

26 November 2021  
LML/80674558.2

**EUR [97,721,615.91] CESCE-backed  
social term loan facility agreement**

relating to the construction of the Yapei, Buipe and Daboya bridges in Ghana

**Dated \*\***

**The Republic of Ghana, represented by The Ministry of Finance**  
(as Borrower)

**The financial institution[s] listed in Part 1 of Schedule 1**  
(as Original Lender[s])

**Standard Chartered Bank**  
(as Agent)

**Standard Chartered Bank**  
(as Structuring Bank)

**The financial institution[s] listed in Part 2 of Schedule 1**  
(as Mandated Lead Arranger[s])

**Standard Chartered Bank**  
(as Social Loan Co-ordinator)

THIS DRAFT FACILITY AGREEMENT REMAINS SUBJECT TO THE REVIEW AND APPROVAL OF STANDARD CHARTERED BANK ("SCB") & REVIEW OF THE CESCE DOCUMENTATION. ALL ENVIRONMENTAL AND SOCIAL DEFINITIONS AND PROVISIONS REMAIN SUBJECT TO THE REVIEW & APPROVAL OF SCB. CIRCULATION OF THIS DRAFT FACILITY AGREEMENT DOES NOT CONSTITUTE A COMMITMENT BY SCB, CESCE OR ANY OF THEIR RESPECTIVE AFFILIATES TO PROVIDE ANY FINANCING OR SUPPORT. THIS DRAFT HAS NOT BEEN REVIEWED BY SCB, CESCE OR LOCAL COUNSEL AND REMAINS SUBJECT TO THEIR COMMENT. ANY COMMITMENT WILL BE SUBJECT TO THE DUE DILIGENCE AND INTERNAL POLICIES OF SCB. ALL FIGURES ARE INDICATIVE ONLY AND THEREFORE HAVE BEEN INCLUDED IN [SQUARE BRACKETS] AND REMAIN SUBJECT TO RELEVANT APPROVALS.

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- (b) any treaty, pact or other binding agreement to which any Ghanaian Government Authority is a signatory or party; or
- (c) any judicial or administrative interpretation with binding characteristics or application of those described in paragraphs (a) or (b) above,

and in each case, which is applicable to the Borrower, the Borrower's or the Buyer's assets or the Finance Documents.

**Appropriation Act** means an act of Parliament duly passed in accordance with the laws of Ghana approving the Government of Ghana's expenditure for a financial year commencing 1 January to 31 December.

**Arrangers** means the Mandated Lead Arranger[s] and the Structuring Bank.

**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 Agreement** means an agreement substantially in the form set out in Schedule 6 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

**Authorisation** means an authorisation, consent (including an Environmental Consent), permission, approval, resolution, licence, exemption, filing, notarisation or registration.

**Authority** means any government, quasi-government, administrative, regulatory or supervisory body or authority, court or tribunal.

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

- (a) the date falling [thirty-six (36)] Months from the date of this Agreement; and
- (b) the date on which the Facility has been fully utilised or cancelled.

**Available Commitment** means a Lender's Commitment under the Facility minus:

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

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

**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 the United Kingdom, the UK Bail-In Legislation; and

**CESCE** means Compañía Española de Seguros de Crédito a la Exportación, S.A., Cía de Seguros y Reaseguros.

**CESCE Insurance Policy** means the credit insurance policy (in form and substance satisfactory to all the Lenders) issued by CESCE (on behalf of Spain) to the Agent (acting on behalf of the Lenders) covering the participation of all the Lenders in the Facility.

**CESCE Insurance Premium** means the credit insurance premium payable to CESCE under the CESCE Insurance Policy.

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

**Commercial Contract** has the meaning given to it in Recital A.

**Commercial Contract Event** means any of the following events or circumstances:

- (a) the Commercial Contract ceases to be in full force and effect due to any reason;
- (b) it becomes unlawful for the Buyer or the Exporter to perform its obligations under the Commercial Contract;
- (c) the Commercial Contract is subject to arbitration or legal proceedings which are reasonably likely to be adversely determined in a manner which has had or could reasonably be expected to have a Material Adverse Effect;
- (d) the Commercial Contract is cancelled, terminated, revoked, frustrated or ceases to be valid, legally binding or enforceable;
- (e) there occurs any event or circumstance (or any series of events or circumstances) which adversely affects the Commercial Contract or its validity, enforceability or continuation, in any manner or respect whatsoever; or
- (f) the Buyer or the Exporter fails to perform any of its material obligations (including payment obligations) under the Commercial Contract (and such failure (if capable of remedy) is not remedied within applicable remedy period set out under the terms of the Commercial Contract).

