notice of Drawing, the Facility Agent shall notify each of the Main Crop Lenders promptly (and no later than 5.00 p.m. (London time), three (3) Business Days prior to the proposed Drawdown Date) of the amount and proposed Drawdown Date of the Main Crop Advance relating thereto, the duration of the first Interest Period to apply to such Main Crop Advance and (individually to each Main Crop Lender) the amount of each Main Crop Lender's

participation in such Main Crop Advance and each Main Crop Lender, subject to the terms of this Agreement, shall make available to the Facility Agent for the account of the Borrower on such Drawdown Date its participation in such Main Crop Advance in accordance with Clause 16.1.

- 3.3 Subject to the terms of this Agreement, the Facility Agent shall pay the proceeds of each Main Crop Advance received by it from the Main Crop Lenders to the Borrower in accordance with the instructions in the relevant Notice of Drawing on the Drawdown Date relating thereto and in accordance with the Borrower's instructions.
- 3.4 At the close of business on the last day of the Main Crop Availability Period, the Main Crop Available Amount shall be automatically cancelled and reduced to zero.

4 Repayment and prepayment of Main Crop Advances

- 4.1 The Borrower shall repay to the Main Crop Lenders the amount of the Main Crop Outstandings as at the expiration of the Main Crop Availability Period by seven (7) substantially equal (to the nearest dollar) consecutive monthly instalments and one such instalment shall be repaid on each Repayment Date set out in the schedule below:

Repayment Date

28 February 2023
31 March 2023
28 April 2023
31 May 2023
30 June 2023
28 July 2023
31 August 2023

- 4.2 On the Final Repayment Date, the Borrower additionally shall pay to the Facility Agent and the Main Crop Lenders all other sums then outstanding or payable to the Main Crop Lenders hereunder.
- 4.3 No amount repaid under Clause 4.1 may be re-borrowed other than as a Light Crop Advance in accordance with this Agreement.
- 4.4 The Borrower may at any time prepay the whole or any part of the Main Crop Outstandings, save as provided in Clause 13.4 (subject always to paragraph (e) of this Clause 4.4), provided that:
- (a) other than a prepayment made pursuant to Clause 13.4, any prepayment of the whole or any part of the Main Crop Outstandings may only be made after the last day of the Main Crop Availability Period (or, if earlier, the day on which the Main Crop Available Amount is zero);
 - (b) other than a prepayment made pursuant to Clause 13.4, the Facility Agent shall have received from the Borrower not less than ten (10) days' prior written notice (which shall be irrevocable) of its intention to make such prepayment and specifying the amount and date on which such prepayment is to be made, and the Facility Agent will notify the Main Crop Lenders promptly upon receiving any such notice;

- (c) other than a prepayment made pursuant to Clause 13.4, the amount of any such partial prepayment shall be not less than \$30,000,000 (thirty million Dollars) or, if less, the total of the Main Crop Outstandings;
- (d) no amount prepaid under this Agreement may be reborrowed as a Main Crop Advance;
- (e) no more than four (4) prepayments shall be permitted to be made on a date that is not an Interest Payment Date;
- (f) each prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and all other sums payable thereon under the terms of this Agreement; and
- (g) each partial prepayment under this Clause made after the end of the Main Crop Availability Period shall be applied against the repayment instalments in such order as the Borrower may decide.

5 Drawdown of Light Crop Advances

- 5.1 Subject to the terms of this Agreement, the Borrower may make a request for a Light Crop Advance following the payment in full of each instalment which was due and payable under Clause 4.1 on or before the proposed Drawdown Date of the relevant Light Crop Advance by sending to the Facility Agent a duly completed Notice of Drawing (which shall be irrevocable), such Notice of Drawing to be received by the Facility Agent not later than 10.00 a.m. (London time) three (3) Business Days prior to the Drawdown Date relating to the Light Crop Advance, provided that:
- (a) a Light Crop Advance may only be made on a Business Day during the Light Crop Availability Period;
 - (b) each Light Crop Advance shall be an amount not less than \$50,000,000 (fifty million Dollars);
 - (c) the aggregate of the Light Crop Advances (including the relevant Light Crop Advance to be drawn down) shall not exceed the Total Light Crop Commitments;
 - (d) no Light Crop Advance shall be made if the making of that Light Crop Advance would result in the aggregate number of outstanding Light Crop Advance exceeding six (6); and
 - (e) no Light Crop Advance shall be made if the making of that Light Crop Advance would result in the aggregate of the Main Crop Outstandings and the Light Crop Outstandings exceeding \$[1,300,000,000 (one billion three hundred million Dollars)].
- 5.2 Upon receipt of a Notice of Drawing, the Facility Agent shall notify each of the Light Crop Lenders promptly (and no later than 5.00 p.m. (London time), three (3) Business Days prior to the proposed Drawdown Date) of the amount and Drawdown Date of the Light Crop Advance relating thereto and (individually to each Light Crop Lender) the amount of each Light Crop Lender's participation in such Light Crop Advance and each Light Crop Lender, subject to the terms of this Agreement, shall make available to the Facility Agent for the account of the Borrower on such Drawdown Date its participation in such Light Crop Advance in accordance with Clause 16.1.

- 5.3 Subject to the terms of this Agreement, the Facility Agent shall pay the proceeds of each Light Crop Advance received by it from the Light Crop Lenders to the Borrower in accordance with the instructions in the relevant Notice of Drawing on the Drawdown Date relating thereto.
- 5.4 At the close of business on the last day of the Light Crop Availability Period, the Light Crop Available Amount shall be automatically cancelled and reduced to zero.

6 Repayment and prepayment of Light Crop Advances

- 6.1 The Borrower shall repay to the Light Crop Lenders each Light Crop Advance by equal consecutive monthly instalments so that an instalment for each Light Crop Advance shall be repaid on each Repayment Date remaining after the relevant Drawdown Date in respect of that Light Crop Advance and the amount of each instalment for each Light Crop Advance will be calculated by dividing the amount of the relevant Light Crop Advance on its Drawdown Date by the remaining number of Repayment Dates. On the Final Repayment Date, the Borrower shall additionally pay to the Facility Agent and the Light Crop Lenders all other sums then outstanding or payable to the Light Crop Lenders under this Agreement.
- 6.2 No amount repaid under Clause 6.1 may be reborrowed.
- 6.3 The Borrower may at any time prepay the whole or any part of the Light Crop Outstandings, save as provided in Clause 13.4 (subject always to paragraph (e) of this Clause 6.3), provided that:
- (a) other than a prepayment made pursuant to Clause 13.4, any prepayment of the whole or any part of the Light Crop Outstandings may only be made after the last day of the Light Crop Availability Period (or, if earlier, the day on which the Light Crop Available Amount is zero);
 - (b) other than a prepayment made pursuant to Clause 13.4, the Facility Agent shall have received from the Borrower not less than ten (10) days' prior notice (which shall be irrevocable) of its intention to make such prepayment and specifying the amount and date on which such prepayment is to be made, and the Facility Agent will notify the Light Crop Lenders promptly upon receiving any such notice;
 - (c) other than a prepayment made pursuant to Clause 13.4, the amount of any such partial prepayment shall be not less than \$30,000,000 (thirty million Dollars) (or, if higher, an integral multiple of \$10,000,000 (ten million Dollars)) or, if less, the Light Crop Outstandings;
 - (d) no amount prepaid under this Clause 6.3 may be reborrowed;
 - (e) no more than four (4) prepayments of the Light Crop Outstandings shall be permitted to be made on a date that is not an Interest Payment Date;
 - (f) each prepayment under this Clause 6.3 shall be made together with accrued interest on the amount prepaid and all other sums payable thereon under the terms of this Agreement; and
 - (g) each partial prepayment under this Clause shall be applied against the repayment instalments specified in Clause 6.1 in such order as the Borrower may decide.

7 Mandatory Prepayment and Cancellation

7.1 Illegality

If (i) it becomes unlawful in any jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Advance or (ii) it becomes unlawful for any Affiliate of a Lender for that Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Advance, or (iii) any Affiliate of any Obligor is or becomes a Prohibited Person:

- (a) that Lender shall (or, in the case of (ii) or (iii) above, any Lender may) promptly notify the Facility Agent upon becoming aware of that event;
- (b) upon the Facility Agent notifying the Borrower (or, in the case of (ii) or (iii) above, if the relevant Lender so specifies in its notice or any subsequent notice), the Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall (in the case of (ii) or (iii) above, if the relevant Lender so specifies in its notice or any subsequent notice) repay that Lender's participation in each Advance on the last day of the then current Interest Period for the Loan occurring after the Facility Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law), together with accrued interest and all other amounts payable under the Documents.

7.2 Change of control

If a change of control of either Obligor or a material Subsidiary of either Obligor occurs, (where control means the power to direct the management and/or policy of either Obligor or (as the case may be) a material Subsidiary of an Obligor whether through the exercise of voting rights, by contract, board control or otherwise):

- (a) the Borrower shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) a Lender shall not be obliged to fund an Advance; and
- (c) if the Majority Lenders so require and notify the Facility Agent within five (5) days of the Borrower notifying the Facility Agent of the event, the Facility Agent shall, by not less than ten (10) days' notice to the Borrower, cancel the Total Commitments and declare all outstanding Advances, together with accrued interest and all other amounts payable under the Documents immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding and other amounts will become immediately due and payable.

7.3 Disposal of assets

If either Obligor (voluntarily or involuntarily), without the prior written consent of the Majority Lenders, sells, conveys, transfers, lends, leases or otherwise disposes of all or a substantial part of its assets (whether by one transaction or a series of transactions and whether related or not) other than in the ordinary course of its day to day trading for full value on an arm's length basis:

- (a) the Borrower shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) a Lender shall not be obliged to fund an Advance; and
- (c) if the Majority Lenders so require and notify the Facility Agent within five (5) days of the Borrower notifying the Facility Agent of the event, the Facility Agent shall, by not less than ten (10) days' notice to the Borrower, cancel the Total Commitments and declare all outstanding Advances, together with accrued interest and all other amounts payable under the Documents immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding and other amounts will become immediately due and payable.

7.4 Sanctions

If either Obligor defaults under Clause 11.1(t), then:

- (a) the Borrower shall promptly notify the Facility Agent upon becoming aware of that event;
- (b) any Lender can, by notice to the Facility Agent, elect to immediately cancel its Commitment; and
- (c) if a Lender elects to cancel its Commitment under paragraph (b) above, the Borrower shall repay that Lender's participation in each Advance on the last day of the then current Interest Period for the Loan occurring after the Lender has elected to cancel its Commitment or, if earlier, the date specified by the Lender in the notice delivered to the Facility Agent (being no earlier than the last day of any applicable grace period permitted by law), together with accrued interest and all other amounts payable under the Documents, provided that no Lender shall be permitted to cancel its Commitment under this Clause 7 (*Mandatory Prepayment and Cancellation*) if the Majority Lenders have cancelled the Total Commitments and accelerated the requirement to repay the Loan under Clause 12.2.

8 Interest and Interest Periods

- 8.1 Subject to the terms of this Agreement, the rate of interest applicable to each Advance or any part thereof for each Interest Period relating thereto shall be the rate per annum determined by the Facility Agent to be the aggregate of (a) the Interest Margin, (b) RFR and (c) Credit Adjustment Spread.
- 8.2 Before the beginning of each Interest Period relating to an Advance or the Loan, the Borrower will give an irrevocable notice to the Facility Agent to be received by the Facility Agent not later than 10.00 a.m. (London time) three (3) Business Days before the first day of that Interest Period, specifying whether that Interest Period is to be of one (1) or three (3) months' duration (or any other period agreed between the Borrower and the Facility Agent), provided that:
 - (a) the first Interest Period relating to an Advance will commence on the Drawdown Date of the Advance concerned;
 - (b) the first Interest Period relating to an Advance made during an existing Interest Period shall expire at the end of the then current Interest Period and that Advance shall be consolidated with the balance of the Loan;

- (c) each subsequent Interest Period relating to an Advance or the Loan will commence on the expiry of the previous Interest Period relating to that Advance or the Loan;
 - (d) If any day during an Interest Period is not an RFR Banking Day, the rate of interest for that day will be the rate applicable to the immediately preceding RFR Banking Day;
 - (e) if any Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will be extended to the next following day which is a Business Day, unless that day falls in the next calendar month, in which event that Interest Period will end on the preceding Business Day;
 - (f) if two (2) or more Interest Periods end on the same date, the relevant Loans shall be consolidated into, and treated as, a single Loan on the last day of the Interest Period;
 - (g) no Interest Period for the Loan shall extend beyond the first Repayment Date and thereafter an Interest Period will expire on each Repayment Date;
 - (h) [no Interest Period shall be longer than six months]⁷
 - (i) if the Borrower fails to select an Interest Period in accordance with this Clause, the length of that Interest Period will, subject to paragraph (g) above, be one (1) month;
 - (j) the length of an Interest Period in respect of each Light Crop Advance will, subject to paragraph (g) above, be one (1) month; and
 - (k) the final Interest Period will end on the Final Repayment Date.
- 8.3 Interest on the Loan (or the relevant part thereof) shall be paid by the Borrower to the Facility Agent for the account of the Lenders in arrear on each Interest Payment Date.
- 8.4 The certificate of the Facility Agent as to a rate of interest shall, in the absence of manifest error, be conclusive.
- 8.5 The Facility Agent will notify the Borrower and each of the Lenders by facsimile or by email of each rate of interest determined in accordance with this Agreement and of the duration of each Interest Period, in each case, promptly upon the determination thereof.
- 8.6 In the event that the Facility Agent does not receive on the due date any sum due under this Agreement (or any agreement entered into by the Borrower in connection herewith), the Borrower shall pay to the Facility Agent for the account of those of the Lenders to whom such payment was due and/or the Facility Agent (as the case may be) on demand interest on such sum from and including the due date thereof to the date of actual payment (as well after as before judgment) at the rate per annum determined by the Facility Agent to be zero point five per cent (0.5%) above 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 periods of any duration up to three (3) months, as the Facility Agent (acting on the instructions of the Majority Lenders, or if no Majority Lender decision is reached within ten (10) Business Days of the non-payment, acting in its discretion) may determine from time to time.

⁷ This is based on the suggest LMA, SC to confirm if this is to be included.

- 8.7 If any overdue amount consists of all or part of an Advance which becomes due on a day which was not the last day of an Interest Period relating to that Advance:
- (a) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Advance; and
 - (b) the rate of interest applying to the overdue amount during that first Interest Period shall be zero point five per cent (0.5%) above the rate which would have applied if the overdue amount had not become due.
- 8.8 Any interest payable under Clauses 8.6 and/or 8.7 which is not paid when due shall be compounded at the end of each applicable Interest Period or other applicable periods as the case may be (both before and after any notice of demand by the Facility Agent under Clause 12.2).
- 8.9 The Facility Agent shall promptly upon an Interest Payment being determinable notify:
- (a) the Borrower of that Interest Payment;
 - (b) each relevant Lender of the proportion of that Interest Payment which relates to that Lender's participation in the relevant Loan; and
 - (c) the relevant Lenders and the Borrower of each applicable rate of interest relating to the determination of that Interest Payment.
- 8.10 This Clause 8 shall not require the Facility Agent to make any notification to any Party on a day which is not a Business Day.

9 Conditions Precedent

- 9.1 The obligation of the Main Crop Lenders to make the first Main Crop Advance to the Borrower and the obligation of the Light Crop Lenders to make the first Light Crop Advance available to the Borrower shall be subject to the condition that the Facility Agent shall have received the following documents and evidence in all respects in form and substance satisfactory to the Facility Agent (acting on the instructions of the Lenders) relying on advice from the Lenders' legal advisors on or before the date on which the Notice of Drawing relating thereto is served by the Borrower:
- (a) a copy of the constitutional documents of each of the Obligors;
 - (b) a copy of a resolution of the board of directors of each of the Obligors approving the execution, delivery and performance of the Documents to which it is a party and the terms and conditions thereof and authorising a named person or persons to sign the Documents to which it is a party and any other documents, notices, letters or other communications to be given by each of the Obligors pursuant thereto;
 - (c) specimen signatures of the persons specified in the resolutions referred to in paragraph (b) above authenticated by a director or secretary (or equivalent officer) of each of the Obligors (as the case may be);
 - (d) evidence that the Bank of Ghana has authorised persons to sign the Subordination Agreement on behalf of the Bank of Ghana;

- (e) copies of all governmental and other consents, licences, approvals and authorisations as may be necessary to authorise the performance by each of the Obligors of their respective obligations under the Documents to which they are a party and the execution, validity and enforceability of the Documents to which they are a party and any other letters or documents which the Facility Agent has specified in advance;
- (f) a copy of the resolution of the Parliament of the Republic of Ghana:
 - (i) granting an unconditional and irrevocable waiver of the requirement for the Borrower to pay Stamp Duty in respect of the Documents otherwise subject to Stamp Duty so that no Stamp Duty is payable on the Documents; and
 - (ii) authorising the borrowing by the Borrower of the Total Commitments;
- (g) the Security Agreement duly executed by the parties to it together with all relevant notices, documents, letters or other communications (including, but not limited to, each Notice of Account Charge, each Account Charge Acknowledgement, any relevant Notices of Assignment and any relevant Assignment Acknowledgements required to be delivered under the Security Agreement) which have been delivered to the Facility Agent in accordance with such documents;
- (h) evidence that the Security Agreement has been submitted for:
 - (i) stamping in respect of Stamp Duty;
 - (ii) registration at the Collateral Registry; and
 - (iii) registration at the Companies Registry with a duly completed Form 9 in accordance with the Companies Act;
- (i) the Collection and Conversion Agreement duly executed by the Borrower and Cocoa Marketing and the other parties thereto;
- (j) this Agreement duly executed by the Parties;
- (k) the Subordination Agreement duly executed by the parties thereto;
- (l) evidence that the fees, costs and expenses then due from the Borrower pursuant to Clauses 15.1(a) and 15.3 have been paid or will be paid by the first Drawdown Date;
- (m) a letter from the Ministry of Finance of the Republic of Ghana in the form set out in Schedule 4 (*Form of Letter from Ministry of Finance*);
- (n) a letter jointly signed by the Ministry of Finance of the Republic of Ghana and the Ministry of Food & Agriculture of the Republic of Ghana;
- (o) evidence that the agent for service of process named in Clause 29.3(b) of this Agreement, clause 17.3(b) of the Security Agreement and clause 13.3(b) of the Collection and Conversion Agreement has accepted its appointment as agent for service of process in respect of each agreement;
- (p) the written opinions of each of:
 - (i) the Facility Agent's; and

(ii) the Borrower's;

Ghanaian legal advisors each substantially in the form distributed to the Lenders prior to signing this Agreement (or in such other form as the Majority Lenders shall approve);

- (q) the written opinion of Reed Smith LLP substantially in the form distributed to the Lenders prior to signing this Agreement (or in such other form as the Majority Lenders shall approve);
- (r) a certificate from the Borrower confirming that all stocks of cocoa grown in the Republic of Ghana for the 2022/2023 season shall be sold exclusively via Cocoa Marketing;
- (s) a certificate from the Borrower certifying that sufficient quantities of cocoa are produced in the Republic of Ghana to enable (as the case may be) the Borrower or the Obligors (and their relevant Subsidiaries) to comply with: (a) their respective obligations under this Agreement, (b) all Sales Contracts assigned or to be assigned under the Security Agreement, (c) the obligations of the Borrower under the Bank of Ghana Facility, (e) the 2019 LT Facility and (f) any other delivery obligations of the Obligors (and their relevant Subsidiaries) scheduled to be met on or before the Final Repayment Date;
- (t) evidence from the Borrower that all amounts outstanding under the Existing Loan have been irrevocably and unconditionally paid in full;
- (u) a certificate from the Borrower (in the form set out in Schedule 7 (*Security Interests*)):
 - (i) confirming, with respect to the 2019 LT Facility, that there are no restrictions under the 2019 LT Facility, and no consents or waivers are required under the 2019 LT Facility, for any Obligor to enter into or perform any of their obligations under any Document;
 - (ii) identifying the Security Interests created or subsisting pursuant to the 2019 LT Facility in relation to sale contracts for delivery during the period from the date of this Agreement to the Final Repayment Date;
 - (iii) confirming that borrowing the Total Commitments would not cause any borrowing or similar limit binding on the Borrower to be exceeded;
 - (iv) confirming that the representations and warranties set out in each Document in relation to the Borrower are true; and
 - (v) identifying all Security Interests created over any of the assets of each Obligor on or prior to the date of this Agreement (other than those specified in Clauses 9.1(u)(i) to (iv) above) and setting out (in reasonable detail) the value of all such assets which are subject to such Security Interests and the type of such Security Interest which has been created over the relevant assets;
- (v) a written certificate from the Borrower confirming that each Obligor maintains insurances (including without limitation transportation insurance) required in terms of Clause 11.1(m) against loss or damage to stocks and consignments of cocoa or cocoa beans with reputable insurers of international standing (which certificate shall include the value of such insurances and written confirmation from the insurers that the Facility Agent is named as loss payee under such insurances);

- (w) the audited standalone financial accounts and statements of each of the Borrower and Cocoa Marketing (each to be certified by the Borrower) for the Financial Year of each of the Borrower and Cocoa Marketing ending 30 September 2021; and
- (x) the [unaudited] half year management accounts of [the Borrower] for the half year period ending 31 March 2022 showing satisfactory financial performance in respect of such half year period [(including evidence that the Borrower's equity has not further deteriorated)]⁸;
- (y) written confirmation that the grace period under the Bank of Ghana Facility has been extended to a date falling after the Final Repayment Date;
- (z) confirmation that the Facility Agent has not received notice from any Lender that such Lender has not received from the Borrower all information and documents necessary to comply with that Lender's "know your customer" and client adoption requirements.