**Commercial Contract Export Value** means EUR [58,666,667.00].

**Commercial Facility** means the commercial facility agreement relating to the Project dated on or about the date of this Agreement, made between the Borrower and [Standard Chartered Bank as original lender, arranger and agent].

**Commitment** means the amount set opposite each Lender's name under the heading Commitment in Part 1 of Schedule 1 (*The Parties*) and the amount of any other Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

**Confidential Information** means all information relating to the Borrower, the Finance Documents or the Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation

- (c) the payment or receipt (or entry into any agreement under which it may be paid or receive) any unlawful commission, bribe, pay-off or kickback; or
- (d) any act or practice of whatsoever nature which would or might constitute bribery or corrupt practice within the criminal code of Ghana.

**Dangerous Materials** means any element or substance (in any form) which is subject to regulatory control as being hazardous or dangerous or which is capable of causing harm or damage to the Environment.

**Default** means an Event of Default or any event or circumstance specified in Clause 20 (*Events of Default*) or Clause 4.3.2 (*Conditions subsequent*) which would (with the expiry of a grace period, the giving of notice, the making of any determination or the satisfaction of any condition under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**Disruption Event** means either or both of:

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

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

**Down Payment** means an amount equal to [five per cent (5%)] of the Commercial Contract Export Value.

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

**Effective Date** has the meaning given to it in Clause 4.1.1 (*Conditions precedent to serving of Utilisation Request*).

**Eligible Goods and Services** means Eligible Imported Goods and Services and Local Costs.

**Eligible Imported Goods and Services** means goods and services (other than goods and services referred to in the definition of "Local Costs" below) that are:

- (a) supplied or rendered or to be supplied or rendered by an Exporter to the Buyer pursuant to the Commercial Contract; and
- (b) approved by CESCE for financing under this Agreement.

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraph (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 Finance Document required by FATCA.

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

**Fee Letter** means any letter or letters dated on or about the date of this Agreement between the Borrower and the Agent setting out any of the fees referred to in Clause 11 (*Fees*).

**Final Repayment Date** means the date falling 120 Months after the Starting Point of Credit (or, if such date is not a Business Day, the immediately preceding Business Day).

**Finance Documents** means this Agreement, the CESCE Insurance Policy, any Assignment Agreement, any Transfer Certificate, any Fee Letter and any other document designated as such by the Agent.

**Finance Party** means, as the case may be, any Arranger, the Agent or any Lender (and, together, the **Finance Parties**).

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

- (a) moneys borrowed;
- (b) any acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would be treated as a balance sheet liability;
- (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

**Interest Period** means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

**Interpolated Screen Rate** means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time for euro.

**Lender** means:

- (a) [any][the]Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 21 (*Changes to the Lenders*),

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

**Loan** means a loan made or to be made by the Lenders under the Facility or the principal amount outstanding for the time being of that loan.

**Local Costs** means any expenditure:

- (a) on goods and/or services procured by the Exporter from persons ordinarily resident, and/or carrying on business, in Ghana;
- (b) that is necessary for:
  - (i) executing the Commercial Contract or the performance by the Exporter of its obligations under the Commercial Contract; or
  - (ii) completing the Project; and
- (c) that has been approved by CESCE for financing under this Agreement.

**Majority Lenders** means:

- (a) if there are no Loans then outstanding, a Lender or Lenders whose Commitments aggregate more than 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 the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than sixty-six and two thirds per cent (66 2/3%) of the Loans then outstanding.

**Party** means a party to this Agreement.

**Permitted Participant** means:

- (a) any Lender, any Affiliate of any Lender or an Affiliate of any person of which any Lender is itself an affiliate; or
- (b) any bank or other financial institution or a trust, fund or other entity which is regularly engaged in and established for the purpose of making, purchasing or investing in loans, securities or other financial assets.

**Premium Utilisation** means a Utilisation the proceeds of which will be used to finance payment of the CESCE Insurance Premium (and which will be the first Utilisation).

**Premium Utilisation Request** means the Utilisation Request in respect of the Premium Utilisation.

**Project** has the meaning given to it in Recital A.

**Public Assets** means the assets and international monetary reserves (including gold, special drawing rights and foreign currency) held by the Borrower or any of its agencies.