Each of the documents specified in sub-clauses (a) and (b) above shall be certified as a true and up-to-date copy by a director or secretary (or equivalent officer) of the Borrower or Cocoa Marketing (as the case may be). Promptly upon satisfaction of all of the conditions of this Clause 9.1, the Facility Agent shall confirm to the Main Crop Lenders, the Light Crop Lenders and the Borrower in writing that such satisfaction has occurred. The Facility Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such confirmation.

- 9.2 Without prejudice to any of the other provisions of this Agreement or any of the Security Documents, in the event that the Majority Lenders (and/or the Facility Agent (in respect of the conditions precedent specified in 9.1(c); 9.1(g), 9.1(l) and 9.1(x) only)), in their sole and absolute discretion, make the first Advance to the Borrower prior to the satisfaction of all or any of the conditions referred to in Clause 9.1, each of the Obligors hereby covenants and undertakes to satisfy or procure the satisfaction of such condition or conditions within seven (7) days after the first Drawdown Date (or such longer period as the Majority Lenders and the Facility Agent (in the case of the conditions precedent specified in Clauses 9.1(c); 9.1(g), 9.1(l) and 9.1(x) only) may, in their sole and absolute discretion, agree or specify).
- 9.3 The obligation of the Lenders to make each Advance is subject to the following further conditions:
- (a) that both at the date of the Notice of Drawing and the Drawdown Date relating thereto:
 - (i) no Default or Event of Default;
 - (A) has occurred and is continuing; or
 - (B) will or might result from making such Advance;
 - (ii) the representations and warranties of the Obligors in Clause 10.1 and each of the Security Documents to which they are a party are true and accurate as of each such date, as if made on each such date with reference to the facts then subsisting; and
 - (iii) the Facility Agent (with reference to the amount of the proposed Advance set out in the Notice of Drawing in respect of such Advance), is satisfied that there is no Margin Shortfall, otherwise the Borrower shall promptly provide

⁸ Wording to be confirmed

the Facility Agent with such additional Margin Assets so that the aggregate value of the Margin Assets equals the Required Margin together with, in the case of any Sales Contracts, the additional evidence and documents referred to in Clause 13.1(a);

- (b) that none of the circumstances specified in Clause **Error! Reference source not found.** has occurred and is continuing on the date of such Notice of Drawing;
- (c) that the Facility Agent has received, not later than five (5) Business Days before the proposed Drawdown Date of any Advance, (i) a certificate from the Borrower certifying that there are sufficient quantities of unencumbered cocoa in the Republic of Ghana for Cocoa Marketing to comply with (A) its obligations under the Sales Contracts assigned to the Facility Agent in accordance with the terms of the Security Agreement in respect of that Advance and to repay the amount of the Loan (including such Advance) at the relevant time and (B) all other delivery obligations it and/or Cocoa Marketing may have entered into for the period until the Final Repayment Date; and (ii) a certificate from the Deputy Chief Executive Officer of the Operations Department of the Borrower confirming that the representation set out in Clause 10.1(w) is true and accurate as at the date of the relevant Notice of Drawing and the relevant Drawdown Date;
- (d) that the Facility Agent (in consultation with the Majority Lenders) is satisfied, not later than three (3) Business Days before the proposed Drawdown Date, from the information published by the International Cocoa Organisation or such other reputable source that sufficient cocoa is or will be available to be sold by Cocoa Marketing under Sales Contracts of an amount equal to the Required Margin for the aggregate of the proposed Advance and the amount of the Loan at the relevant time;
- (e) the Facility Agent has received such further opinions, consents, evidence, agreements and documents in connection with the Documents as the Facility Agent may request by notice to either of the Obligors at least six (6) Business Days prior to such Drawdown Date, and the Facility Agent has not received further requests from any Lender for any other opinions, consents, agreements and documents which could be reasonably required in respect of that Advance;
- (f) the Facility Agent has received an original or copy (certified by the Borrower and which certified copy the Borrower may deliver to the Facility Agent by email in accordance with the provisions of this Agreement) of each assigned Sales Contract prior to a Notice of Drawing to the extent not previously received by the Facility Agent;
- (g) that the Facility Agent has not received, by the date falling three (3) Business Days before the proposed Drawdown Date, notice from the Majority Lenders that there has been in the opinion of the Majority Lenders (i) any material adverse change in or on, or (ii) any continuation of any circumstance or event that may be materially prejudicial to the Lenders, in or on (A) the international money and capital markets, or in the bank syndication market, or (B) the business activities and credit standing of the Obligors, or (C) the political and economic situation of the Republic of Ghana (provided that any such occurrence could have a material adverse effect on the ability of either of the Obligors to perform any of its respective obligations under the Documents), or (D) the ability of either of the Obligors to perform any of its respective obligations under the Documents; or (E) the validity or enforceability of the Documents or the rights or remedies of the parties under the Documents; and

- (h) a written confirmation from the Borrower setting out the aggregate value of sales contracts relating to the 2022/23 crop year secured under the 2019 LT Facility together with a list of such sales contracts with such information to be submitted in the same or similar format as set out in Schedule 6 (*Monthly Report*).
- 9.4 Without prejudice to the application of Clause 9.3, the obligation of the Light Crop Lenders to make each Light Crop Advance is subject to the further condition that the full amount of each instalment which is due and payable under Clause 4.1 on or before the proposed Drawdown Date of each such Light Crop Advance has been paid in full.
- 9.5 If any Lender fails to provide a response to a request from the Facility Agent for such Lender to confirm it is satisfied with Clauses 9.3(d) and (g) above within three (3) Business Days of that request being made:
- (a) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the Facility when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
 - (b) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

10 Representations and Warranties

- 10.1 The Borrower hereby represents and warrants to the Finance Parties that:
- (a) the Borrower is a statutory corporation established under the Ghana Cocoa Board Law, 1984 (PNDCL 81) as amended by the Ghana Cocoa Board (Amendment) Law, 1991 (PNDCL265) and that Cocoa Marketing is a company duly incorporated in the Republic of Ghana;
 - (b) each of the Obligors is not a FATCA FFI nor a US Tax Obligor;
 - (c) each of the Obligors has full power and authority (i) to execute and deliver each of the Documents to which it is a party, (ii) (in the case of the Borrower only) to borrow under this Agreement and (iii) to comply with the provisions of, and perform all of their obligations under, the Documents to which they are a party;
 - (d) each of the Obligors has taken all necessary action to authorise the borrowing of the Loan (in the case of the Borrower only) and the execution and delivery of the Documents to which they are a party and the Documents to which they are a party constitute (in each case) their legal, valid and binding obligations enforceable against them in accordance with their terms, except as such enforcement may be limited by general equitable principles or by any relevant bankruptcy, insolvency, administration or similar laws affecting creditors' rights generally;
 - (e) the entry into and performance by each of the Obligors of the Documents to which they are a party (in each case) do not and will not violate in any respect
 - (i) any law or regulation of any governmental or official authority or body, or
 - (ii) their constitutional documents; or

- (iii) any agreement, contract or other undertaking to which they are a party or which is binding on them or any of their respective assets.

The Borrower represents that borrowing all or any part of the Facility at any time when the Borrower has negative equity will not violate any provision of the Borrower's constitutional documents or the Ghana Cocoa Board Law, 1984 (PNDCL 81) as amended by the Ghana Cocoa Board (Amendment) Law, 1991 (PNDCL265) and the representations in this Clause 10.1 shall apply to all such borrowings;

- (f) all consents, licences, approvals, authorisations and registrations required in connection with the entry into, performance, validity, enforceability and perfection in the applicable jurisdictions (in the case of the Security Documents) of each of the Documents have been obtained and are in full force and effect;
- (g) it is not necessary for the legality, validity or enforceability of any of the Documents that any of them or any document relating to them be notarised, registered, filed, recorded or enrolled with any court or authority in any relevant jurisdiction (except for the registration of the Security Documents with the Companies Registry and the Collateral Registry) or that any stamp, registration or similar Taxes be paid on or in relation to any of the Documents except for stamp duty in the total aggregate amount of zero point fifty per cent (0.50%) of the Total Commitments payable in the Republic of Ghana in relation to the Security Agreement (the **Stamp Duty**) and the nominal stamp duty payable in respect of each Document. However, further to a resolution of the Parliament of the Republic of Ghana dated [2022], the Parliament of the Republic of Ghana has approved an unconditional and irrevocable waiver of the requirement for the Borrower to pay the Stamp Duty on the Security Agreement so that no Stamp Duty is payable on that Document;
- (h) it is not necessary for a final and conclusive judgment of an English court in relation to any of the Documents to be enforceable against the Obligors (or either of them) in any court in the Republic of Ghana, that any of the Documents (or any document relating to them) be notarised, filed, recorded or enrolled with any court or authority in any relevant jurisdiction or that any stamp, registration or similar Taxes be paid on or in relation to any of the Documents except for the Stamp Duty and the nominal stamp duty payable in respect of each Document. However, further to a resolution of the Parliament of the Republic of Ghana dated [2022], the Parliament of the Republic of Ghana has approved an unconditional and irrevocable waiver of the requirement for the Borrower to pay the Stamp Duty on the Security Agreement so that no Stamp Duty is payable on that Document;
- (i) no action, suit, proceeding, litigation or dispute against either of the Obligors is currently taking place or pending or, to the Borrower's knowledge, threatened nor is there subsisting any judgment or award given against either of the Obligors before any court, board of arbitration or other body which has or is reasonably likely to result in any material adverse change in the business or condition (financial or otherwise) of the Obligors (or either of them);
- (j) neither of the Obligors is in default in any material respect under any material agreement by which it is bound and no Default or Event of Default has occurred and is continuing nor will such a Default or Event of Default result from the entry by the Obligors into the Documents to which they are a party, the making of any Advance to the Borrower or the performance by either of the Obligors of any of its obligations under any of the Documents to which it is a party;

- (k) the latest audited accounts and financial statements (which have been prepared in accordance with generally accepted international accounting principles consistently applied) are true and accurate in every respect and represent a true and fair view of each of the Obligors' financial positions at the date of such accounts and financial statements and the results of each of the Obligors' operations for the year ended on the date to which such accounts and financial statements were prepared and no significant liabilities (contingent or otherwise) exist which have not been fully disclosed or reserved against in such accounts and financial statements and there has been no material adverse change in the Obligors' (or either of their) financial conditions from that set forth in such accounts and financial statements;
- (l) all financial and other information furnished by or on behalf of either of the Obligors in connection with the negotiation of the Documents to which it is a party or delivered to the Facility Agent and/or the Lenders pursuant to any of the Documents was true and accurate when given and there are no other facts or matters the omission of which would have made any statement or information contained therein misleading;
- (m) other than withholding tax of eight per cent. (8%) on interest payments required to be made pursuant to the Income Tax Act, 2015 (Act 896) (as amended), all payments made or to be made by each of the Obligors under or pursuant to the Documents to which they are a party may be made free and clear of, and without deduction or withholding for or on account of, any Taxes;
- (n) the information contained in the Information Memorandum and all of the other written information supplied by each of the Obligors to the Facility Agent, or any of the Lenders in connection herewith, is true, complete and accurate in all material respects and neither of the Obligors is aware of any material facts or circumstances that have not been disclosed to the Facility Agent and which might, if disclosed, adversely affect the decision of a person considering whether or not to provide finance to the Borrower or to provide such finance under the security provided by Cocoa Marketing pursuant to the Security Documents;
- (o) each Sales Contract is valid and effective and has not been terminated or varied and the monies expressed to be payable thereunder are payable in full;
- (p) there are no written or oral agreements or arrangements between either of the Obligors and any Approved Purchaser and, where applicable, its Parent Company, which derogates from the obligations of the Approved Purchaser or, where applicable, its Parent Company, under any Sales Contract to which such Approved Purchaser is a party;
- (q) there are no circumstances which would entitle any Approved Purchaser and, where applicable, the relevant Parent Company, to terminate any Sales Contract to which it is a party by reason of any failure to perform or repudiation by Cocoa Marketing of its obligations under such Sales Contract;
- (r) the execution and delivery of and the performance by each of the Obligors of its respective obligations under the Documents to which it is a party constitute (in each case) private and commercial acts of the Obligors (or either of them);
- (s) each of the Obligors' obligations under the Documents to which it is a party rank (in each case) at least pari passu in all respects with all its other present and future unsecured obligations save for those mandatorily preferred by Ghanaian law;

- (t) the Borrower's obligations under the Bank of Ghana Facility are subordinate to its obligations under the Documents in accordance with the Subordination Agreement;
- (u) no Obligor has granted or permitted to subsist any Security Interest pursuant to, or in support of the obligations of the Borrower under, the Bank of Ghana Facility;
- (v) the Borrower owns the whole of the issued share capital of Cocoa Marketing and Cocoa Marketing is controlled by the Borrower (where controlled means the power to direct the management and/or policy of Cocoa Marketing whether through the exercise of voting rights, by contract, board control or otherwise);
- (w) Cocoa Marketing has, or will have prior to the relevant delivery date under each Sales Contract, sufficient quantities of cocoa available to it to satisfy the amounts required to be delivered under each such Sales Contract on the relevant delivery date and to enable the Loan to be repaid in full in each required amount under and in accordance with this Agreement on its respective due dates together with interest thereon and all other amounts payable under or pursuant to this Agreement;
- (x) Cocoa Marketing has the exclusive right to export cocoa from the Republic of Ghana and to enter into Sales Contracts for the sale of all the cocoa as referred to in paragraph 9.1(r) above;
- (y) the Borrower is acting on its own account;
- (z) neither Obligor is, nor has been, engaged in:
 - (i) Corrupt Practices, Fraudulent Practices, Collusive Practices or Coercive Practices in connection with such Obligor's business and operations, including without limitation the procurement or the execution of any contract for goods or works relating to such Obligor's business;
 - (ii) Money Laundering or acted in breach of any applicable law relating to Money Laundering; or
 - (iii) the Financing of Terrorism;
- (aa) each of the Obligors, each of their Affiliates and joint ventures and any of their respective directors, officers or employees and, to the best knowledge of the Obligors after due and careful inquiry, any persons acting on any of their behalf or on behalf of their Affiliates, has conducted their business in compliance with applicable anti-corruption laws and anti Money Laundering laws and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws and regulations;
- (bb) neither Obligor, nor any of their Affiliates or joint ventures, nor any of their respective directors, officers or employees nor any persons appointed and acting on any of their behalf or on behalf of their Affiliates:
 - (i) is a Prohibited Person,
 - (ii) is owned or controlled, or acting directly or indirectly on behalf of or for the benefit of a Prohibited Person;
 - (iii) is in breach of Sanctions; or

(iv) 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,

and each such Obligor, Affiliate and (as applicable) such other person has instituted and maintains policies and procedures designed to promote and achieve compliance with Sanctions;

- (cc) neither Obligor, nor any of their Affiliates, has breached any law or regulation which breach has or is reasonably likely to have a material adverse effect;
- (dd) each of the Obligors and their Affiliates is in compliance with Clause 14 (*Environmental Compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a material adverse effect; and
- (ee) no Environmental Claim has been commenced or (to the best of each of the Obligors' and their Affiliates' knowledge and belief (having made due and careful enquiry)) is threatened against any of the Obligors or their Affiliates where that claim has or is reasonably likely, following determination to have a material adverse effect.

For the purposes of Clause 10.1(z) (*Representations and Warranties*) and Clause 11.1(u) (*Undertakings*), the following definitions shall apply:

Coercive Practice means impairing or harming or threatening to impair or harm, directly or indirectly, any party or its property or to improperly influence the actions of that party;

Collusive Practice means an arrangement between two or more parties without the knowledge, but designed to improperly influence the actions, of another party;

Corrupt Practice means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party;

Financing of Terrorism means the act of providing or collecting funds with the intention that they be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

Fraudulent Practice means any action, including without limitation misrepresentation, to obtain a financial or other benefit or avoid an obligation, by deception; and

Money Laundering means:

- (a) the conversion or transfer of property, knowing it is derived from a criminal offence, for the purpose of concealing or disguising its illegal origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of its actions;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property knowing that it is derived from a criminal offence;
- (c) the acquisition, possession or use of property knowing at the time of its receipt that it is derived from a criminal offence; or

- (d) entering into or becoming concerned in an arrangement which the relevant person knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

- 10.2 None of the representations and warranties given in Clause 10.1(bb), nor any other provision of this Agreement relating to Sanctions (however described), shall be made for the benefit of, nor apply to, any Finance Party in so far as the application of Clause 10.1(bb) (or any other such clause relating to Sanctions (however described)) would result in a violation or conflict with section 7 of the German Foreign Trade Regulation (Außenwirtschaftsverordnung), any provision of Council Regulation (EC) 2271/1996 or any similar applicable anti-boycott law or regulation.
- 10.3 In connection with any waiver, determination or direction relating to any part of Clause 10.1(bb) (or any other provision of this Agreement relating to Sanctions (however described)) of which a Lender does not have the benefit pursuant to Clause 10.2 above, the Commitment of that Lender will be excluded for the purpose of determining whether the consent of the requisite majority of Lenders has been obtained or whether the determination or direction by the requisite majority of Lenders has been made.
- 10.4 The representations and warranties of the Borrower set out in Clause 10.1 shall survive the execution of this Agreement and the making of each Advance and shall be deemed to be repeated on the date of each Notice of Drawing, the date of each Advance and at the commencement of each Interest Period, with respect to the facts and circumstances existing at each such time, as if made at each such time.

11 Undertakings

- 11.1 The Borrower hereby undertakes that, so long as the Total Commitments are in force or any amount remains outstanding or payable under this Agreement and throughout the Security Period:
 - (a) it will send or (in the case of Cocoa Marketing) procure that there is sent to the Facility Agent:
 - (i) as soon as possible, but in no event later than two hundred and seventy (270) days after the end of each of the Borrower's or Cocoa Marketing's (as the case may be) Financial Years, the audited accounts and financial statements for each Obligor and the audited consolidated reports of the Borrower for such Financial Year, such accounts, financial statements and consolidated reports to be prepared in accordance with generally accepted international accounting principles consistently applied;
 - (ii) as soon as possible, any interim financial information in relation to either Obligor which may become available at any time during the Security Period;
 - (iii) as soon as the same is instituted (or, to the Borrower's knowledge, threatened), details of any litigation, arbitration or administrative proceedings against or involving the Obligors (or either of them) which is likely to have a material adverse effect on the Obligors (or either of them); and
 - (iv) within ten (10) Business Days of a request, such additional financial or other information relating to the Obligors (or either of them) as may be requested by the Facility Agent or any Lender,

and shall (in each case) supply the Facility Agent with a sufficient number of copies of the documents referred to above in English to provide one (1) copy for the Facility Agent and each of the Lenders;

- (b) it will notify the Facility Agent of any Default or Event of Default forthwith upon the occurrence thereof;
- (c) it will notify the Facility Agent of any material breach of any Sales Contract;
- (d) it will not make any repayment or prepayment of principal in relation to the Bank of Ghana Facility, except at the times and in the amounts specified in the schedule to the repayment moratorium letter dated [21 June 2021]⁹ from the Bank of Ghana to the Borrower and reproduced in Appendix 1 of the Subordination Agreement;
- (e) it will, and will procure that Cocoa Marketing will, ensure that all authorisations, consents, approvals and licences required in connection with the Documents and the Sales Contracts remain in full force and effect or, as the case may be, obtain and promptly renew from time to time, and will promptly furnish certified copies to the Facility Agent of, all such authorisations, approvals, consents and licences as may be required under any applicable law or regulation to enable it and Cocoa Marketing to perform their respective obligations under the Documents to which they are a party to and (in the case of Cocoa Marketing) the Sales Contracts, or required for the validity or enforceability of such Documents and the Sales Contracts and the Borrower will, and will procure that Cocoa Marketing will, comply with the terms of such authorisations, approvals, consents and licences and the terms of each Sales Contract;
- (f) the Borrower will procure that no Obligor shall become a FATCA FFI or a US Tax Obligor;
- (g) it will route, and procure that Cocoa Marketing will route, all shipping documents in respect of the Sales Contracts in the manner specified by the Collection and Conversion Agreement or otherwise in a manner satisfactory to the Collection Agent and the Facility Agent. The Borrower may, where applicable, provide certified copies or scanned copies of the shipping documents, Sales Contracts and Assignment Acknowledgements to the Collection Agent and the Facility Agent so as to effect the collection of proceeds to be paid under the Sales Contracts;
- (h) it will:
 - (i) maintain and procure that Cocoa Marketing maintains at all times collection arrangements satisfactory to the Facility Agent, (including, if satisfactory to the Facility Agent, more flexible alternative collection procedures where previously approved collection arrangements are impractical during prevailing market conditions), in respect of all monies to be paid under the Sales Contracts, or in respect of any letter of credit issued in connection with any Sales Contract; and
 - (ii) ensure, and procure that Cocoa Marketing ensures, that all the proceeds from any Sales Contract and any letter of credit issued in connection with any Sales Contract, are remitted to the relevant Collection Account;

⁹ Will there be a renewal of this letter?

- (i) it will:
 - (i) procure that Cocoa Marketing will not, without the prior written consent of the Majority Lenders, create, assume or permit to exist any Security Interest (other than those created pursuant to the Security Documents) upon any of the Secured Assets (from time to time) or any Sales Contract;
 - (ii) not, without the prior written consent of the Majority Lenders, create, assume or permit to exist any Security Interest upon any of its assets or revenues, save for any Permitted Security Interests; and
 - (iii) procure that Cocoa Marketing will not, without the prior written consent of the Majority Lenders, create, assume or permit to exist any Security Interest (subject always to Clause 11.1(i)(i) above) upon any of its other assets or revenues, save for any Permitted Security Interests;
- (j) it will not, and will procure that Cocoa Marketing will not, without the prior written consent of the Majority Lenders incur any Financial Indebtedness other than:
 - (i) the Financial Indebtedness constituted by this Agreement and the other Documents;
 - (ii) the Bank of Ghana Facility;
 - (iii) unsecured Financial Indebtedness which is denominated in Ghanaian cedi and has a tenor of no greater than twelve (12) calendar months;
 - (iv) the 2019 LT Facility;
 - (v) [the Cocoa Bills Refinance Facility (once executed and utilised); or]
 - (vi) any Financial Indebtedness which, when aggregated with all other Financial Indebtedness falling within this paragraph (v), does not exceed \$10,000,000 (ten million Dollars);
- (k) it will not, and will procure that Cocoa Marketing will not, without the prior written consent of the Majority Lenders, make (or threaten to make) any substantial change in its business or the business of Cocoa Marketing taken (in each case) as a whole as conducted at the date of (in the case of the Borrower) this Agreement and (in the case of Cocoa Marketing) the Security Documents, or carry on any other business which is substantial in relation to the business of the Borrower or Cocoa Marketing taken as a whole as conducted at the date of (in the case of the Borrower) this Agreement and (in the case of Cocoa Marketing) the Security Documents;
- (l) save in the ordinary course of its day to day trading and on an arm's length basis, it will not, without the prior written consent of the Majority Lenders, and will procure that Cocoa Marketing will not, make any loan, grant any credit or give any guarantee or indemnity (other than those provided under the Documents) to or for the benefit of any person or voluntarily assume any obligation or liability for any other person;
- (m) it will, and/or shall procure that Cocoa Marketing will:
 - (i) insure and keep insured or procure that all stocks and consignments of cocoa or cocoa beans (whether in storage or in the process of being delivered to the

- relevant Approved Purchaser) are insured with reputable insurance companies or underwriters against loss or damage with the Facility Agent named as loss payee until such time as the risk in respect of such stocks and consignments has passed to the relevant Approved Purchaser under the terms of the applicable Sales Contract (on the basis that any insurance proceeds received shall be paid into the relevant SCB Collection Account or, as the case may be, the Trustee Collection Account);
- (ii) procure that all local insurers will, if so requested, pay the proceeds of any insurance policies relating to stocks or consignments under Sales Contracts to the relevant Collection Account and in Dollars;
 - (iii) duly pay or procure that there is duly paid all premiums and other monies necessary for effecting and keeping up such insurance; and
 - (iv) on demand produce to the Facility Agent the policies of such insurance and the receipts of such payment;
- (n) it will provide to the Facility Agent, at the end of each month or promptly upon the request of the Facility Agent from the date of this Agreement until the end of the Security Period, a report (substantially in the form set out in Schedule 6 (*Monthly Report*)) (the **Monthly Report**) setting out details of:
- (i) the cocoa stock supplies available to Cocoa Marketing in the Republic of Ghana for delivery to the Approved Purchasers under the Sales Contracts;
 - (ii) the aggregate cocoa crop volumes available to Cocoa Marketing in the Republic of Ghana for the crop year 2022/2023;
 - (iii) in respect of each Sales Contract:
 - (A) the quantities of cocoa (i) delivered and (ii) remaining to be delivered under such Sales Contract;
 - (B) the aggregate value of cocoa (i) delivered and (ii) remaining to be delivered under such Sales Contract; and
 - (C) the details of any delayed or suspended deliveries of cocoa under such Sales Contract (including the aggregate value of such delayed or suspended deliveries);
 - (iv) the cocoa stock supplies available to Cocoa Marketing in the Republic of Ghana for delivery to the relevant purchasers under the sales contracts assigned or to be assigned to secure the obligations of the Borrower under (aa) the 2019 LT Facility; and (bb) [the Cocoa Bills Refinance Facility (once executed and utilised)]; and
 - (v) any Security Interest created after the date of this Agreement to secure the obligations of the Borrower under (aa) the 2019 LT Facility; and (bb) [the Cocoa Bills Refinance Facility (once executed and utilised)];
- (o) it will, at the end of:
- (i) December 2022;

(ii) March 2023; and

(iii) June 2023,

(or, if earlier, until such time closing of, and funding under, the Cocoa Bills Refinance Facility has occurred),

provide a written update (in a form acceptable to the Facility Agent) on the status of the Borrower's discussions with Afreximbank in relation to the Cocoa Bills Refinance Facility (with such update to include evidence of tangible progress on the Cocoa Bills Refinance Facility and expected timelines for execution of, and of funding being made available under, the Cocoa Bills Refinance Facility;

(p) it will promptly, upon the creation of any Security Interest pursuant to either:

(i) the 2019 LT Facility; or

(ii) [the Cocoa Bills Refinance Facility (once executed and utilised),

provide the details (in form and substance satisfactory to the Facility Agent) of such Security Interest;

(q) it will promptly, upon request by the Facility Agent, provide the details (in form and substance satisfactory to the Facility Agent) of any Security Interest created or subsisting pursuant to:

(i) the 2019 LT Facility; or

(ii) [the Cocoa Bills Refinance Facility (once executed and utilised);

(r) it will ensure that it is at all times in compliance with Clause 13 (*Security Margin*) and shall provide confirmation of such in writing at any time the Facility Agent may request;

(s) promptly upon the request of any Lender, it shall supply, or procure the supply of, such documentation and other evidence as is requested by such Lender (for itself or on behalf of any prospective new Lender), in order for such Lender or any prospective new Lender, to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to the Borrower under all applicable laws and regulations including (but not limited to) checks to be carried out by the Lender or the Facility Agent pursuant to anti Money Laundering, terrorist financing and sanctions and embargoes laws and regulations with regard to the transactions contemplated in the Documents;

(t) it shall ensure that:

(i) no Obligor will become a Prohibited Person;

(ii) the proceeds of the Facility are used solely for the purposes set out in Clause 2.1 and it shall further ensure that it shall not and that no Obligor (or any Affiliate of any Obligor) shall, directly or indirectly, use or make available, or authorise any other person to use or make available, any of those proceeds:

- (A) for the purpose of funding any trade or other activities or business involving, or for the benefit of, any Prohibited Person or in any Restricted Country;
 - (B) for any purpose which would breach the Bribery Act 2010, the Sapin II Act of 2016, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in applicable jurisdictions; or
 - (C) in any other manner that would reasonably be expected to result in any Obligor or any Lender being in breach of any Sanctions (if and to the extent applicable to either of them) or becoming a Prohibited Person;
- (iii) each Obligor shall (and shall ensure that each Affiliate of each Obligor will):
- (A) conduct its businesses in compliance with applicable anti-corruption laws; and
 - (B) maintain policies and procedures designed to promote and achieve compliance with such laws;
- (iv) no repayment (or any part of any repayment) of the Facility shall be made from proceeds derived from transactions which would be prohibited by Sanctions or would otherwise cause any person to be in breach of Sanctions and no person that is a Prohibited Person will have any legal or beneficial interest in any funds repaid or remitted by the Borrower to any Finance Party in connection with the Facility;
- (v) neither it nor Cocoa Marketing engages in any transaction that will cause it or Cocoa Marketing (as the case may be) to become a subject of, or violate, any Sanctions;
- (vi) to the extent permitted by law, each Obligor shall, promptly upon becoming aware of them, supply to the Facility Agent details of any claim, action, suit, proceedings or investigation against it by a Sanctions Authority in connection with Sanctions;
- (u) it shall not, and shall procure that Cocoa Marketing shall not, engage in:
- (i) Corrupt Practices, Fraudulent Practices, Collusive Practices or Coercive Practices in connection with such Obligor's business and operations, including without limitation the procurement or the execution of any contract for goods or works relating to such Obligor's business;
 - (ii) Money Laundering or act in breach of any applicable law relating to Money Laundering; or
 - (iii) the Financing of Terrorism,
- as such terms are defined in Clause 10.1; and
- (v) it will authorise (and procure that Cocoa Marketing shall authorise):

- (i) the facility agent under the 2019 LT Facility, until the expiry of the Security Period, to disclose the particulars of any sales contract assigned or proposed to be assigned under the 2019 LT Facility to the Facility Agent; and
- (ii) the [facility agent] under [the Cocoa Bills Refinance Facility (once executed and utilised)], until the expiry of the Security Period, to disclose the particulars of any sales contract assigned or proposed to be assigned under the [Cocoa Bills Refinance Facility (once executed and utilised)] to the Facility Agent,

at such times and with such frequency as the facility agent under the 2019 LT Facility, or as applicable, the [facility agent] under [the Cocoa Bills Refinance Facility (once executed and utilised)], considers appropriate.

- 11.2 The Borrower undertakes that where Cocoa Marketing may be unable to perform in full its obligations or liabilities under a Sales Contract by the date specified in such Sales Contract because the consignment (or part thereof) of cocoa or cocoa beans, the subject of such Sales Contract, has been either destroyed, lost or damaged in any way it will pay or will procure that Cocoa Marketing pays to the relevant SCB Collection Account or, as the case may be, the Trustee Collection Account, any monies received by either of them (the **Insurance Monies**) from or pursuant to any insurances in respect of such consignment. Such Insurance Monies may be used to make up any Margin Shortfall or Repayment Shortfall.
- 11.3 In respect of each Approved Purchaser which is designated as such pursuant to paragraph (b) of the definition of "Approved Purchaser," the Borrower undertakes to ensure that the Parent Company of such Approved Purchaser:
- (a) has signed, and is counterparty to and is jointly and severally liable to make payment under, each Sales Contract to which such Approved Purchaser is a party; and
 - (b) has signed the relevant Assignment Acknowledgement.
- 11.4 The Borrower undertakes to ensure that, until the Loan is repaid in full, it and Cocoa Marketing will conduct their respective businesses in such a manner so as to ensure that the delivery obligations in respect of cocoa sold under each Sales Contract will be complied with on the relevant due dates so that the payment obligations of the relevant Approved Purchaser or Parent Company (as the case may be) under each such Sales Contract will arise on its relevant due date and so as to ensure that the Loan will be repaid in full on or before its respective due dates together with interest accrued thereon and all other amounts payable under this Agreement.
- 11.5 The Borrower undertakes that it shall, and shall ensure that Cocoa Marketing shall, pay and discharge all Taxes and governmental charges payable by or assessed upon the relevant Obligor prior to the date on which the same become overdue unless, and only to the extent that:
- (a) such Taxes and charges shall be contested in good faith by appropriate proceedings, pending determination of which payment may lawfully be withheld, and each Obligor shall set aside adequate reserves with respect to any such Taxes or charges so contested; or
 - (b) the relevant Obligor benefits from an exemption in respect of such Taxes or charges.

12 Events of Default

12.1 Each of the following events shall constitute an Event of Default (whether such event shall occur or come about voluntarily or involuntarily or by operation of law or regulation or pursuant to, or in compliance with, any judgment, decree or order of any court or other authority) if:

- (a) either of the Obligors fails to pay when due any sum payable pursuant to this Agreement or any of the other Documents to which it is a party (or any agreement entered into in connection with this Agreement or the Security Documents) provided that such failure shall not be an Event of Default if it occurs solely for administrative or technical reasons affecting the transfer of funds despite timely instruction of the relevant Obligor and that payment is received by the Facility Agent within three (3) Business Days; or
- (b) either of the Obligors defaults under, or in the due and punctual observance and performance of, any other provision of this Agreement (in the case of the Borrower) or any of the other Documents to which it is a party, which if such default is, in the opinion of the Majority Lenders, capable of remedy is not remedied within ten (10) Business Days (other than Clause 13 (*Security Margin*) for which the remedy period shall be as set out in Clause 13.1) after written notice from the Facility Agent requesting action to remedy the same, or either of the Obligors defaults under, or in the due and punctual observance and performance of, any other provision of this Agreement (in the case of the Borrower) or any of the Security Documents to which it is a party which is not, in the opinion of the Majority Lenders, capable of remedy (save that no breach of Clause 11.1(f) shall constitute an Event of Default under this Clause 12); or
- (c) either of the Obligors fails to comply with any obligation binding on it pursuant to:
 - (i) the Bank of Ghana Facility or any document entered into pursuant to the Bank of Ghana Facility, or
 - (ii) the 2019 LT Facility or any document entered into pursuant to the 2019 LT Facility; or
 - (iii) [once executed and utilized, the Cocoa Bills Refinance Facility or any document entered into pursuant to the Cocoa Bills Refinance Facility],

in each case following the expiry of any applicable grace period or remedy; or

- (d) any representation or warranty made by the Borrower or Cocoa Marketing in or pursuant to (in the case of the Borrower) this Agreement or (in the case of Cocoa Marketing) any of the Security Documents or in any notice, certificate, instrument or statement contemplated hereby or made or delivered pursuant to (in the case of the Borrower) this Agreement or (in the case of Cocoa Marketing) the Security Documents is, or proves to be, untrue or incorrect in any material respect when made or deemed to be repeated (save that this Clause 12.1(d) shall not apply to Clause 10.1(b)); or
- (e) any Financial Indebtedness of the Obligors (or either of them) exceeding in aggregate \$10,000,000 (ten million Dollars) or its equivalent in other currencies is not paid when due or becomes prematurely payable or capable of being prematurely declared payable as a consequence of a default with respect thereto; or

- (f) (i) a petition is presented or an order is made or a resolution is passed or, in the case of the Borrower, any legislation is proposed, for the winding-up or dissolution of the Obligors (or either of them), or (ii) any step is taken to repeal the Ghana Cocoa Board Law, 1984 (PNDCL 81) (as amended by the Ghana Cocoa Board (Amendment) Law, 1991 (PNDCL265)) or any amendment to such law is proposed that would, in the opinion of the Majority Lenders, have a material adverse effect on the Borrower's ability to perform its obligations under the Documents, or (iii) the Obligors (or either of them) become insolvent and are deemed unable to pay their debts as and when they fall due, or (iv) the Obligors (or either of them) are unable to pay their debts as and when they fall due, or (v) the Obligors (or either of them) stop or threaten to stop making payments generally or declare or threaten to declare a moratorium or suspension of payments with respect to all or any part of their debts or enter into any composition or other arrangement with their creditors generally (or any class of them), or (vi) any preparatory or other steps are taken by any person to appoint an administrative or other receiver or similar official of the Obligors (or either of them) or any of their assets, or (vii) any meeting is convened to make an application for an administration order in relation to the Obligors (or either of them) or such an administration order is made by a court, or (viii) (in the opinion of the Majority Lenders) anything analogous to any of the foregoing events occurs in any applicable jurisdiction; or
- (g) a Security Interest of the Obligors (or either of them) becomes enforceable over, or an encumbrancer takes possession of, the whole or, in the opinion of the Majority Lenders, any material part of the assets of the Obligors (or either of them) or a distress, execution or other process is levied or enforced upon or sued out against the whole or, in the opinion of the Majority Lenders, a material part of the assets of the Obligors (or either of them); or
- (h) the Obligors (or either of them) cease, or threaten to cease, to carry on all or, in the opinion of the Majority Lenders, any material part of their business or, without the prior written consent of the Majority Lenders, merge, amalgamate or consolidate with any other person other than in circumstances where (in the reasonable opinion of the Majority Lenders) the legal personality of the Obligors (or either of them) is not changed and the financial position of the Obligors (or either of them) is not adversely affected and the rights of the Lenders under the Documents are not adversely affected; or
- (i) any authorisation, approval, consent, licence, exemption, filing or registration or other requirement necessary to enable the Obligors (or either of them) to comply with any of their obligations or undertakings contained in this Agreement, any of the Security Documents or any Sales Contract is materially modified, revoked or withheld or does not remain in full force and effect (each a **Relevant Event**) (and, in the case of the occurrence of a Relevant Event in respect of a Sales Contract, such affected Sales Contract is not replaced by another Sales Contract which is (i) not affected by such Relevant Event and (ii) of a value such that no Margin Shortfall has occurred or would occur as a consequence of such replacement); or
- (j) there shall, in the opinion of the Majority Lenders, occur any circumstance or any material adverse change in the business, assets or condition of the Obligors (or either of them) from that existing at the date of (in the case of the Borrower) this Agreement or (in the case of Cocoa Marketing) the Security Documents which has, or is reasonably likely to have, a material adverse effect on the financial condition of the Obligors (or either of them) or may imperil, delay or prevent fulfilment by them or either of them (as the case may be) of their obligations under the Documents or the Sales Contracts to

which they are a party or contemplated hereby or the validity or enforceability of the Documents or the rights or remedies of the parties under the Documents; or

- (k) the Obligors (or either of them) commence negotiations with their creditors to whom all or a substantial part of their (or either of their) Financial Indebtedness is due with a view to a general readjustment or rescheduling of such Financial Indebtedness provided that no default shall occur if the Borrower is negotiating in respect of its domestic borrowing for its day to day trading activities and in respect of such borrowings no action to enforce any rights of repayment or impose any more onerous terms on such borrowings is being or has been taken; or
- (l) the Security Interests constituted by any of the Security Documents become unenforceable in any way; or
- (m) any event occurs which renders it unlawful or impossible for (i) the Obligors (or either of them) to perform or observe, or procure the performance or observance of any of their obligations or undertakings contained in the Documents to which they are a party, or (ii) the Lenders and/or the Facility Agent to exercise any of the rights and remedies conferred on them (or any of them) under this Agreement or any of the Security Documents; or
- (n) it is established or there is credible evidence, during any control or audit procedure, that any Obligor or any of its officers, employees or agents or one of any of its Affiliates, its respective officers, employees or agents is or are engaged in any activity or has committed an act that breaches any anti-corruption laws or rules applicable to it or one of the above-mentioned legal entities or individuals is subject to any action, proceeding, investigation or inquiry that will establish any of them has breached or is breaching any such laws or rules.

12.2 Upon the occurrence of an Event of Default, the Facility Agent may, and upon receiving instructions from the Majority Lenders, the Facility Agent will (without prejudice to the individual rights of each Lender):

- (a) by notice to the Borrower, terminate the Total Commitments of the Lenders under this Agreement, whereupon the same shall be so terminated and, for the avoidance of doubt, the Main Crop Available Amount and the Light Crop Available Amount shall each be reduced to zero; and/or
- (b) by notice to the Borrower, declare the Loan, accrued interest thereon and all other amounts payable under this Agreement either immediately due and payable or payable on demand, whereupon the Loan, accrued interest thereon and all other amounts payable under this Agreement shall become immediately due and payable or (as the case may be) payable on demand being made by the Facility Agent; and/or
- (c) take any other action, exercise any other right or pursue any other remedy conferred upon the Facility Agent and/or the Lenders by this Agreement or any of the Security Documents or by any applicable law or regulation or otherwise as a consequence of such Event of Default.

12.3 Without prejudice to the rights of the Facility Agent and the Lenders under Clause 12.2, the Facility Agent will as soon as is reasonably practicable after it becomes aware of an Event of Default notify the Borrower and the Lenders of such Event of Default.