**Quasi-Security** has the meaning given in Clause 19.4 (*Negative pledge*).

**Quotation Day** means, in relation to any period for which an interest rate is to be determined, two (2) TARGET Days before the first day of that period unless market practice differs in the Relevant Market in which case the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given by leading banks in the Relevant Market on more than one day, the Quotation Day will be the last of those days).

**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 the European interbank market.

**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, in respect of each Loan, the First Repayment Date and the last day of each six Month period thereafter.

**Repayment Instalment** means an amount equal to 1/20<sup>th</sup> of the total amount of the Loans drawn on or before the last day of the Availability Period.<sup>1</sup>

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<sup>1</sup> This assumes that repayments will not begin until the availability period has ended.



- (b) the United Nations;
- (c) the European Union;
- (d) the United Kingdom;
- (e) Spain;
- (f) the jurisdiction in which each Lender is incorporated or has its the Facility Office; or
- (g) the respective governmental institutions and agencies of any of the foregoing, including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury (**OFAC**), the United States Department of State, and Her Majesty's Treasury (**HMT**),

(together the **Sanctions Authorities**).

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

**Screen Rate** means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Borrower and the Lenders.

**Screen Rate Replacement Event** means, in relation to the Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders materially changed;
- (b)
  - (i)
    - (A) the administrator of that Screen Rate 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 that Screen Rate is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide the Screen Rate;

- (ii) the administrator of the Screen Rate publicly announces that it has ceased or will cease, to provide the Screen Rate permanently or indefinitely and, at that

(c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation.

**TARGET2** means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

**TARGET Day** means any day on which TARGET2 is open for the settlement of payments in euro.

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

**Tax Deduction** has the meaning given to it in Clause 12.1.1 (*Tax definitions*).

**Total Commitments** means the aggregate of the Commitments being EUR [97,721,615.91] at the date of this Agreement.

**Transfer Certificate** means a certificate substantially in the form set out in Schedule 7 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrower.

**Transfer Date** means, in relation to a transfer, the later of:

(a) the proposed Transfer Date specified in the Transfer Certificate; and

(b) the date on which the Agent executes the Transfer Certificate.

**UK Bail-In Legislation** means Part 1 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).

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

**US** means the United States of America.

**Utilisation** means a utilisation of the Facility.

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

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

**VAT** means value added tax as provided for in the Value Added Tax Act 1994, and any other tax of a similar nature.

**World Bank** means the World Bank Group, including the International Bank for Reconstruction and Development, The International Development Association (IDA), The International Finance Corporation (IFC) and The Multilateral Investment Guarantee Agency (MIGA).

- (f) **debt or indebtedness** includes any obligation, whether incurred as principal or as surety, for the payment or repayment of money, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
- (g) **liabilities** includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
- (h) the words **other** and **otherwise** shall not be construed ejusdem generis with any preceding words where a wider construction is possible;
- (i) any **person** includes one or more of that person's assigns, transferees, successors in title, delegates, sub-delegates and appointees (in the case of a Party, in so far as such assigns, transferees, successors in title, delegates, sub-delegates and appointees are permitted) and any individual, person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (j) 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 regulatory, self-regulatory or other authority or organisation;
- (k) any **statute or statutory provision** includes any statute or statutory provision which amends, extends, consolidates or replaces it, or which has been amended, extended, consolidated or replaced by it, and any orders, regulations, instruments or other subordinate legislation made under it;
- (l) any **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, restated, varied, novated, supplemented or replaced from time to time;
- (m) references to one person being **controlled** by another means that other (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power to appoint and remove all or the majority of the directors of that person or otherwise controls or has power to control the affairs and policies of that person or a project;
- (n) accounting terms shall be construed so as to be consistent with International Financial Reporting Standards; and
- (o) a time of day is a reference to London time.

1.2.2 Section, clause and schedule headings are for ease of reference only.

1.2.3 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 in writing.

### 1.3 Currency symbols and definitions

1.3.1 €, EUR and euro denote the single currency of the Participating Member States.

1.3.2 \$ and US dollars denote the lawful currency of the US.

## **Section 2 – The Facility**

### **2 The Facility**

#### **2.1 The Facility**

Subject to the terms of this Agreement, the Lenders make available to the Borrower a euro term loan facility in an aggregate amount equal to the Total Commitments. The Commitments of the Original Lender[s] as at the date hereof will be as set out in Part 1 of Schedule 1 (*The Parties*).

#### **2.2 