13 Security Margin

- 13.1 The Borrower undertakes to ensure that, so long as the Total Commitments are in force or any amount remains outstanding or payable under this Agreement, the Margin Assets shall at least equal the Required Margin and undertakes that if and as often as a Margin Shortfall shall arise it will and shall procure that Cocoa Marketing will, as soon as practicable but in any event not later than the date falling on the earlier of (i) fifteen (15) Business Days after being advised by the Facility Agent of a Margin Shortfall and (ii) the next Determination Date:
- (a) procure the assignment by Cocoa Marketing to the Facility Agent of, and provide the Facility Agent with a schedule of, such further Sales Contracts (under which the delivery of cocoa is due to be made) together with evidence (satisfactory to the Facility Agent) of the existence of such Sales Contracts as shall in the opinion of the Facility Agent (acting on the instructions of the Majority Lenders) be adequate to make up the Margin Shortfall (in each case after taking account of any payments made pursuant to Clauses 11.2, 13.1(b) and 13.2) together with Notices of Assignment and Assignment Acknowledgements in respect of each such additional Sales Contract duly executed by Cocoa Marketing and the relevant Approved Purchaser and the Parent Company (as the case may be) respectively; and/or
 - (b) pay into the Trustee Collection Account such amount as will make up such Margin Shortfall (after taking account of any additional Sales Contracts provided pursuant to paragraph (a) and/or any payments made pursuant to Clause 11.2 and Clause 13.2); and/or
 - (c) provide cash collateral, in a form and substance satisfactory to the Majority Lenders, in such amount as will make up such Margin Shortfall (after taking account of any additional Sales Contracts provided pursuant to paragraph (a) and/or any payments made under paragraph (b) and/or any payments made pursuant to Clause 11.2 and Clause 13.2) into such account as is designated by the Facility Agent in writing.
- 13.2 The Borrower undertakes to ensure that for so long as any amount remains outstanding or payable under this Agreement the Credit Balance for each date falling within any Repayment Margin Period shall at least be equal to the Repayment Margin and further undertakes that in so far as a Repayment Shortfall shall arise the Borrower will pay or will procure that Cocoa Marketing pays to the Trustee Collection Account such amount as will make up the Repayment Shortfall.
- 13.3 Any Credit Balances standing to the credit of each SCB Collection Account and the Trustee Collection Account shall bear interest at the rate agreed between the Borrower and the Facility Agent) and shall be payable in the relevant currency and shall be paid to the relevant SCB Collection Account or the Trustee Collection Account (as the case may be).
- 13.4 If at any time the Credit Balance on the Trustee Collection Account exceeds the Repayment Margin (such excess being **Excess Cash**) the Borrower may:
- (a) use such Excess Cash to prepay the Loan (or part thereof) in accordance with the terms of this Agreement subject to there being sufficient receivables due and payable under Sales Contracts prior to the next Interest Payment Date to meet the amounts due on that Interest Payment Date; and/or
 - (b) retain all or part of such Excess Cash in the Trustee Collection Account to meet future payments; and/or

- (c) subject to no Default or Event of Default having occurred and continuing and consent having been obtained from the Facility Agent (acting on the instructions of the Majority Lenders) (**Excess Withdrawal Consent**), the Borrower may request, through the delivery of a notice substantially in the form set out in Schedule 8 (*Excess Withdrawal Request*), the withdrawal of such Excess Cash from the Trustee Collection Account provided that in any event, such prepayment and/or withdrawal (after taking account of any withdrawals made by Cocoa Marketing pursuant to the Security Agreement) will not result in a Margin Shortfall. The Facility Agent shall provide its response in accordance with Clause 13.5 to any such request within three (3) Business Days of its receipt of any such notice from the Borrower.

Without prejudice to the foregoing, if a Margin Shortfall will result from such prepayment and/or withdrawal, the Borrower shall provide additional Sales Contracts to maintain the Required Margin set out in Clause 13.1.

- 13.5 For the purposes of obtaining Excess Withdrawal Consent under Clause 13.4(c), the Facility Agent shall notify the Lenders of any request from the Borrower to withdraw excess funds from the Trustee Collection Account. If the Majority Lenders consent to the requested withdrawal, that withdrawal shall be permitted in accordance with the terms of the request. Any Lender who does not respond within three (3) Business Days of the Facility Agent's notification shall be deemed to consent to that withdrawal.

13.6

- (a) If the Borrower wishes to request the Facility Agent to designate a prospective purchaser of cocoa under a contract between such purchaser and Cocoa Marketing as an "Approved Purchaser" (a **Designation Request**) and it proposes to use such contract with such purchaser as part of the Margin Assets securing the drawdown of an Advance (the **Relevant Advance**) or to remedy a Margin Shortfall, it will deliver the applicable Designation Request to the Facility Agent at least fifteen (15) Business Days before the proposed Drawdown Date of the Relevant Advance or, as the case may be, the date required under Clause 13.1 (or proposed substitution under Clause 13.8). The Facility Agent shall send the Designation Request to each Lender who shall reply to the Facility Agent in writing within seven (7) Business Days of the date the relevant Designation Request was delivered to it by the Facility Agent (the **Delivery Date**). Any Lender which does not reply to the Facility Agent within seven (7) Business Days of the Delivery Date shall be deemed to have agreed with the Majority Lenders (for the purposes of this Clause 13.6(a) only, the Majority Lenders shall be calculated by reference to the Commitments of those Lenders who have delivered a reply within seven (7) Business Days of the Delivery Date). Acting on the instructions of the Majority Lenders, the Facility Agent shall approve or reject the relevant Designation Request and shall inform the Borrower in writing of such decision at least five (5) Business Days before the Drawdown Date of the Relevant Advance or, as the case may be, the date required under Clause 13.1. If the relevant Designation Request is refused in circumstances where there is a Margin Shortfall, the Borrower shall then have five (5) Business Days to designate an alternative Sales Contract between Cocoa Marketing and an Approved Purchaser or pay into the Trustee Collection Account such amount as will make up any Margin Shortfall. Until a Designation Request is approved by the Majority Lenders, the contract that is the subject of that Designation Request shall not be accepted as security under this Agreement and shall not be taken into account in calculating the Margin Assets.

- (b) If any Lender is of the opinion that a purchaser which has been designated as an "Approved Purchaser" should no longer be so designated, it shall deliver a notice to the Facility Agent notifying the Facility Agent of such opinion (a **Redesignation Notice**). If the Facility Agent receives a Redesignation Notice from a Lender, it shall send such Redesignation Notice to each Lender who shall reply to the Facility Agent in writing within five (5) Business Days of the date the relevant Redesignation Notice was delivered to it by the Facility Agent (the **Redesignation Notice Delivery Date**). Any Lender which does not reply to the Facility Agent within five (5) Business Days of the Redesignation Notice Delivery Date shall be deemed to have agreed with the Majority Lenders (for the purposes of this Clause 13.6(b) only, the Majority Lenders shall be calculated by reference to the Commitments of those Lenders who have delivered a reply within five (5) Business Days of the Redesignation Notice Delivery Date). The Majority Lenders shall, if a Redesignation Notice is issued, have discretion in deciding if the relevant purchaser which is the subject of the Redesignation Notice (the **Relevant Purchaser**) should no longer be an "Approved Purchaser" and accordingly should be removed from the list of Approved Purchasers set out in Schedule 5 (*Approved Purchasers*). If the Majority Lenders agree that the Relevant Purchaser should no longer be designated as an Approved Purchaser, the Borrower shall ensure that Cocoa Marketing shall not enter into any further Sales Contracts with the Relevant Purchaser. In addition, the Facility Agent acting on the instructions of the Majority Lenders shall decide if further deliveries of cocoa to be made under all existing Sales Contracts between Cocoa Marketing and the Relevant Purchaser shall form part of the calculation of the Margin Assets for the purposes of the applicable provisions of the Documents. The Facility Agent shall promptly inform the Borrower and the Lenders in writing of the decisions reached in respect of a Redesignation Notice and in relation to the calculation of Margin Assets.

13.7 If an Approved Purchaser or a Parent Company (as the case may be) is in breach of any material provisions of any applicable Sales Contract and such Approved Purchaser or Parent Company (as the case may be) does not remedy such breach within ten (10) Business Days of the occurrence of such breach or if any applicable Sales Contract ceases to be in full force and effect for any reason, the Borrower shall ensure that within fifteen (15) Business Days of a demand by the Facility Agent, acting on the instructions of the Lenders, to the Borrower, the Borrower shall either:

- (a) procure the assignment by Cocoa Marketing to the Facility Agent of, and provide the Facility Agent with a schedule of, such further Sales Contracts together with evidence (satisfactory to the Facility Agent, acting on the instructions of the Lenders) of the existence of such Sales Contracts as shall be adequate to make up any Margin Shortfall arising as a result of such breach or a Sales Contract ceasing to be in full force and effect (in each case after taking account of any payments made pursuant to Clauses 11.2, 13.2 and 13.7(b)) together with Notices of Assignment and Assignment Acknowledgements in respect of each such additional Sales Contract duly executed by Cocoa Marketing and the relevant Approved Purchaser and Parent Company (as the case may be) respectively; and/or
- (b) pay into the Trustee Collection Account such amount as will make up any such Margin Shortfall as referred to in Clause 13.7(a) above (after taking account of any additional Sales Contracts provided pursuant to Clause 13.7(a) and/or any payments made pursuant to Clause 11.2 and Clause 13.2).

13.8 The Borrower may, at any time, submit a request to the Facility Agent for the substitution of certain Sales Contracts, assigned to the Facility Agent pursuant to the Security Agreement, to

be released from the Security Agreement and reassigned to Cocoa Marketing and substituted with alternative sales contracts between Cocoa Marketing and an Approved Purchaser (a **Substitution Request**) it proposes to use as part of the Margin Assets towards satisfying the Required Margin, provided that:

- (a) such Substitution Request specifies and details (i) the Sales Contract(s) to be substituted (the **Original Sales Contract(s)**) and (ii) the substitute sales contract(s) (the **Substitute Sales Contract(s)**);
- (b) no Default or Event of Default has occurred or is continuing or would result from such withdrawal; and
- (c) following such substitution:
 - (i) the Required Margin will be met; and
 - (ii) there are sufficient Sales Contracts with a payment date prior to the commencement of the next Repayment Margin Period and/or credit balance standing to the credit of the Collection Accounts to meet the requirements of this Agreement at the commencement of the next Repayment Margin Period,

then and subject to those conditions being met the Facility Agent shall release and reassign to Cocoa Marketing the Original Sales Contract(s) within ten (10) Business Days of:

- (d) the Substitute Sales Contract(s) being assigned in accordance with the terms of the Security Agreement to the satisfaction of the Facility Agent; and
- (e) the Notices of Assignment and Assignment Acknowledgements in respect of such Substitute Sales Contract(s) duly executed by Cocoa Marketing and the relevant Approved Purchaser (and, if applicable, its Parent Company) being provided to the Facility Agent in form and substance satisfactory to it.

14 Environmental Compliance

14.1 Each Obligor shall:

- (a) comply with all Environmental Law;
- (b) obtain, maintain and ensure compliance with all requisite Environmental Permits; and
- (c) implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a material adverse effect on the financial condition of such Obligor or may imperil, delay or prevent fulfilment by such Obligor of its obligations under the Documents or the Sales Contracts to which it is a party or contemplated hereby or the validity or enforceability of the Documents or the rights or remedies of the parties under the Documents.

Environmental claims

14.2 Each Obligor shall, promptly upon becoming aware of the same, inform the Facility Agent in writing of:

- (a) any Environmental Claim against either of the Obligors or their Affiliates which is current, pending or threatened; and
- (b) any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any of the Obligors or their Affiliates,

where the claim, has been or is likely to be determined against either of the Obligors or any of their Affiliates, and if so determined has or is reasonably likely to have a material adverse effect on the financial condition of such Obligor or is reasonably likely to imperil, delay or prevent fulfilment by such Obligor of its obligations under the Documents or the Sales Contracts to which it is a party or contemplated hereby or the validity or enforceability of the Documents or the rights or remedies of the parties under the Documents.

15 Fees and expenses

15.1 The Borrower shall pay to the Facility Agent:

- (a) for the account of the Co-ordinating Initial Mandated Lead Arrangers and Bookrunners and the Initial Mandated Lead Arranger (together the **Arranger Group**) an arrangement fee of an amount previously agreed in writing between the Arranger Group and the Borrower (the **Arrangement Fee**), which shall be payable in accordance with a fee letter entered into or to be entered into between the Facility Agent and the Borrower and shall be paid pro rata the amount of each Main Crop Advance drawdown under this Agreement (with the applicable amount of the Arrangement Fee being deducted from the amount of each Main Crop Advance) and shall be distributed to the Lenders in the proportions agreed between the Arranger Group and the Lenders provided that, in any event, the full amount of the Arrangement Fee shall be payable by the Borrower no later than 23 December 2022;
- (b) for the account of the Main Crop Lenders, pro rata according to their respective Main Crop Commitments, a commitment fee at the rate of thirty-five per cent (35%) of the Interest Margin on the daily undrawn amount of the Total Main Crop Commitments for the period commencing on the date of this Agreement and ending on the last day of the Main Crop Availability Period (the **Main Crop Commitment Fee Period**), such commitment fee to be payable monthly in arrears, during the Main Crop Commitment Fee Period, on the last day thereof, and, if cancelled, on the cancelled amount of all or any part of the Main Crop Available Amount at the time the cancellation is effective; and
- (c) for the account of the Light Crop Lenders, pro rata according to their respective Light Crop Commitments, a commitment fee at the rate of thirty-five per cent (35%) of the Interest Margin per annum on the daily undrawn amount of the Total Light Crop Commitments for the period commencing on 1 May 2023 and ending on the last day of the Light Crop Availability Period (the **Light Crop Commitment Fee Period**), such commitment fee to be payable monthly in arrears during the Light Crop Commitment Fee Period, on the last day thereof, and, if cancelled, on the cancelled amount of all or any part of the Light Crop Available Amount at the time the cancellation is effective.

15.2 No commitment fee is payable under Clauses 15.1(b) and 15.1(c) in respect of the Commitment of any Lender for any day on which that Lender is a Defaulting Lender.

15.3 The Borrower shall pay to the Facility Agent on demand, subject to any maximum amount previously agreed in writing between the Lenders and the Borrower, all reasonable costs, fees

and any Taxes thereon, incurred by it (or any other Finance Party) in connection with the negotiation, preparation, printing, execution, syndication and perfection of the Documents and any other documents referred to in this Agreement.

15.4 The Borrower shall pay to the Facility Agent, each Lender and the Collection Agent promptly on demand all costs, fees and expenses (including, but not limited to, legal fees and expenses) and Taxes thereon (together the **Expenses**) incurred by the Facility Agent, such Lender or the Collection Agent in connection with the preserving or enforcing of, or attempting to preserve or enforce, any of its rights under the Documents including (without limitation) any Expenses the Facility Agent or the Collection Agent may incur pursuant to Clause 24.12(a) or the Facility Agent, the Collection Agent or any Lender may incur in ensuring that the Borrower complies with the provisions of Clause 13 (*Security Margin*) or in obtaining or ensuring that the Borrower or Cocoa Marketing obtains any of the documents referred to in Clause 13 (*Security Margin*).

15.5 The Borrower shall pay to the Facility Agent, each Lender and the Collection Agent on demand all reasonable costs, fees and expenses (including, but not limited to, legal fees and expenses) and Taxes thereon incurred by the Facility Agent, each Lender and the Collection Agent in connection with:

- (a) any variation of, or amendment or supplement to, any of the terms of the Documents made at the Borrower's request or required as a result of the Borrower's acts or omissions or as a result of the occurrence of a Default or Event of Default; and/or
- (b) any consent or waiver required from any of the Lenders or the Collection Agent in relation to the Documents; and

in each case, regardless of whether the same is actually implemented, completed or granted, as the case may be.

15.6 The Borrower shall pay promptly all stamp, documentary and other like duties and Taxes to which this Agreement or any of the Security Documents may be subject or give rise and shall indemnify the Facility Agent, the Lenders and the Collection Agent on demand against any and all liabilities with respect to or resulting from any delay or omission on the part of the Borrower to pay any such duties or Taxes.

16 Payments and Calculations

16.1

- (a) All payments to be made by the Lenders to the Facility Agent or by the Borrower to the Facility Agent or the Lenders under this Agreement and the Security Documents shall be made to the Facility Agent on the due date in same day Dollar funds settled through the New York Interbank Payments System or in such other Dollar funds and/or settled in such other manner as the Facility Agent shall specify as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement to, in the case of payments by the Lenders, the Facility Agent to such account in the name of the Facility Agent as the Facility Agent notifies to the Lenders from time to time and, in the case of payments by the Borrower to the Facility Agent, to the Trustee Collection Account or to such other account with such other bank as the Facility Agent shall from time to time notify to the Borrower and the Lenders.

- (b) The currency of account(s) is Dollars and payment for each and every sum at any time due from the Borrower hereunder, provided that each payment in respect of losses, expenses and Taxes shall be made in the currency in which the same were incurred.
- 16.2 The Facility Agent shall not be obliged to make available to any person any sum which it is expecting to receive for the account of that person until it has been able to establish to its satisfaction that it has received that sum, provided that, if and to the extent that the Facility Agent does so make available such sum, but it transpires that the Facility Agent had not then received the sum which it paid to such person:
- (a) the person to whom the Facility Agent made such sum available shall on demand refund such sum in full to the Facility Agent; and
- (b) that person shall pay on demand to the Facility Agent the amount (as certified by the Facility Agent) which will refund the Facility Agent against any funding or other cost, loss, expense or liability sustained or incurred by the Facility Agent as a result of paying out such sum before receiving it.
- 16.3 If any sum payable by the Borrower under this Agreement or the Security Documents shall become due on a day which is not a Business Day, the due date thereof shall be extended to the next following Business Day, unless that day falls in the next calendar month, in which event that due date will be the preceding Business Day.
- 16.4
- (a) If, at any time, the Facility Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Documents to the Facility Agent in accordance with Clause 16.1 may instead either pay that amount directly to the required recipient or pay that amount to an interest bearing account held with an Acceptable Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Documents. In each case such payments must be made on the due date for payment under the Documents.
- (b) All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of the beneficiaries of that trust account pro rata to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 16.4 shall be discharged of the relevant payment obligation under the Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Facility Agent in accordance with Clause 24.17, each Party which has made a payment to a trust account in accordance with this Clause 16.4 shall give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Facility Agent for distribution in accordance with the terms of this Agreement.
- 16.5 Each Lender shall maintain accounts showing the amounts from time to time outstanding to it under this Agreement and the Security Documents and all other sums owing by the Borrower to it under this Agreement and the Security Documents and all payments in respect thereof made by the Borrower to it from time to time. The Facility Agent will maintain a memorandum

account showing the amounts from time to time lent by the Lenders under this Agreement and all other sums owing to the Facility Agent and/or the Lenders under this Agreement and all payments in respect thereof made by the Borrower from time to time. Such accounts, in the absence of manifest error, shall be prima facie evidence as to any amounts from time to time owing by the Borrower under this Agreement and the Security Documents. The Facility Agent shall provide the Borrower, on a monthly basis with respect to each Repayment Date, with a statement of the amount outstanding under this Agreement.

- 16.6 All payments of interest and any other payments hereunder of an annual or periodic nature shall accrue from day-to-day and shall be calculated on the basis of the actual number of days elapsed in a three hundred and sixty (360) day year.
- 16.7 Except as otherwise indicated herein, all payments made to the Facility Agent by the Borrower hereunder shall be promptly distributed by the Facility Agent among the Lenders in the proportion to which their respective Contributions bears to the Loan and in like funds as they are received by the Facility Agent.

17 Taxation

- 17.1 All payments to be made by or on behalf of the Borrower to the Facility Agent and the Lenders pursuant to this Agreement shall be made (a) without set-off, counterclaim or condition whatsoever and (b) free and clear of, and without deduction for or on account of, any present or future Taxes, unless the Borrower is required by law or regulation to make any such payment subject to any Taxes.
- 17.2 In the event that an Obligor is required by any law or regulation to make any deduction or withholding on account of any Taxes which arise as a consequence of any payment due under this Agreement or any of the Security Documents, then:
- (a) the Borrower shall notify the Facility Agent as soon as it becomes aware of such requirement;
 - (b) without prejudice to Clause 11.5 (*Undertakings*), the Borrower shall remit, or procure that Cocoa Marketing remits, promptly the amount of such Taxes to the appropriate taxation authority, and in any event prior to the date on which penalties attach thereto; and
 - (c) the Borrower shall increase such payment (on its own behalf or on behalf of Cocoa Marketing as the case may be) by such amount as may be necessary to ensure that the Facility Agent or (as the case may be) each Lender receives a net amount, which, after deducting or withholding such Taxes, is equal to the full amount which the Facility Agent or (as the case may be) each Lender would have received had such payment not been subject to such Taxes.
- 17.3 Not later than thirty (30) days after each deduction or withholding of any such Taxes, the Borrower shall forward to the Facility Agent evidence satisfactory to the Facility Agent that such Taxes have been remitted to the appropriate taxation authority.
- 17.4 If the Borrower is required to pay any additional amounts for the account of any Lender pursuant to Clause 17.2, then the Borrower may give not less than fifteen (15) days' notice of prepayment (which shall be irrevocable) to the Facility Agent on behalf of such Lender, in which case the Borrower shall prepay to the Facility Agent for the account of such Lender, without premium or penalty, all (but not part) of such Lender's Contribution in accordance with and subject to the

provisions of this Agreement, provided that any such prepayment shall not relieve the Borrower of its obligation to pay any such additional amounts that may be due. For the avoidance of doubt, this Clause 17.4 will not apply in relation to any additional amount that the Borrower is required to pay pursuant to Clause 17.2 as a result of any Ghanaian withholding tax payable in respect of interest payments made by the Borrower under this Agreement to the Main Crop Lenders or to the Light Crop Lenders as a whole.

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

17.6 Clause 17.5 shall not apply:

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

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

(ii) under the law of the jurisdiction in which that Finance Party's facility office is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or

(b) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 17.2.

17.7 A Finance Party making, or intending to make, a claim under Clause 17.5 above shall promptly notify the Facility Agent of the event which will give, or has given, rise to the claim, following which the Facility Agent shall notify the Borrower.

17.8 A Finance Party shall, on receiving a payment from the Borrower under Clause 17.5, notify the Facility Agent.

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

(a) a credit against, relief or remission for, or repayment of any Tax is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(b) that Finance Party has obtained and utilised that credit against, relief or remission for, or repayment of that Tax,

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

18 FATCA

18.1 Subject to Clause 18.3 below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:

- (a) confirm to that other Party whether it is:
 - (i) a FATCA Exempt Party; or
 - (ii) not a FATCA Exempt Party; and
 - (b) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (c) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.
- 18.2 If a Party confirms to another Party pursuant to Clause 18.1(a) 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.
- 18.3 Clause 18.1 above shall not oblige any Finance Party to do anything, and Clause 18.1(c) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
- (a) any law or regulation;
 - (b) any fiduciary duty; or
 - (c) any duty of confidentiality.
- 18.4 If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with Clause 18.1 above (including, for the avoidance of doubt, where Clause 18.3 above applies), then such Party shall be treated for the purposes of the Documents 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.
- 18.5 If an Obligor is a US Tax Obligor, or where the Facility Agent reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, each Lender shall, within ten (10) Business Days of:
- (a) where an Obligor is a US Tax Obligor and the relevant Lender is listed in Schedule 1 (*Commitments*), the date of this Agreement;
 - (b) where an Obligor is a US Tax Obligor and the relevant Lender becomes a Party in accordance with Clauses 23 (*Defaulting Lenders*) or 26 (*Assignments and Transfers*), the date that Lender became a Party;
 - (c) the date a new US Tax Obligor accedes as an Obligor; or
 - (d) where an Obligor is not a US Tax Obligor, the date of a request from the Facility Agent, supply to the Facility Agent:
 - (i) a withholding certificate on Form W-8 or Form W-9 (or any successor form) (as applicable); or

- (ii) any withholding statement and other documentation, authorisations and waivers as the Facility Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.

- 18.6 The Facility Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to Clause 18.5 above to the Borrower.
- 18.7 If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Facility Agent pursuant to Clause 18.5 above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such withholding certificate, withholding statement, document, authorisation or waiver to the Facility Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Facility Agent). The Facility Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.
- 18.8 The Facility Agent may rely on any such withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to Clauses 18.5 or 18.7 above without further verification. The Facility Agent shall not be liable for any action taken by it under or in connection with Clauses 18.5, 18.6 or 18.7 above.
- 18.9 Each Finance 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 Finance 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. A Finance Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Facility Agent and the Facility Agent shall notify the other Finance Parties.

19 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.

20 Changes in Circumstances

20.1 Increased Costs

- (a) Subject to Clause 20.1(e) the Borrower shall, within three (3) Business Days of a demand by the Facility Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement or (iii) the implementation or application of, or

compliance with Basel III, CRD IV, CRD V and/or CRR or any other law or regulation which implements Basel III, CRD IV, CRD V and/or CRR (whether such implementation, application or compliance is by a government regulator, any Finance Party or any of its Affiliates) to the extent (aa) such Increased Costs were not capable of being calculated with sufficient accuracy prior to the date of this Agreement due to a lack of clarity or detail in relation to Basel III, CRD IV and CRR and/or lack of any related information from a banking regulator in this respect available on the date of this Agreement and (bb) it is the relevant Finance Party's policy to seek to recover these costs to a similar extent from other similar borrowers in relation to similar facilities, each as confirmed by the relevant Finance Party, which confirmation shall be conclusive for the purposes of this Clause 20.1(a).

(b) In this Agreement:

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 systematically 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 and supplemented or restated; or (c) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

CRD IV means EU CRD IV and UK CRD IV.

EU CRD IV means (a) "Regulation (EU) No 575/2013 of the European Parliament and of the Council dated 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012", as amended from time to time; and (b) "Directive 2013/36/EU of the European Parliament and of the Council dated 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC", as amended from time to time.

Increased Costs means:

- (a) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under any Document.

which in any case 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 Document.

UK CRD IV means (a) "Regulation (EU) No 575/2013 of the European Parliament and of the Council dated 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012" as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (the "Withdrawal Act"); and (b) the law of the United Kingdom or any part of it, which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit

institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC and its implementing measures; and (c) direct EU legislation (as defined in the Withdrawal Act), which immediately before IP completion day (as defined in the European Union (Withdrawal Agreement) Act 2020) implemented EU CRD IV as it forms part of domestic law of the United Kingdom by virtue of the Withdrawal Act.

- (c) A Finance Party intending to make a claim pursuant to paragraph (a) shall notify the Facility Agent of the event giving rise to the claim, following which the Facility Agent shall promptly notify the Borrower.
- (d) Each Finance Party shall, as soon as practicable after a demand by the Facility Agent, provide a certificate confirming the amount of its Increased Costs.
- (e) Paragraph (a) does not apply to the extent any Increased Cost is:
 - (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 17.5 (or would have been compensated for under Clause 17.5) but was not so compensated solely because any of the relevant exclusions in Clause 17.5; or
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

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

- 20.2.1 If any Lender claims indemnification from the Borrower under Clause 20.1, the Borrower may, whilst the circumstance giving rise to the requirement for that indemnification continues, give the Facility Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's Contribution or give the Facility Agent notice of its intention to replace that Lender in accordance with Clause 20.2.4.
- 20.2.2 On receipt of a notice of cancellation referred to in Clause 20.2.1, the Commitment of that Lender shall immediately be reduced to zero.
- 20.2.3 On the last day of the Interest Period which ends after the Borrower has given notice of cancellation under Clause 20.2.1 (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's Contribution.
- 20.2.4 If the circumstances set out in Clause 20.2.1 apply to a Lender, the Borrower may, on fifteen (15) Business Days' prior notice to the Facility 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 26 (*Assignments and Transfers*) 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 26 (*Assignments and Transfers*) for a purchase price in cash payable at the time of the transfer in an amount equal to the Contribution of such Lender and all accrued interest and other amounts payable in relation thereto under the Documents.

20.2.5 The replacement of a Lender pursuant to Clause 20.2.4 shall be subject to the following conditions:

- (a) the Borrower shall have no right to replace the Facility Agent;
- (b) neither the Facility Agent nor any Lender shall have any obligation to find a replacement Lender pursuant to this Clause 20.2;
- (c) in no event shall the Lender replaced under Clause 20.2.4 be required to pay or surrender any of the fees received by such Lender pursuant to the Documents; and
- (d) the Lender shall only be obliged to transfer its rights and obligations pursuant to Clause 20.2.4 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.

20.2.6 A Lender shall perform the checks described in paragraph (d) of Clause 20.2.5 as soon as reasonably practicable following delivery of a notice referred to in Clause 20.2.4 and shall notify the Facility Agent and the Borrower when it is satisfied that it has complied with those checks.

20.3 ¹⁰[Changes to reference rates:

20.3.1 If an RFR Replacement Event has occurred any amendment or waiver which relates to:

- (a) providing for the use of a Replacement Reference Rate in place of the RFR; and
- (b)
 - (i) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
 - (ii) implementing market conventions applicable to that Replacement Reference Rate;
 - (iii) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
 - (iv) 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 Reference Rate (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),
 - (v) may be made with the consent of the Facility Agent (acting on the instructions of [Majority Lenders]) and the Borrower.

¹⁰ SC to confirm if they would like to include this clause. This is suggested optional wording from LMA. There are a number of consent level options that will also need to be addressed if this clause is to be included

20.3.2 [An amendment or waiver that relates to, or has the effect of, aligning the means of calculation of interest on an Advance or, as the case may be, the Loan under this Agreement to any recommendation of a Relevant Nominating Body which:

- (a) relates to the use of [a risk-free reference rate] / [the RFR] on a compounded basis in the international or any relevant domestic syndicated loan markets; and
- (b) is issued on or after the date of this Agreement,

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

20.3.3 [If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) [or paragraph (b)] above within [●] Business Days (or such longer time period in relation to any request which the Borrower and the Facility Agent may agree) of that request being made:

- (a) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Loan(s) when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
- (b) (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.]

In this Clause 20.3:

["RFR Replacement Event" means:

- (a) the methodology, formula or other means of determining the RFR has[,in the opinion of the [Majority Lenders], and the Borrower] materially changed;
- (b)
 - (i)
 - (A) the administrator of the RFR or its supervisor publicly announces that such administrator is insolvent; or
 - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of the RFR is insolvent, provided that, in each case, at that time, there is no successor administrator to continue to provide the RFR;
 - (ii) the administrator of the RFR publicly announces that it has ceased or will cease, to provide the RFR permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the RFR;
 - (iii) the supervisor of the administrator of the RFR publicly announces that the RFR has been or will be permanently or indefinitely discontinued; [or]
 - (iv) (the administrator of the RFR or its supervisor announces that the RFR may no longer be used; [or]

- (c) [the administrator of the RFR determines that the RFR should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
- (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the [Majority Lenders] and the Borrower) temporary; or
 - (ii) the RFR is calculated in accordance with any such policy or arrangement for a period no less than the period specified as the "RFR Contingency Period" in the Reference Rate Terms[; or]]
- (d) [in the opinion of the [Majority Lenders] and the Borrower, the RFR is otherwise no longer appropriate for the purposes of calculating interest under this Agreement].]

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 Reference Rate means a reference rate which is:

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

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Reference Rate" 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 the RFR; or (c) in the opinion of the [Majority Lenders] and the Borrower, an appropriate successor to the RFR.]

20.4 Miscellaneous

- (a) If, in respect of any Lender, circumstances arise which would or would upon the giving of notice result in the Borrower being obliged to prepay the Loan pursuant to Clause 20.1, then without in any way limiting, reducing or otherwise qualifying the obligations of the Borrower under Clause 20.1, such Lender shall endeavour to take such steps as may be reasonably open to it to mitigate or remove those circumstances or the effect of those circumstances, including (without limitation) the transfer of its lending office to another jurisdiction or the transfer of its rights and obligations under this Agreement to another bank or financial institution acceptable to the Borrower unless, in the reasonable opinion of that Lender, such steps would be prejudicial in any way to such Lender.
- (b) Without prejudice to the provisions of Clause 20.4(a), if the Commitment of any Lender is terminated pursuant to Clause 7.1, that Lender shall, if so requested by the Borrower within thirty (30) days of such termination, take such steps as may be reasonably open to it during the period of thirty (30) days from such request to find a replacement bank or financial institution acceptable to the Borrower to assume the Commitment of such

Lender, but without committing any of them to take such steps or imposing on any of them any liability for any failure to find a replacement.

21 Indemnities

21.1

- (a) The Borrower shall promptly indemnify the Facility Agent against any cost, loss or liability incurred by the Facility Agent (acting reasonably) as a result of:
- (i) investigating any event which it reasonably believes is a Default;
 - (ii) entering into or performing any foreign exchange contract for the purposes of Clause 21.4;
 - (iii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iv) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Documents.

21.2

- (a) The Borrower shall promptly indemnify the Facility Agent and every Representative against any cost, loss or liability incurred by any of them as a result of:
- (i) any failure by the Borrower to comply with its obligations under Clause 15 (*Fees and expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Security Documents;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Facility Agent and each Representative by the Documents or by law;
 - (v) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Documents; or
 - (vi) acting as Facility Agent or Representative under the Documents or which otherwise relates to any of the Secured Assets (otherwise, in each case, than by reason of the relevant Facility Agent's or Representative's gross negligence or wilful misconduct).
- (b) The Facility Agent and every Representative may, in priority to any payment to the Finance Parties, indemnify itself out of the Secured Assets in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 21.2 and shall have a lien on the Security Interest created by the Security Documents and the proceeds of the enforcement of the Security Documents for all moneys payable to it.

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

- (a) the occurrence of any Event of Default;
- (b) a failure by an Obligor to pay any amount due under a Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 22.3;
- (c) funding, or making arrangements to fund, its participation in an Advance requested by a Borrower in a Notice of Drawing 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) an Advance (or part of an Advance) not being prepaid in accordance with a notice of prepayment given by the Borrower.

21.4 If, under any applicable law or regulation, and whether pursuant to a judgment being made or registered against an Obligor or the liquidation of the Borrower or for any other reason, any payment under or in connection with this Agreement or any of the Security Documents is made or is satisfied in a currency (the **payment currency**) other than the currency in which such payment is due under or in connection with this Agreement or any of the Security Documents (the **contractual currency**), then to the extent that the amount of such payment actually received by the Facility Agent, any Lender or the Collection Agent, when converted into the contractual currency at the rate of exchange, falls short of the amount due under or in connection with this Agreement or any of the Security Documents, the Borrower, as a separate and independent obligation, shall indemnify and hold harmless the Facility Agent or (as the case may be) such Lender or the Collection Agent against the amount of such shortfall. For the purposes of this Clause 21.4, rate of exchange means the rate at which the Facility Agent or (as the case may be) such Lender or the Collection Agent is able on the date of such payment to purchase the contractual currency with the payment currency and shall take into account any premium and other costs of exchange with respect thereto.

22 Set-off and Sharing

- 22.1 The Borrower hereby authorises each Finance Party (without prior notice) at any time after the occurrence of an Event of Default to apply any Credit Balance in the case of the Facility Agent or any credit balance in the case of a Lender or other Finance Party (whether or not then due) which is at any time held by the Facility Agent, such Lender or other Finance Party for the account of the Borrower at any office of the Facility Agent, such Lender or other Finance Party in any country in or towards satisfaction of any Unpaid Sum then due from the Borrower to the Facility Agent, such Lender or other Finance Party under this Agreement. The Facility Agent, each Lender and each other Finance Party are authorised to use all or any part of any such Credit Balance or credit balance to buy such other currencies as may be necessary to effect such application. Neither the Facility Agent nor any Lender nor any other Finance Party shall be obliged to exercise any of its rights under this Clause, which shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other rights to which the Facility Agent, such Lender or other Finance Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).
- 22.2 Save as expressly provided in the Security Documents, if any sum paid or recovered in respect of the liabilities of any Obligor under any of the Documents is less than the amount then due, the Facility Agent shall apply that sum (a) first, to fees and reimbursement of expenses, (b) secondly, to interest, (c) thirdly, to principal amounts, and (d) fourthly, to other amounts due under this Agreement, in each case pro rata to the outstanding amounts owing to the Lenders under this Agreement taking into account any applications under this Clause 22.2 and any such application shall override any applications or appropriations made by the Borrower.

- 22.3 If any Lender at any time shall receive or recover from any Obligor (whether by way of voluntary or involuntary payment, by virtue of an exercise of its legal rights including but not limited to the right of set-off, counterclaim or otherwise howsoever) the whole or any part of any amounts due from the Borrower to such Lender or to the Facility Agent on behalf of such Lender hereunder, otherwise than by distribution from the Facility Agent in accordance with the terms of this Agreement, then subject as provided in Clause 22.4:
- (a) such Lender (the **Sharing Lender**) shall forthwith pay to the Facility Agent the full amount or (as the case may be) an amount equal to the equivalent of the full amount so received or recovered;
 - (b) as between the Borrower and the Sharing Lender, the Borrower shall remain or again become indebted to such Sharing Lender hereunder in the amount so paid as if it had not been received or recovered as aforesaid; and
 - (c) the Facility Agent shall treat the amount so paid as if it were a payment by the Borrower on account of amounts due from the Borrower hereunder for distribution to the Sharing Lender and each of the other Lenders in the proportions in which the Sharing Lender and the other Lenders would have been entitled to receive such amount had it been paid by the Borrower to the Facility Agent hereunder, provided that every payment and adjustment made pursuant to this Clause 22.3 shall be subject to the condition that, if the amount (or any part thereof) so paid by the Sharing Lender to the Facility Agent subsequently falls to be repaid by the Sharing Lender to the Borrower or any other person, then each of the Lenders who has received any part thereof from the Facility Agent shall repay the amount received by it to the Sharing Lender together with such amount (if any) as is necessary to reimburse the Sharing Lender for the appropriate portion of any interest it was obliged to pay when repaying such amount as aforesaid and the relevant adjustments pursuant to this Clause 22.3 shall be cancelled.

22.4 A Sharing Lender which shall have commenced or joined in an action or proceeding in any court to recover sums due to it under this Agreement, and pursuant to a judgment obtained therein or a settlement or compromise of that action or proceeding shall have received any amount, shall not be required to share any proportion of that amount with a Lender which has the legal right to, but does not, join such action or proceeding or commence and diligently prosecute a separate action or proceeding to enforce its rights under this Agreement in the same or another court.

22.5 Each Lender shall promptly give notice to the Facility Agent of:

- (a) the institution by such Lender of a legal action or proceedings against the Borrower hereunder or in connection herewith as soon as practicable thereafter (and, in any event, within five (5) Business Days); and
- (b) the receipt or recovery by such Lender of any amount due and payable by the Borrower hereunder which is received or recovered otherwise than through the Facility Agent.

Upon receipt of any such notice, the Facility Agent will as soon as practicable thereafter notify all the other Lenders.

23 Defaulting Lenders

23.1 If any Lender becomes a Defaulting Lender, the Borrower may, at any time whilst the Lender continues to be a Defaulting Lender, give the Facility Agent ten (10) Business Days' notice of

cancellation of each available Commitment of that Defaulting Lender. On the notice referred to in this Clause 23.1 becoming effective, the available Commitment of the Defaulting Lender shall immediately be reduced to zero. The Facility Agent shall, as soon as practicable after receipt of a notice referred to in this Clause 23.1 notify all the Lenders.

23.2

- (a) If a Lender becomes a Defaulting Lender, repayment of each of the participations of that Defaulting Lender then outstanding will be made by the Borrower in accordance with the Repayment Dates as set out in this Agreement.
- (b) Interest in respect of each of the participations of that Defaulting Lender then outstanding will accrue and be paid to the Defaulting Lender in accordance with the terms of this Agreement.
- (c) The terms of this Agreement generally shall continue to apply to such outstanding amounts.

23.3

- (a) The Borrower may, by giving prior written notice to the Facility Agent by no later than the date falling five (5) Business Days after the effective date of a cancellation of the available Commitments of a Defaulting Lender in accordance with Clause 23.1, request that the Total Commitments be increased in an aggregate amount of up to the amount of the available Commitments or Commitments so cancelled as follows:
 - (i) the increased Commitments will be assumed by one (1) or more Lenders or other banks, financial institutions, trusts, funds or other entities which are not an Affiliate of the Borrower and which are regularly engaged or established for the purpose of making, purchasing or investing in loans, securities, or other financial assets (each an **Increase Lender**) selected by the Borrower (which is acceptable to the Facility Agent (acting reasonably)) and each of which confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been a Lender at the date of this Agreement;
 - (ii) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been a Lender at the date of this Agreement;
 - (iii) each Increase Lender shall become a Party as a Lender and any Increase Lender and each of the other Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Parties would have assumed and/or acquired had the Increase Lender been a Lender at the date of this Agreement;
 - (iv) the Commitments of the other Lenders shall continue in full force and effect; and
 - (v) any increase in the Total Commitments shall take effect on the date specified by the Borrower in the notice referred to above or any later date on which the conditions set out in Clause 23.3(b) below are satisfied.

- (b) An increase in the Total Commitments will only be effective:
 - (i) on counter-signature by the Facility Agent of an increase confirmation notice (an **Increase Confirmation**) from the Increase Lender in form and substance satisfactory to the Facility Agent; and
 - (ii) in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase, on the performance by the Facility Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender, the completion of which the Facility Agent shall promptly notify to the Borrower and the Increase Lender.
- (c) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Facility Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.
- (d) Unless the Facility Agent otherwise agrees or the increased Commitment is assumed by an Existing Lender, the Borrower shall, on the date upon which the increase takes effect, pay to the Facility Agent (for its own account) a fee of \$3,000 (three thousand Dollars) and the Borrower shall promptly on demand pay the Facility Agent the amount of all costs and expenses (including without limitation legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 23 (*Defaulting Lenders*).
- (e) The Borrower may pay to the Increase Lender a fee in the amount and at the times agreed between the Borrower and the Increase Lender in a letter between the Borrower and the Increase Lender setting out that fee. Such fee shall not exceed the pro rata amount of any fee that has or will be paid to the other Lenders in accordance with this Agreement at that time.
- (f) Clause 26.4 shall apply mutatis mutandis in this Clause 23 (*Defaulting Lenders*) in relation to an Increase Lender as if references in that Clause to:
 - (i) an Existing Lender were references to all the Lenders immediately prior to the relevant increase; and
 - (ii) the Transferee were references to that Increase Lender.

23.4 The Borrower may, at any time a Lender has become and continues to be a Defaulting Lender, by giving fifteen (15) days' prior written notice to the Facility Agent and such Lender:

- (a) replace such Lender by requiring such Lender to (and to the extent permitted by law such Lender shall) transfer pursuant to Clause 26 (*Assignments and Transfers*) all (and not part only) of its rights and obligations under this Agreement; or
- (b) require such Lender to (and to the extent permitted by law such Lender shall) transfer pursuant to Clause 26 (*Assignments and Transfers*) all (and not part only) of the undrawn Commitment of the Lender,

to a Lender or other bank, financial institution, trust, fund or other entity which is not an Affiliate of the Borrower and which is regularly engaged or established for the purpose of making,

purchasing or investing in loans, securities, or other financial assets (a **Replacement Lender**) selected by the Borrower, and which (unless the Facility Agent is an Impaired Agent) is acceptable to the Facility Agent (acting reasonably) and which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender's participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for the par value of that participation and all accrued interest and other amounts payable in relation thereto under the Documents.

23.5 Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:

- (a) the Borrower shall have no right to replace the Facility Agent;
- (b) neither the Facility Agent nor the Defaulting Lender shall have any obligation to the Borrower to find a Replacement Lender;
- (c) the transfer must take place no later than fifteen (15) days after the notice referred to in Clause 23.4 above;
- (d) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Documents; and
- (e) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to Clause 23.4 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 to the Replacement Lender.

23.6 The Defaulting Lender shall perform the checks described in Clause 23.5(e) above as soon as reasonably practicable following delivery of a notice referred to in Clause 23.4 above and shall notify the Facility Agent and the Borrower when it is satisfied that it has complied with those checks.

24 The Finance Parties

24.1 Each Lender hereby irrevocably appoints and authorises the Facility Agent as its agent under this Agreement and as its agent and trustee under the Security Documents and the Subordination Agreement with such powers as are expressly delegated to the Facility Agent in its capacity as such by the terms of the Documents together with such other powers as are reasonably incidental thereto. The Facility Agent shall not have any duties or responsibilities except those expressly set forth in the Documents. As to any matters not expressly provided for by the Documents, the Facility Agent shall act or refrain from acting hereunder or in connection herewith in accordance with the instructions of the Majority Lenders but, in the absence of any such instructions, the Facility Agent shall not be obliged to act but may act as it considers to be in the best interests of the Majority Lenders. Save where the Documents expressly require any decision to be made by all the Lenders, any action taken by the Facility Agent in accordance with the instructions of the Majority Lenders shall be binding upon all the Lenders. The Facility 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 value-added tax) which it may incur in complying with the instructions. In no event, however, shall the Facility Agent be

required to take any action which exposes, or is likely to expose, the Facility Agent to personal liability or which is contrary to this Agreement or any law, regulation or directive.

24.2 The Facility Agent shall furnish each Lender with a copy of the documents received by it under Clauses 9.3(e), 11.1(a) and 11.1(b) and, if requested by a Lender, any other documents received by the Facility Agent under this Agreement (but the Facility Agent shall not be obliged to review or check the accuracy or completeness thereof). The Facility Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement. Each Lender will, promptly after receipt or despatch thereof, forward to the Facility Agent a copy of any communication sent by such Lender to the Obligors (or either of them) or received by such Lender from the Obligors (or either of them), in each case, relating to any Documents. If the Facility Agent is aware of the non-payment of any principal, interest or other fee payable to a Lender under this Agreement, it shall promptly notify the Lenders of any such Event of Default under Clause 12.1.

24.3

(a) Save where the Facility Agent is expressly stated to be acting as trustee for each Lender, the relationship between the Facility Agent and each Lender is that of agent and principal only. Nothing in this Agreement shall constitute the Facility Agent as a trustee or fiduciary for any Lender or any other person and no action taken by the Lenders pursuant hereto shall be deemed to constitute the Lenders as a partnership, association, joint venture or other entity.

(b) In performing its functions and duties under this Agreement, the Facility Agent shall act solely as agent of the Lenders and does not assume and shall not be deemed to have assumed any responsibility, liability or obligation (whether fiduciary or otherwise) towards, or relationship of agency or trust with, or for, the Borrower in any circumstances whatsoever.

(c) The Facility Agent's duties under the Documents are solely mechanical and administrative in nature.

24.4 The Facility Agent shall not be obliged 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 Facility Agent and each other Lender that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Facility Agent.

24.5 Each Lender shall promptly upon the request of the Facility Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Facility Agent (for itself) in order for the Facility Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Documents.

24.6

(a) The Facility Agent shall not be obliged to ascertain or enquire:

(i) either initially or on a continuing basis, as to the credit or financial condition or affairs of the Obligors (or either of them) or any other person; or

- (ii) as to the performance or observance by the Obligors or either of them of any of the terms or conditions of any of the Documents to which they are a party or any other agreement; or
 - (iii) whether any Default or Event of Default has occurred, and, until it shall have actual knowledge or express notice to the contrary, the Facility Agent shall be entitled to assume that no Default or Event of Default has occurred.
- (b) If the Facility Agent receives notice from a Party referring to this Agreement, describing an Event of Default and stating that the circumstance described is an Event of Default or if the Facility Agent has actual knowledge of an Event of Default, it shall promptly notify the Lenders.
- 24.7 Neither the Facility Agent nor any of its respective officers, employees, directors or agents shall be:
- (a) responsible to any of the Lenders for:
 - (i) any failure or delay in performance, or breach by the Obligors (or either of them), of their obligations under any of the Documents to which they are a party or under any other agreement; or
 - (ii) any recitals, statements, representations or warranties in, or for the legality, validity, effectiveness, enforceability, admissibility in evidence or sufficiency of the Documents to which the Obligors (or either of them) are a party to or any other agreement; or
 - (iii) any breach of or default by the Obligors (or either of them) of their obligations under any of the Documents to which they are a party or any other agreement to which they are a party; or
 - (b) liable for any delay (or any related consequences) in crediting an account with an amount required under the Documents to be paid by the Facility Agent if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose; or
 - (c) bound to account to any Lender for any sum or the profit element of any sum received by it for its own account; or
 - (d) bound to act in accordance with any instructions given to it by the Lenders or disclose to any other person any information relating to the Obligors (or either of them) if such action or disclosure would or might in its opinion constitute a breach of any law or regulation or be otherwise actionable at the suit of any person.

Neither the Facility Agent nor any of its respective officers, employees, directors or agents shall be liable to the Borrower or to any of the Lenders or to any other person for any action taken or omitted to be taken by it under this Agreement or in connection herewith unless caused by its gross negligence or wilful misconduct. Each such officer, employee, director or agent may enforce the provisions of this Clause 24.7 in accordance with and within the meaning of the provisions of the Contracts (Rights of Third Parties) Act 1999.

- (a) In acting as agent for the Lenders, the Facility Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
 - (b) If information is received by another division or department of the Facility Agent, it may be treated as confidential to that division or department and the Facility Agent shall not be deemed to have notice of it.
- 24.9 The Facility Agent accepts no responsibility for the due authorisation or execution (other than by the Facility Agent), or the legality, validity, effectiveness, adequacy or enforceability of any of the Documents or any other agreement or for any failure or delay in performance, or breach by the Obligors (or either of them) of their obligations under the Documents to which they are a party or any other agreement and the Facility Agent shall not be under any liability to any Lender as a result of taking or omitting to take any action in relation to this Agreement or any other agreement, except in the case of gross negligence or wilful misconduct.
- 24.10 Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Document, or that of any professional advisors, including, but not limited to, legal advisors, each Lender confirms to the Facility Agent 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 Document including but not limited to:
- (a) the financial condition, status and nature of each Obligor;
 - (b) the legality, validity, effectiveness, adequacy or enforceability of any Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any 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 Document, the transactions contemplated by the Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Document; and
 - (d) the adequacy, accuracy and/or completeness of the Information Memorandum and any other information provided by the Facility Agent, any Party or by any other person under or in connection with any Document, the transactions contemplated by the Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Document.
- 24.11 The Lenders agree (which agreement shall survive payment of all sums due under this Agreement) to indemnify the Facility Agent (to the extent not reimbursed by the Borrower) within three (3) Business Days of demand rateably according to their respective Contributions (or, if an Advance has not been drawn down, their respective Commitments) from and against any and all liabilities (including FATCA related liability), obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Facility Agent in performing its functions or duties under this Agreement or any of the Security Documents or any action taken or omitted by the Facility Agent, in enforcing or preserving or attempting to enforce or preserve the rights of the Lenders under this Agreement or any of the Security Documents or any other document, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements

resulting from the gross negligence or wilful misconduct of the Facility Agent, its officers or employees.

24.12 The Facility Agent may:

- (a) engage and pay for the advice and services of any lawyers, accountants or other experts and the Facility Agent shall be entitled to rely on the advice and opinions of such lawyers, accountants and other experts and shall not be liable to any of the other Parties for any of the consequences of such reliance;
- (b) perform all or any of its functions and duties hereunder or under the Security Documents through its employees or agents or any office or branch of the Facility Agent from time to time selected by it and notified to the other Parties;
- (c) rely on any communication or document believed by it to be genuine, correct and appropriately authorised and to have been communicated or signed by the person by whom it purports to be communicated or signed and shall not be liable to any of the other Parties for any of the consequences of such reliance. In particular, the Facility Agent may rely on any statement made by a director, 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;
- (d) assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
- (e) without liability to account, make loans to, accept deposits from and generally engage in any kind of banking or trust business with the Obligors (or either of them) as though the Facility Agent were not the Facility Agent.

In relation to its participation in the Loan, if any, the Facility Agent shall have the same rights and powers under the Documents as any Lender and may exercise the same as though it were not the Facility Agent and may retain for its own use and benefit and shall not be liable to account to any of the Lenders for all or any part of any sums received by it by way of fees (and not payable to any Lender) or by way of reimbursement of expenses incurred by it.

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

24.14

- (a) The Facility Agent hereby declares itself as trustee of the security and other rights, title and interest constituted by the Security Documents and the Subordination Agreement and of all monies, property and assets paid to it or held by it or received or recovered by it pursuant to or in connection with the Security Documents or the Subordination Agreement for the benefit of itself and the Lenders, the perpetuity period applicable to the trusts herein declared being one hundred and twenty five (125) years.

- (b) The Facility Agent shall have all the powers and discretions conferred upon trustees by the Trustee Act 1925 (to the extent not inconsistent herewith) and upon such Facility Agent by the Security Documents and the Subordination Agreement.
- (c) By way of supplement to the Trustee Act 1925, it is expressly declared as follows:
 - (i) the Facility Agent may refrain from doing anything which would or might in its opinion be contrary to any law of any jurisdiction or any directive of any agency or any state or which would or might in its opinion otherwise render it liable to any person and may do anything which is in its opinion necessary to comply with any such law or directive; and
 - (ii) save to the extent that the same arises by the virtue of its own gross negligence or wilful misconduct, the Facility Agent shall not be liable for any failure, omission or defect in perfecting the security constituted by any Security Document including without prejudice to the generality of the foregoing (A) failure to obtain any licence, consent or other authority for the execution of any Security Document, (B) failure to register the same in accordance with the provisions of any of the documents of title of the person providing the security to any of the property hereby charged, or (C) failure to take or to require such person to take any steps to secure the creation of any ancillary charge under the laws of any territory concerned.

24.15 The Facility Agent may resign and appoint one of its Affiliates as successor by giving notice to the Lenders.

24.16 Alternatively, subject to the appointment and acceptance of a successor as provided below, the Facility Agent may resign as agent at any time by giving thirty (30) days' notice thereof to the Lenders or the Facility Agent may be removed by the Majority Lenders at any time upon being given not less than thirty (30) days' notice thereof by the Majority Lenders. Upon any such resignation or removal, the Majority Lenders shall have the right to appoint a reputable international bank or financial institution as a successor to the retiring agent. If no successor to the retiring agent shall have been so appointed by the Majority Lenders within twenty-one (21) days of the retiring agent giving notice of resignation or being given notice of its removal (as the case may be), then the retiring agent may, in consultation with the Borrower, appoint a reputable international bank or financial institution as its successor. Upon the acceptance of any appointment as agent under this Agreement by a successor agent, such successor agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring agent, and the retiring agent shall be discharged from its duties and obligations under the Documents. After the Facility Agent's resignation or removal under this Agreement as agent, these provisions and the other provisions relating to the role of the Facility Agent contained in the Documents shall remain in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as agent or trustee under any of the Documents.

24.17

- (a) After consultation with the Borrower, the Majority Lenders may, by giving thirty (30) days' notice (or any shorter notice determined by the Majority Lenders) to the Facility Agent, at any time the Facility Agent is an Impaired Agent, replace the Facility Agent by appointing a successor Facility Agent.
- (b) The retiring Facility Agent shall (at the Lenders' cost) make available to the successor Facility Agent such documents and records and provide such assistance as the

successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Documents.

- (c) The appointment of the successor Facility Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Facility Agent. As from this date, the retiring Facility Agent shall be discharged from any further obligation in respect of the Documents but shall remain entitled to the benefit of this Clause 24.17.
- (d) Any successor Facility Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

24.18 The Facility Agent shall resign in accordance with Clause 24.15 above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Facility Agent pursuant to Clauses 24.15 and 24.17 above) if on or after the date which is three (3) months before the earliest FATCA Application Date relating to any payment to the Facility Agent under the Documents, either:

- (a) the Facility Agent fails to respond to a request under Clause 18 (FATCA) and the Borrower or a Lender reasonably believes that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (b) the information supplied by the Facility Agent pursuant to Clause 18 (FATCA) indicates that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (c) the Facility Agent notifies the Borrower and the Lenders that the Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) the Borrower or a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Facility Agent were a FATCA Exempt Party, and the Borrower or that Lender, by notice to the Facility Agent, requires it to resign.

24.19 The Facility Agent shall provide to the Borrower within five (5) Business Days of a request by the Borrower (but no more frequently than three (3) times before the Final Repayment Date and only if the Borrower reasonably suspects that the Facility Agent may become an Impaired Agent), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Documents, the electronic mail address and/or any other information required to enable the transmission of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Facility Agent to that Lender under the Documents.

24.20 The Facility Agent accepts no responsibility for the adequacy, accuracy and/or completeness of any information supplied in connection with any of the Documents or any other agreement and each Lender confirms to the Facility Agent that it has not relied and will not hereafter rely on the Facility Agent to check or enquire on its behalf about the adequacy, accuracy or completeness of any information provided by the Obligors (or either of them) in connection with

any of the Documents or any other agreement or the transaction therein contemplated (whether or not such information has been or is hereafter circulated to such Lender by the Facility Agent).

24.21 In respect of the Security Documents and the security constituted thereby:

- (a) the Facility Agent in its capacity as trustee or otherwise may accept without enquiry such title as Cocoa Marketing may have to the assets intended to be secured by the Security Documents; and
- (b) the Lenders hereby confirm their approval of each Security Document and agree to the terms thereof.

24.22 The Facility Agent does not accept any responsibility for the adequacy, accuracy and/or completeness of the Information Memorandum or any information supplied in connection herewith.

24.23 No member of the Arranger Group shall have any continuing obligation in connection with this Agreement or the Security Documents and shall not be liable in respect of any matter concerning this Agreement or the Security Documents and accordingly no consent from any member of the Arranger Group shall be necessary to make any amendments to this Agreement (save for this Clause 24) and the Security Documents. The exclusions of liability granted in favour of the Facility Agent set out in this Clause 24 shall apply mutatis mutandis to each member of the Arranger Group.

24.24 The Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Facility Agent's principal office as notified to the other Parties from time to time) as the Lender acting through its facility office:

- (a) entitled to or liable for any payment due under any Document on that day; and
- (b) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any 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.

24.25 Each Lender hereby irrevocably appoints and authorises the Collection Agent to act as its collection agent under this Agreement and the Collection and Conversion Agreement together with such other powers as may be delegated to it by the Facility Agent, instructed by the Majority Lenders, and together with such other powers as are reasonably incidental thereto.

24.26 The Collection Agent shall not have duties or responsibilities except those expressly set out in this Agreement and the Collection and Conversion Agreement.

24.27 The Collection Agent shall be entitled to the protection and rights set out in Clauses 24.2 to 24.24 as if reference to the Facility Agent were references to the Collection Agent.

25 Communications

25.1 Communications in writing

25.1.1 Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax, letter or by email in accordance with Clause 25.6.1.

25.2 Addresses¹¹

25.2.1 The address, email address, telephone and facsimile numbers 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 this Agreement are:

(a) in the case of the Borrower:

[Ghana Cocoa Board
(Cocoa House)
PO Box 933
Accra
The Republic of Ghana

Facsimile No: +233 302 661681 and +233 302 667104
Email: ce.office@cocobod.gh
peter.osei-amoako@cocobod.gh
Attention: Hon. Joseph Boahen Aidoo]

(b) in the case of the Facility Agent:

[Standard Chartered Bank
1 Basinghall Avenue
6th Floor, London
EC2V 5DD
Fax: +4420 7885 9728

Attention: Asset Servicing - Manager
Email: Loans.AgencyUK@sc.com]

(c) in the case of the Lenders: at the address as advised to the Facility Agent,

or any substitute address, telephone or facsimile number, email address or department or officer as the Party may notify to the Facility Agent (or the Facility Agent may notify to the other Parties, if a change is made by the Facility Agent) by not less than five (5) Business Days' notice.

25.3 Delivery

25.3.1 Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

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

¹¹ Notice details to be confirmed

- (b) 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; or
- (c) if by way of website or email, in accordance with Clauses 25.5.1 to 25.5.5 (inclusive) and Clauses 25.6.1 to 25.6.2 (inclusive) respectively,

and, if a particular department or officer is specified as part of its address details provided under Clause 25.2.1, if addressed to that department or officer.

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

25.3.3 All notices from or to the Borrower shall be sent through the Facility Agent.

25.3.4 Any communication or document made or delivered to the Borrower in accordance with this Clause will be deemed to have been made or delivered to the Borrower.

25.4 Notification of address and fax number

25.4.1 Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 25.2.1 or on changing its own address or fax number, the Facility Agent shall notify the other Parties.

25.5 Use of websites

25.5.1 Subject to the exceptions set out below, the Borrower, the Facility Agent and Cocoa Marketing may satisfy their obligations under the Documents to deliver information in relation to the Facility by posting this information onto an electronic website designated by the Facility Agent and accepted by the Borrower (the **Designated Website**), subject to the following:

- (a) information may be provided in this format only to those Lenders who agree to accept this method of communication (the **Website Lenders**). If any Lender (a **Paper Form Lender**) does not agree to the delivery of information electronically, then it shall notify the Facility Agent who shall ensure that all information is provided (in sufficient copies for each Paper Form Lender) in paper form;
- (b) only those Parties selected by the Facility Agent may post information on the Designated Website;
- (c) the Facility Agent shall select a Designated Website provided that:
 - (i) it has received from the website operator assurances satisfactory to it that communications transmitted to, received from and stored on the Designated Website will be as secure as possible from unauthorised access or distortion;
 - (ii) it is satisfied that each of the Borrower, Cocoa Marketing and the Website Lenders has been provided by the website operator, or any other relevant entity, with any website addresses, user names, passwords and other necessary information needed to access the Designated Website; and

- (iii) it is satisfied that, promptly upon a communication being placed on the Designated Website, the intended recipient will be sent a notification by email of the communication and will, for the duration of the Security Period, be able to read and retrieve a copy of the communication;
- (d) the Designated Website may not be used by either Obligor for the delivery of:
 - (i) any Notice of Drawing;
 - (ii) any Security Documents or Sales Contracts;
 - (iii) any Notice of Assignment or Assignment Acknowledgement;
 - (iv) any notification of a Default or Event of Default;
 - (v) any Designation Request or Redesignation Notice;
 - (vi) any other information as decided by the Facility Agent, (acting on the instructions of the Lenders) and notified to the Borrower, Cocoa Marketing and the Website Lenders;
 - (vii) any notification of the tenor of any Interest Period; or
 - (viii) any information detailing amounts payable to or from any Lender;
- (e) for the avoidance of doubt, any notifications to be delivered to the Lenders by the Facility Agent pursuant to Clauses 3.2 and 5.2 of this Agreement shall be sent by fax or email;
- (f) in any event the Borrower shall supply the Facility Agent with at least one (1) paper copy of any information required to be provided by it and/or Cocoa Marketing; and
- (g) any Website Lender may at any time request one (1) paper copy of any information required to be provided under the Documents which is posted onto the Designated Website. The Facility Agent shall comply with any such request within five (5) Business Days.

25.5.2 The Facility Agent shall promptly notify the Website Lenders, the Borrower and Cocoa Marketing in a paper form (in accordance with Clause 25.2.1) if:

- (a) it has selected a Designated Website. It must also provide all information necessary to enable the Website Lenders to access the Designated Website;
- (b) it has deselected a Designated Website (which decision shall be in its absolute discretion and subject to five (5) Business Days' prior notice to the Website Lenders and the Borrower);
- (c) any new information is posted onto the Designated Website;
- (d) any changes are made to information already posted on the Designated Website; or
- (e) information posted on the Designated Website cannot be accessed for technical or software reasons or as the result of a virus.

If the Facility Agent notifies the Website Lenders, the Borrower and Cocoa Marketing under paragraph (b) or (e) above, all information provided under the Documents after the date of that notice shall be supplied in paper form unless and until the Facility Agent, the Borrower and each Website Lender are satisfied that the circumstances giving rise to the notification are no longer continuing or a replacement website has been selected.

25.5.3 Any information posted on a Designated Website shall be validly given if:

- (a) the sender places the communication on the Designated Website (provided that it has not been deselected by the Facility Agent in accordance with Clause 25.5.2(b) above) in accordance with the procedures and requirements of the relevant website operator;
- (b) the details and instructions (including any password) necessary in order to access the communication on the Designated Website have been notified to the Facility Agent, the Borrower, Cocoa Marketing and each Website Lender by letter, fax or email in accordance with Clauses 25.5.1 to 25.5.4 (inclusive);
- (c) the communication is placed on the Designated Website in PDF format or any other format acceptable to the Facility Agent, the Borrower and the Website Lenders and a paper copy is, in any event, provided to the Facility Agent; and
- (d) each recipient is sent, by letter or fax in accordance with this Agreement or by electronic mail in accordance with Clause 25.6.1 below, a notice (a **Notification**) that a communication has been placed on the Designated Website for their attention and giving instructions for gaining access to that communication (to the extent not already notified under Clause 25.5.2(a) above),

unless the sender becomes aware that:

- (i) any Notification sent has not been received by the recipient; and
- (ii) the Designated Website or any information posted on the Designated Website cannot be accessed by any of the Website Lenders.

25.5.4 Neither the Borrower nor the Facility Agent shall be required to provide information via the Designated Website and each may revert to providing paper copy information at any time subject to it having provided prior written notification to each other, the Website Lenders and Cocoa Marketing.

25.5.5 Any Website Lender may at any time, by giving at least five (5) Business Days' notice, elect to become a Paper Form Lender.

25.6 Electronic communication

25.6.1 Unless and until notified to the contrary, any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means, if those two Parties:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
- (b) notify each other of any change to their address or any other such information supplied by them.

- 25.6.2 Any such electronic communication as specified in Clause 25.6.1 to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- 25.6.3 Any electronic communication made between two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Lender to the Facility Agent only if it is addressed in such a manner as the Facility Agent shall specify for this purpose.
- 25.6.4 Any electronic communication which becomes effective, in accordance with Clause 25.6.3, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- 25.6.5 Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 25.6.

English language

- 25.7 Any notice given under or in connection with this Agreement must be in English.
- 25.8 All other documents provided under or in connection with this Agreement must be:
- (a) in English; or
 - (b) if not in English, 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.

Communication when Facility Agent is an Impaired Agent

- 25.9 If the Facility Agent is an Impaired Agent, the Parties may, instead of communicating with each other through the Facility Agent, communicate with each other directly and (while the Facility Agent is an Impaired Agent) all the provisions of the Documents which require communications to be made or notices to be given to or by the Facility Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Facility Agent has been appointed.

26 Assignments and Transfers

- 26.1 This Agreement shall be binding upon and inure to the benefit of the Facility Agent, the Lenders and the Borrower and their respective successors and permitted assigns.
- 26.2 The Borrower shall not assign or transfer all or any part of its rights and/or obligations under this Agreement.
- 26.3 Each Lender may at any time and from time to time change its lending office but such Lender shall give the Facility Agent (which shall notify the Borrower) five (5) Business Days' prior notice thereof. Until the Facility Agent receives such notification, it shall be entitled to assume that each Lender is acting through the lending office of which it last had notice.
- 26.4 Any Lender (the **Existing Lender**) may, at any time, assign or transfer all or any part of its rights, benefits and/or obligations under the Documents to (i) another bank or financial

institution or a trust, fund or other entity which is not an Affiliate of the Borrower and which is regularly engaged or established for the purpose of making, purchasing or investing in loans, securities or other financial assets or (ii) an insurance or reinsurance company, (a **Transferee**) by delivering to the Facility Agent a Transfer Certificate duly completed and duly executed by the Existing Lender and the Transferee together with the registration fee referred to in Clause 26.6. Any such assignments or transfers by an Existing Lender in respect of outstanding Advances shall be made pro rata to its participation in such Advances. Such transfers shall be in a minimum amount of \$5,000,000 (five million Dollars) (or, if that Lender's Commitment is less than \$5,000,000 (five million Dollars), the full amount of that Lender's Commitment) and up to the whole amount of that Lender's Commitment. Upon signature of any such Transfer Certificate by the Facility Agent (on behalf of itself and the other Lenders), which signature shall be effected as promptly as is practicable after such Transfer Certificate has been delivered to the Facility Agent, and subject to the terms of such Transfer Certificate:

- (a) to the extent that in such Transfer Certificate the Existing Lender seeks to assign or transfer its rights and/or obligations under the Documents, each of the Obligors and the Existing Lender shall each be released from further obligations to the other under the Documents and their respective rights against each other shall be cancelled (such rights and obligations being referred to in this Clause 26.4 as **discharged rights and obligations**);
- (b) to the extent that in such Transfer Certificate the Existing Lender seeks to assign or transfer its rights and/or obligations under the Documents, each of the Obligors and the Transferee shall assume obligations towards each other and/or acquire rights against each other which differ from the discharged rights and obligations only insofar as the Obligors and the Transferee have assumed and/or acquired the same in place of the Obligors and the Existing Lender and the Transferee shall accordingly become a Lender and be bound by and entitled to the benefit of the Documents as a Lender;
- (c) the Commitment of the Existing Lender shall be reduced by, and the Commitment of the Transferee shall be equal to (or if the Transferee has an existing Commitment, its existing Commitment shall be increased by), the amount specified in such Transfer Certificate as the portion to be transferred; and
- (d) the Facility Agent, the Transferee, the other Lenders and each other Finance Party shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had such Transferee been an original party hereto as a Lender with the rights and/or obligations acquired or assumed by it as a result of such transfer and to that extent the Facility Agent, the Transferee, the other Lenders and each other Finance Party shall each be released from further obligations to each other under the Documents.

Each of the Lenders and the Borrower hereby authorises and instructs the Facility Agent to sign any such Transfer Certificate on its behalf and undertakes not to withdraw, revoke or qualify such authority or instruction at any time. Promptly upon its signature of any Transfer Certificate, the Facility Agent shall notify each of the Obligors, the Existing Lender, the Transferee and the other Lenders. The Facility Agent shall only be obliged to execute a Transfer Certificate 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 such assignment or transfer to a Transferee, the completion of which the Facility Agent shall promptly notify to the Existing Lender and the Transferee. For the avoidance of doubt, no Lender shall be obliged to consult with, or obtain the consent of, any Obligor before making or effecting any assignment or transfer in accordance with this Clause 26.4.

- 26.5 The Facility Agent shall be entitled to rely on any Transfer Certificate or Increase Confirmation believed by it to be genuine and correct and to have been presented or signed by the persons by whom it purports to have been presented or signed and shall not be liable to any of the Parties to this Agreement for the consequences of such reliance.
- 26.6 If any Lender causes the transfer of all or any part of its rights, benefits and/or obligations hereunder (other than any transfer to an Affiliate of that Lender), it shall cause to be paid to the Facility Agent for its own account a registration fee of \$3,000 (three thousand Dollars) and shall also pay to the Facility Agent on demand all expenses (including, but not limited to, legal fees and all value-added tax thereon) certified by the Facility Agent as having been incurred by it in connection with such transfer, provided that such expenses were agreed to in writing by the Lender prior to such expenses being incurred.
- 26.7 A Lender may sub-participate all or any part of its rights and/or obligations under the Documents without the consent of, or notice to, the Obligors.
- 26.8 In addition to the other rights provided to Lenders under this Clause 26, each Lender may, without consulting with or obtaining consent from any Obligor, at any time create Security Interests in or over (whether by way of collateral or otherwise) all or any of its rights under any Document to secure obligations of that Lender including, without limitation:
- (a) any charge, assignment or other Security Interest 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 Interest 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 other Security Interest shall:
 - (i) release a Lender from any of its obligations under the Documents or substitute the beneficiary of the relevant charge, assignment or other Security Interest for the Lender as a party to any of the Documents; or
 - (ii) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Documents.

27 Confidentiality

- 27.1 Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 27.2 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.
- 27.2 Any Finance Party may disclose:
- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners, insurers, insurance brokers, credit insurers and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional

obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

- (b) to any person:
- (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Documents or which succeeds (or which may potentially succeed) it as Facility Agent or Collection 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 Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph 27.2(b)(i) or 27.2(b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Documents on its behalf;
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph 27.2(b)(i) or 27.2(b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (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 a Security Interest (or may do so) pursuant to Clause 26.8;
 - (viii) who is a Party; or

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

- (A) in relation to paragraphs 27.2(b)(i), 27.2(b)(ii) and 27.2(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 27.2(b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive

and is informed that some or all of such Confidential Information may be price-sensitive information;

- (C) in relation to paragraphs 27.2(b)(v) or 27.2(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 27.2(b)(i) or 27.2(b)(ii) above applies to provide administration or settlement services in respect of one or more of the Documents including in relation to the trading of participations in respect of the 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 27.2(c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrower and the relevant Finance Party.
- 27.3 Nothing in any Document shall prevent disclosure of any Confidential Information or any other matter to the extent that preventing that disclosure would otherwise cause any transaction contemplated by the Documents or any transaction carried out in connection with any transaction contemplated by the Documents to become an arrangement described in Part II A 1 of Annex IV of Directive 2011/16/EU.

28 Miscellaneous

28.1

- (a) Subject as provided in this Clause 28.1(a), the provisions of this Agreement and any Security Documents may be amended, waived or suspended with the prior written consent of the Borrower (in the case of this Agreement) or Cocoa Marketing (in the case of a Security Document) and the Majority Lenders or by the Facility Agent acting on the instructions of the Majority Lenders, in each case evidenced by a written instrument, and any such amendment, waiver or suspension shall be binding upon all the Lenders. [Without prejudice to Clause 20.3 (*Changes to reference rates*)], nothing in this Clause 28.1(a) shall authorise the effecting, without the prior written consent of the Facility Agent and all the Lenders, of:
- (i) any decrease in the Interest Margin;
 - (ii) any extension of the date for, or reduction in the amount of, any payment of principal;
 - (iii) any reduction in the rate of interest and in the amount of any fees or other amounts payable under this Agreement;
 - (iv) any increase in a Lender's Commitment;
 - (v) any extension of the Main Crop Availability Period or the Light Crop Availability Period;

- (vi) any change to the definition of "Majority Lenders";
 - (vii) any change to the definition of "Sanctions", "Sanctions Authority", "Sanctions List", "Prohibited Person" and "Restricted Country";
 - (viii) any change in the currency of any payment to be made under this Agreement;
 - (ix) any change to Clause 2.1;
 - (x) any change to Clause 2.3;
 - (xi) any change to Clauses 7.1, 7.2 and 7.4;
 - (xii) any changes to Clause 10.1(bb);
 - (xiii) any changes to Clause 11.1(t);
 - (xiv) any change to Clause 13 (*Security Margin*);
 - (xv) any change to Clause 17 (*Taxation*);
 - (xvi) any changes to Clauses 22.2, 22.3, 22.4 and 22.5;
 - (xvii) any change to Clause 26 (*Assignments and Transfers*);
 - (xviii) any change to Clause 29 (*Law and Jurisdiction*);
 - (xix) any change to this Clause 28.1(a);
 - (xx) any other matter in respect of which the terms of this Agreement expressly require the agreement of all the Lenders;
 - (xxi) any release or substitution of any Security Interest created by any of the Security Documents (other than in respect of any such release or substitution which is made under and in accordance with, and is expressly permitted by, the terms of any Document); or
 - (xxii) any change of the Security Documents which may have a material detrimental effect on the terms of the Security Documents.
- (b) Notwithstanding the provisions of Clause 28.1(a), no provision or term of this Agreement which in any way relates to the duties, functions, powers or responsibilities of the Facility Agent may be amended, waived or suspended without the prior consent of the Facility Agent which consent shall not be unreasonably withheld or delayed.
- (c) For so long as a Defaulting Lender has any available Commitment, in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Documents, that Defaulting Lender's Commitments will be reduced by the amount of its available Commitments. For the purposes of this Clause, the Facility Agent may assume that the following Lenders are Defaulting Lenders:

- (i) any Lender which has notified the Facility Agent that it has become a Defaulting Lender;
- (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a) or (b) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Facility Agent) or the Facility Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

- 28.2 No delay or omission on the part of the Facility Agent or any Lender in exercising any right, power or remedy under this Agreement shall impair such right, power or remedy or be construed as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies herein provided are cumulative and not exclusive of any rights, powers and remedies provided by law and may be exercised from time to time and as often as the Facility Agent or any Lender deems expedient.
- 28.3 Any waiver by the Facility Agent or the Lenders of any provision of this Agreement, or any consent or approval given by the Facility Agent or the Lenders hereunder, shall only be effective if given in writing and then only for the purpose and upon the terms for which it is given.
- 28.4 If at any time any one or more of the provisions in this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law or regulation, neither the validity, legality and enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way affected or impaired thereby.
- 28.5 The obligations of the Borrower under this Agreement shall remain in full force and effect until the Facility Agent and the Lenders shall have received all amounts due or to become due to them hereunder in accordance with the terms hereof and, without prejudice to the foregoing, the obligations of the Borrower under Clauses 8.6, 15 (*Fees and Expenses*), 17 (*Taxation*), 20.1 and 21 (*Indemnities*) shall survive the repayment of the Loan.
- 28.6 This Agreement may be executed in any number of counterparts and by the different Parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.
- 28.7 A certificate or determination of the Facility Agent (on behalf of itself or any of the Lenders) as to any amount due to the Facility Agent or the Lenders (or any of them) under the Documents (or any of them) shall, in the absence of manifest error, be conclusive and binding on the Borrower.
- 28.8 For the avoidance of doubt, the resignation or removal of the Facility Agent pursuant to Clause 24.15 shall not in any way prejudice or adversely affect any rights or remedies the Borrower and/or Lenders may have in law against the Facility Agent in respect of any amounts due hereunder from the Facility Agent to the Borrower and/or Lenders as applicable.
- 28.9 Except as expressly provided in Clause 24.7, the Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party. The Parties may rescind, vary, waive, release, assign, novate or otherwise dispose of any of their respective rights or obligations under this Agreement

(including without limitation rights conferred by Clause 24.7(a)) without the consent of any person who is not a Party.

29 Law and Jurisdiction

- 29.1 English law governs this Agreement, its interpretation and any non-contractual obligations arising from or connected with it.
- 29.2 It is agreed that any dispute arising out of or in connection with the Documents (other than the Subordination Agreement), including without limitation any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration. Disputes submitted to arbitration shall be resolved in accordance with the Rules of Arbitration of the LCIA, from time to time in force. Those Rules are deemed to be incorporated by reference into this Clause insofar as they do not conflict with its express provisions. The tribunal shall consist of three (3) arbitrators. The Finance Parties shall appoint one (1) arbitrator, the Borrower shall appoint one (1) arbitrator, and the parties shall seek to agree on, and appoint, a third arbitrator. Failing agreement between the parties, the two arbitrators already appointed shall appoint the third arbitrator. The third arbitrator will be chairman of the tribunal. The seat of arbitration shall be London. The language of the arbitration shall be English. The tribunal shall give a written record of the award and reasons therefor. Save as otherwise set out in this Clause 29, the parties shall exclude the jurisdiction of the courts under Sections 45 and 69 of the Arbitration Act 1996.
- 29.3 Notwithstanding Clause 29.2, before any arbitrator has been appointed by the Facility Agent or the Lenders, as applicable, to determine a dispute, the Facility Agent, acting on the instructions of the Majority Lenders, may require that all disputes or a specific dispute be heard by a court of law. In such case, the Borrower hereby irrevocably and unconditionally:
- (a) submits to the non-exclusive jurisdiction of the courts of England and waives any objection to proceedings with respect to this Agreement in such court on the grounds of venue or inconvenient forum; and
 - (b) appoints [the Manager of Ghana Cocoa Marketing Company (UK) Ltd. of Unit 5, Granard Business Centre, Bunn's Lane, Mill Hill, London NW7 2DQ]¹², for the time being as its agent for service of process in respect of proceedings before such court (and agrees that service on such agent shall be deemed due service for the purposes of proceedings in such court) and undertakes that, throughout the term of this Agreement, it will maintain an agent in England for such purpose.
- 29.4 To the extent that the Borrower has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from the jurisdiction of any court or from set-off or any legal process (whether service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution or judgment or otherwise) with respect to itself or any of its property and assets, the Borrower hereby irrevocably waives and agrees not to plead or claim such immunity in respect of its obligations under this Agreement.
- 29.5 Nothing in this Clause shall affect the right of the Facility Agent or any Lender to serve process in any manner permitted by law or limit the right of the Facility Agent or any Lender to take proceedings with respect to this Agreement against the Borrower in any jurisdiction nor shall the taking of proceedings with respect to this Agreement in any jurisdiction preclude the Facility

¹² To be confirmed

Agent or any Lender from taking proceedings with respect to this Agreement in any other jurisdiction, whether concurrently or not.

- 29.6 The Borrower acknowledges and agrees that no provision of this Agreement shall constitute or imply, in any way, a waiver by any Lender of any immunities or privileges provided in the relevant constitutional document, or other document of incorporation, of that Lender or any other applicable law or international treaties.

30 Contractual recognition of bail-in

30.1 Notwithstanding any other term of any Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

30.1.1 any Bail-In Action in relation to any such liability, including (without limitation):

- (a) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
- (b) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
- (c) a cancellation of any such liability; and

30.1.2 a variation of any term of any Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

Signed by the parties

Schedule 1 – Commitments

Part 1 – Main Crop Lenders and Main Crop Commitments¹³

Main Crop Lender

Main Crop Commitment USD

TOTAL	[1,300,000,000]
--------------	-------------------------



¹³ Lender details and commitments to be inserted

Part 2 – Light Crop Lenders and Light Crop Commitments¹⁴

Light Crop Lender

Light Crop Commitment USD

TOTAL

250,000,000

¹⁴ Lender details and commitments to be inserted

Schedule 2 – Notice of Drawing

To: Standard Chartered Bank
1 Basinghall Avenue,
6th Floor,
London,
EC2V 5DD

Attention: [insert]

[Insert] 2022

Dear Sirs,

Notice of Drawing

- 1 We refer to the facility agreement (the **Facility Agreement**) dated [Insert] 2022 made between (1) Ghana Cocoa Board (as **Borrower**), (2) the banks and financial institutions referred to therein as **Lenders**, (3) the banks and financial institutions referred to therein as **Co-ordinating Initial Mandated Lead Arrangers and Bookrunners**, (4) Ghana International Bank plc (as **Initial Mandated Lead Arranger and Collection Agent**) and (5) Standard Chartered Bank (as **Facility Agent**), pursuant to which the Lenders have agreed, upon and subject to the terms and conditions therein contained, to make available to the Borrower a loan facility of up to \$[1,300,000,000 (one billion three hundred million Dollars)].
- 2 Terms defined in the Facility Agreement shall have the same meanings when used herein.
- 3 We refer to [clause 3.1][clause 5.1] of the Facility Agreement and hereby request the following [Main Crop Advance][Light Crop Advance]:
 - (a) the amount of the proposed [Main Crop Advance][Light Crop Advance] is \$[Insert]*;
 - (b) the Drawdown Date of the proposed [Main Crop Advance][Light Crop Advance] is [Insert];
 - (c) the first Interest Period of the proposed [Main Crop Advance][Light Crop Advance] is [Insert]; and
 - (d) the payment instructions for the proposed [Main Crop Advance][Light Crop Advance] are [Insert].
- 4 We confirm that:
 - (a) the representations and warranties made by us in clause 10.1 of the Facility Agreement are true and accurate on the date hereof as if made on such date;
 - (b) the undertakings contained in clauses 11.1, 11.2 and 11.3 of the Facility Agreement have at all times been complied with;
 - (c) this Notice of Drawing is irrevocable;

- (d) as at the date of this Notice of Drawing and the proposed Drawdown Date of the requested [Main Crop][Light Crop] Advance, Cocoa Marketing does not, and will not, have negative equity; and
- (e) no Default or Event of Default has occurred and is continuing or would result from the proposed [Main Crop Advance][Light Crop Advance].

Authorised Signatory

for and on behalf of
Ghana Cocoa Board

- * In the case of a Main Crop Advance: Not less than \$100,000,000 (one hundred million Dollars) or, if more, an integral multiple of \$10,000,000 (ten million Dollars) or the balance of the Total Main Crop Commitments.
- * In the case of a Light Crop Advance: Not less than \$50,000,000 (fifty million Dollars) or, if more, an integral multiple of \$50,000,000 (fifty million Dollars) or the balance of the Light Crop Available Amount.
- ** Applicable only to the first Interest Period.

Schedule 3 – Form of Transfer Certificate

To: Standard Chartered Bank
1 Basinghall Avenue,
6th Floor,
London,
EC2V 5DD

for and on behalf of itself and acting as agent and trustee on its own behalf and for and on behalf of the Lenders defined in the Facility Agreement referred to below and the Collection Agent.

Attention: [insert]

[Insert] 20[]

This certificate (**Transfer Certificate**) relates to a facility agreement (the **Facility Agreement**) dated [Insert] 2022 made between (1) Ghana Cocoa Board (as **Borrower**), (2) the banks and financial institutions referred to therein as **Lenders**, (3) the banks and financial institutions referred to therein as **Co-ordinating Initial Mandated Lead Arrangers and Bookrunners**, (4) Ghana International Bank plc (as **Initial Mandated Lead Arranger and Collection Agent**) and (5) Standard Chartered Bank (as **Facility Agent**), pursuant to which the Lenders have agreed, upon and subject to the terms and conditions therein contained, to make available to the Borrower a loan facility of up to \$[1,300,000,000 (one billion three hundred million Dollars)].

Terms defined in the Facility Agreement shall, unless otherwise defined herein, have the same meanings in this Transfer Certificate as in the Facility Agreement.

Under the terms of the Facility Agreement each of the Lenders and the Borrower authorised and instructed the Facility Agent to sign the Transfer Certificate on its behalf and undertook not to withdraw, revoke or qualify such authority or instruction at any time.

- 1 [insert name of Existing Lender] (the **Existing Lender**):
 - (a) confirms the accuracy of the summary of its participation under the Facility Agreement appearing in the Schedule hereto;
 - (b) requests [insert name of Transferee] (the **Transferee**) to accept and procure the substitution for the Existing Lender of the Transferee in respect of the portion of its participation specified in the Schedule by countersigning the copy of this Transfer Certificate executed by the Existing Lender and delivering the same to the Facility Agent at its address for the service of notice specified in clause 25.2 of the Facility Agreement; and
 - (c) gives notice to the Transferee that the Existing Lender is under no obligation to repurchase all or any part of the rights and/or obligations the subject of this Transfer Certificate at any time nor to support any losses suffered by the Transferee.
- 2 The Transferee hereby requests the Borrower and the Lenders to accept the executed copies of this Transfer Certificate as being delivered pursuant to and for the purposes of clause 26.4 of the Facility Agreement so as to take effect in accordance with the terms thereof on the date of transfer as notified by the Facility Agent.

3 The Transferee:

- (a) confirms that it has received a copy of the Documents together with such other documents and information as it has required in connection with the transaction contemplated thereby;
- (b) confirms that it has not relied and will not hereafter rely on the Existing Lender to check or enquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any of the Documents or any such documents or information;
- (c) agrees that it has not relied and will not rely on the Existing Lender, the Facility Agent or the Lenders to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of either of the Obligors, or any other party to any of the Documents (save as otherwise expressly provided therein);
- (d) has power and authority to become a party to the Facility Agreement and has taken all necessary action to authorise execution of this Transfer Certificate and to obtain all necessary approvals and consents to the assumption of its obligations under the Documents;
- (e) acknowledges and accepts the provisions of paragraph 31(c) above; and
- (f) if not already a Lender, appoints the Facility Agent to act as its agent and trustee as provided in the Facility Agreement and agrees to be bound by the terms of clause 22 (*Defaulting Lenders*) of the Facility Agreement.

4 The Transferee hereby undertakes with the Existing Lender and each of the other parties to the Facility Agreement that it will perform in accordance with its terms all those obligations which by the terms of the Documents will be assumed by it after delivery of the executed copies of this Transfer Certificate to the Facility Agent and satisfaction of the condition (if any) subject to which this Transfer Certificate is expressed to take effect.

5 By execution of this Transfer Certificate and in reliance upon the representations and warranties of the Transferee, the Facility Agent and the Lenders accept the Transferee as a party to the Facility Agreement in substitution for the Existing Lender with respect to all those rights and/or obligations which by the terms of the Facility Agreement will be assumed by the Transferee after delivery of the executed copies of this Transfer Certificate to the Facility Agent and satisfaction of the conditions (if any) subject to which this Transfer Certificate is expressed to take effect.

6 Neither the Existing Lender, the Facility Agent, the Collection Agent nor the Lenders:

- (a) makes any representation or warranty nor assumes any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of any of the Documents or any document relating thereto; and/or
- (b) assumes any responsibility for the financial condition of either of the Obligors or any other party to any of the Documents or any such other document or for the performance and observance by the Obligors or any other party to any of the Documents or any such other document (save as otherwise expressly provided therein) and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded (except as aforesaid).

7 The agreements and undertakings of the Transferee in this Transfer Certificate are given to, and for the benefit of, and made with each of the other parties to the Documents.

8 This Transfer Certificate shall be governed by, and construed in accordance with, English law.

Existing Lender

Transferee

By:

By:

Dated:

Dated:

Facility Agent

This Transfer Certificate is accepted by the Facility Agent for and behalf of itself as Facility Agent, for and on behalf of the Borrower, for and on behalf of the other Lenders under the Facility Agreement, and for and on behalf of the Collection Agent. The Transfer Date is confirmed as *[Insert]*.

[Insert]

By:

Dated:

Schedule

Undrawn Commitment	Outstanding Advances	Participation Transferred
\$	\$	%

Administrative Details of Transferee

Lending Office:

Contact for Administration:

Contact for Credit and Documentation:

Account for Payments:

Telephone:

Schedule 4 – Form of Letter from Ministry of Finance

To: Standard Chartered Bank
1 Basinghall Avenue,
6th Floor,
London,
EC2V 5DD

Attention: [insert]

as Facility Agent for and on behalf of the Lenders

[Insert] 2022

Ghana Cocoa Board – up to \$[1,300,000,000] Trade Finance Facility

We refer to the facility agreement (the **Facility Agreement**) dated [Insert] 2022 made between (1) Ghana Cocoa Board (as **Borrower**), (2) the banks and financial institutions referred to therein as **Lenders**, (3) the banks and financial institutions referred to therein as **Co-ordinating Initial Mandated Lead Arrangers and Bookrunners**, (4) Ghana International Bank plc (as **Initial Mandated Lead Arranger and Collection Agent**) and (5) Standard Chartered Bank (as **Facility Agent**), pursuant to which the Lenders have agreed, upon and subject to the terms and conditions therein contained, to make available to the Borrower a loan facility of up to \$[1,300,000,000 (one billion three hundred million Dollars)].

Terms defined in the Facility Agreement shall have the same meaning when used herein. We hereby:

- 1 approve, in accordance with applicable laws and regulations pertaining to the Borrower, the above mentioned loan facility and the execution of the Documents by each of the Obligors;
- 2 confirm that no other approval is required in order for each of the Obligors to enter into and perform under the Documents;
- 3 confirm that the entry into and performance by each of the Obligors of the obligations under the Documents does not and will not violate in any respect any law or regulation of any governmental or official authority or body, or their constitutional documents, or any agreement, treaty, contract or other undertaking to which they are a party or which is binding on them or any of their respective assets; and
- 4 confirm that neither Obligor is subject to any foreign exchange requirements in relation to any proceeds deriving from the Sales Contracts that are paid into the Collection Accounts and accordingly such moneys may be used without restriction in settling obligations under the Documents.

for and on behalf of
Ministry of Finance

Schedule 5 – Approved Purchasers¹⁵

NAME OF APPROVED PURCHASER	COUNTRY

¹⁵ Updated Approved Purchaser schedule to be sent

NAME OF APPROVED PURCHASER	COUNTRY

NAME OF APPROVED PURCHASER	COUNTRY

Schedule 6 – Monthly Stock and Delivery Report¹⁶

Accra, [date]

Dear Sirs,

With reference to clause 11.1 of the Receivables Backed Trade Finance Facility of up to \$[1,300,000,000] signed [Insert] 2022 (the **Facility Agreement**).



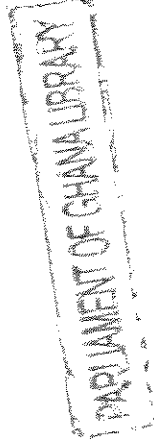
From: **GHANA COCOA BOARD, Accra**

Cocoa House PO Box 933 Accra –

The Republic of Ghana

To: **Standard Chartered Bank**

1 Basinghall Avenue,
6th Floor, London,
EC2V 5DD



¹⁶ Format of delivery section of the report to be agreed

Monthly Report - Cocoa volumes for the Crop Year 2022-23

In metric tonnes	30/09/22	15/10/22	15/11/22	15/12/22	15/01/23	15/02/23	15/03/23	15/04/23	15/05/23	15/06/23	15/07/23	15/08/23	15/09/23
Monthly cocoa production													
Cumulative cocoa production													
Monthly cocoa purchase													
Cumulative cocoa purchase													
Monthly cocoa shipment													
Cumulative cocoa shipment													
% of monthly purchase paid													
% of cumulative purchase paid													
Monthly cocoa inventory (Cocoa Taken Over)													
Cumulative cocoa inventory (Closing Stock)													

- 1 Please find hereunder our Monthly Report to the Facility Agent.
- 2 Pursuant to clause 11.1(n)(iii), in respect of each Sales Contract (identified below), the quantities of cocoa (i) delivered and (ii) remaining to be delivered under those Sales Contracts is:
[identify Sales Contract] [identify amount of cocoa delivered to date] [identify amount of cocoa to be delivered]
- 3 Pursuant to clause 11.1(n)(iv), the amount of cocoa stock supplies available to Cocoa Marketing in the Republic of Ghana for delivery to the relevant purchasers under sales contracts assigned or to be assigned to secure the obligations of the Borrower under the 2019 LT Facility (as defined in the Facility Agreement) is
[insert amount].
- 4 Pursuant to clause 11.1(n)(v), the following Security Interests have been created to secure the obligations of the Borrower under the 2019 LT Facility¹⁷(as defined in the Facility Agreement):
[insert details of any Security Interests created in respect of the 2019 LT Facility]

Signed by _____

¹⁷ References to Cocoa Bills Refinance Facility to be inserted once it has been executed and utilised

Schedule 7 – Security Interests

To: Standard Chartered Bank
1 Basinghall Avenue,
6th Floor,
London,
EC2V 5DD

Attention: [insert]

[Insert] 2022

Dear Sirs,

- 1 We refer to the facility agreement (the **Facility Agreement**) dated [insert] 2022 made between (1) Ghana Cocoa Board (as **Borrower**), (2) the banks and financial institutions referred to therein as **Lenders**, (3) the banks and financial institutions referred to therein as **Co-ordinating Initial Mandated Lead Arrangers and Bookrunners**, (4) Ghana International Bank plc (as **Initial Mandated Lead Arranger and Collection Agent**) and (5) Standard Chartered Bank (as **Facility Agent**), pursuant to which the Lenders have agreed, upon and subject to the terms and conditions therein contained, to make available to the Borrower a loan facility of up to \$[1,300,000,000 (one billion three hundred million Dollars)].
- 2 Terms defined in the Facility Agreement shall have the same meanings when used herein.
- 3 We refer to Clause 9.1(f) of the Facility Agreement.
- 4 We hereby:
 - (i) confirm, with respect to the 2019 LT Facility, that there are no restrictions under the 2019 LT Facility, and no consents or waivers are required under the 2019 LT Facility, for any Obligor to enter into or perform any of their obligations under any Document;
 - (ii) identify the Security Interests created or subsisting pursuant to the 2019 LT Facility in the table set out below;
 - (iii) confirm that borrowing the Total Commitments would not cause any borrowing or similar limit binding on the Borrower to be exceeded;
 - (iv) confirm that the representations and warranties set out in each Document in relation to the Borrower are true; and

- (v) identify all Security Interests created over any of the assets of each Obligor on or prior to the date of this Agreement (other than those specified in paragraphs (i) to (iv) above) in the table set out below.

Sales Contract Assigned to 2019 LT Facility¹⁸

Date	Purchaser	MK Number	Tonnage	Price (\$)	Value (\$)	Shipping Period

Any other Security Interests Created

Date of creation	Type of Security Interest	Category of assets secured	Value of assets secured

Authorised Signatory

for and on behalf of
Ghana Cocoa Board

¹⁸ To confirm if there is any other security

Schedule 8– Excess Withdrawal Request

To: Standard Chartered Bank
1 Basinghall Avenue,
6th Floor,
London,
EC2V 5DD

Attention: [insert]

[insert]

Dear Sirs,

- 1 We refer to the facility agreement (the **Facility Agreement**) dated [insert] 2022 made between (1) Ghana Cocoa Board (as **Borrower**), (2) the banks and financial institutions referred to therein as **Lenders**, (3) the banks and financial institutions referred to therein as **Co-ordinating Initial Mandated Lead Arrangers and Bookrunners**, (4) Ghana International Bank plc (as **Initial Mandated Lead Arranger and Collection Agent**) and (5) Standard Chartered Bank (as **Facility Agent**), pursuant to which the Lenders have agreed, upon and subject to the terms and conditions therein contained, to make available to the Borrower a loan facility of up to \$[1,300,000,000 (one billion three hundred million Dollars)].
- 2 Terms defined in the Facility Agreement shall have the same meanings when used herein.
- 3 We refer to Clause 13.4(c) of the Facility Agreement.
- 4 We have determined that the Credit Balance on the Trustee Collection Account exceeds the Repayment Margin by [insert USD amount of excess amount] (the **Excess Amount**).
- 5 Accordingly, we wish to withdraw an amount equal to [insert the amount requested to be withdrawn which shall not exceed the Excess Amount] (the **Withdrawal Amount**) from the Trustee Collection Account.
- 6 We evidence that the withdrawal of the Withdrawal Amount will not result in a Margin Shortfall with the following information:

Trustee Collection Account Balance	USD	A
Repayment Margin	USD	B
Excess Cash	USD	A - B
Cash Withdrawal Request	USD	C
Account Balance after the Cash Withdrawal	USD	A - C
Outstanding Saks Contracts Value	USD	D
Margin Asset after the Cash Withdrawal	USD	A - C + D
Outstanding Loan Amount	USD	E
Security Margin after the Cash Withdrawal	%	(A - C + D) / E

Schedule 9– Reference Rate Terms

DOLLARS

CURRENCY:

Dollars.

Cost of funds as a fallback

Cost of funds will not apply as a fallback.

Backstop Rate Switch Date

Shall be [] *[RS note: Lenders to confirm.]*

Definitions

Additional Business Days:

An RFR Banking Day.

**Business Day Conventions
(definition of "Month" and Clause
11.2 (Non-Business Days)):**

(a) If any period is expressed to accrue by reference to a Month or any number of Months then, in respect of the last Month of that period:

(i) subject to paragraph (iii) 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;

(ii) 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

(iii) 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.

- (b) 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).
- (a) The short-term interest rate target set by the US Federal Open Market Committee as published by the Federal Reserve Bank of New York from time to time; or
- (b) if that target is not a single figure, the arithmetic mean of:
 - (i) the upper bound of the short-term interest rate target range set by the US Federal Open Market Committee and published by the Federal Reserve Bank of New York; and
 - (ii) the lower bound of that target range.

In relation to the Central Bank Rate prevailing at close of business on any RFR Banking Day, the 20 per cent trimmed arithmetic mean (calculated by the Facility Agent, or by any other Finance Party which agrees to do so in place of the Facility Agent) of the Central Bank Rate Spreads for the five most immediately preceding RFR Banking Days for which the RFR is available.

In relation to any RFR Banking Day, the difference (expressed as a percentage rate per annum) calculated by the Facility Agent (or by any other Finance Party which agrees to do so in place of the Facility Agent) of:

Central Bank Rate:

Central Bank Rate Adjustment:

Central Bank Rate Spread:

- (a) the RFR for that RFR Banking Day; and
- (b) the Central Bank Rate prevailing at close of business on that RFR Banking Day.

Credit Adjustment Spread:

The percentage rate per annum specifies in the column entitled "Adjustment Spread" below for each Relevant Tenor, where "Relevant Tenor" is determined as set out below:

Length of Interest Period	Relevant Tenor	Adjustment Spread (percent. annum)	Per
1 month or less	1 month	0.11448	
2 months or less but greater than 1 month	2 months	0.18456	
3 months or less but greater than 2 months	3 months	0.26161	
6 months or less but greater than 3 months	4 months	0.42826	

Daily Rate:

The "Daily Rate" for any RFR Banking Day is:

- (a) the RFR for that RFR Banking Day; or

- (b) if the RFR is not available for that RFR Banking Day, the percentage rate per annum which is the aggregate of:
 - (i) the Central Bank Rate for that RFR Banking Day; and
 - (ii) the applicable Central Bank Rate Adjustment; or
- (c) if paragraph (b) above applies but the Central Bank Rate for that RFR Banking Day is not available, the percentage rate per annum which is the aggregate of:
 - (i) the most recent Central Bank Rate for a day which is no more than 5 RFR Banking Days before that RFR Banking Day; and
 - (ii) the applicable Central Bank Rate Adjustment;

rounded, in either case, to five decimal places and if, in either case, the aggregate of that rate and the Credit Adjustment Spread is less than zero, the Daily Rate shall be deemed to be such rate that the aggregate of the Daily Rate and the applicable Credit Adjustment Spread is zero.

Lookback Period:

Five RFR Banking Days.

Relevant Market:

The market for overnight cash borrowing collateralised by US Government securities.

Reporting Day:

The Business Day which follows the day which is the Lookback Period prior to the last day of the Interest Period.

RFR:

The secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).

RFR Banking Day:

Any day other than:

- (a) a Saturday or Sunday; and
- (b) a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities.

Schedule 10 – Daily Non-Cumulative Compounded RFR Rate

The "Daily Non-Cumulative Compounded RFR Rate" for any RFR Banking Day "i" during an Interest Period is the percentage rate per annum (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose) calculated as set out below:

$$(UCCDR_i - UCCDR_{i-1}) \times \frac{dcc}{n_i}$$

where:

"UCCDR_i" means the Unannualised Cumulative Compounded Daily Rate for that RFR Banking Day "i";

"UCCDR_{i-1}" means, in relation to that RFR Banking Day "i", the Unannualised Cumulative Compounded Daily Rate for the immediately preceding RFR Banking Day (if any) during that Interest Period;

"dcc" means 360 or, in any case where market practice in the Relevant Market is to use a different number for quoting the number of days in a year, that number;

"n_i" means the number of calendar days from, and including, that RFR Banking Day "i" up to, but excluding, the following RFR Banking Day; and

the "Unannualised Cumulative Compounded Daily Rate" for any RFR Banking Day (the "Cumulated RFR Banking Day") during that Interest Period is the percentage rate per annum (without rounding, to the extent reasonably practicable for the Finance Party performing the calculation, taking into account the capabilities of any software used for that purpose) calculated as set out below:

$$ACCDR \times \frac{tn_i}{dcc}$$

(a) where:

(b) "ACCDR" means the Annualised Cumulative Compounded Daily Rate for that Cumulated RFR Banking Day;

- (c) "**tn_i**" means the number of calendar days from, and including, the first day of the Cumulation Period to, but excluding, the RFR Banking Day which immediately follows the last day of the Cumulation Period;
- (d) "**Cumulation Period**" means the period from, and including, the first RFR Banking Day of that Interest Period to, and including, that Cumulated RFR Banking Day;
- (e) "**dcc**" has the meaning given to that term above; and
- (f) the "**Annualised Compounded Daily Rate**" for that Cumulated RFR Banking Day is the percentage rate per annum (rounded to five decimal places) calculated as set out below:

$$\left[\prod_{i=1}^{d_0} \left(1 + \frac{\text{DailyRate}_{e_i-LP} \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{tn_i}$$

- (g) where:
- (h) "**d₀**" means the number of RFR Banking Days in the Cumulation Period;
- (i) "**Cumulation Period**" has the meaning given to that term above;
- (j) "**i**" means a series of whole numbers from one to d₀, each representing the relevant RFR Banking Day in chronological order in the Cumulation Period;
- (k) "**DailyRate_{i-LP}**" means, for any RFR Banking Day "**i**" in the Cumulation Period, the Daily Rate for the RFR Banking Day which is the applicable Lookback Period prior to that RFR Banking Day "**i**";
- (l) "**n_i**" means, for any RFR Banking Day "**i**" in the Cumulation Period, the number of calendar days from, and including, that RFR Banking Day "**i**" up to, but excluding, the following RFR Banking Day;
- (m) "**dcc**" has the meaning given to that term above; and
- (n) "**tn_i**" has the meaning given to that term above.

DRAFT: 18/07/22

Execution Pages¹⁹

The Borrower

Signed for and on behalf of)
Ghana Cocoa Board)
by its Chief Executive)

Signed for and on behalf of)
Ghana Cocoa Board)
by the Solicitor Secretary)

The Facility Agent

Signed for and on behalf of)
Standard Chartered Bank)

The Collection Agent

Signed for and on behalf of)
Ghana International Bank plc)

The Co-Ordinating Initial Mandated Lead Arrangers and Bookrunners

Signed for and on behalf of)
Coöperatieve Rabobank U.A.)

Signed for and on behalf of)
Industrial and Commercial Bank of China)
Limited, London Branch)

Signed for and on behalf of)
MUFG Bank, Ltd.)

Signed for and on behalf of)
Natixis)

Signed for and on behalf of)
Standard Chartered Bank)

The Initial Mandated Lead Arranger

Signed for and on behalf of)
Ghana International Bank plc)

The Senior Mandated Lead Arrangers

¹⁹ Lender names and titles to be confirmed and details inserted

The Mandated Lead Arrangers

The Lead Arrangers

The Arrangers

The Lead Managers

The Lenders

Signed for and on behalf of)
Coöperatieve Rabobank U.A.)

Signed for and on behalf of)
Industrial and Commercial Bank of China)
Limited, London Branch)

Signed for and on behalf of)
MUFG Bank, Ltd.)

Signed for and on behalf of)
Natixis)

Signed for and on behalf of)
Standard Chartered Bank)

Signed for and on behalf of)
Ghana International Bank plc)

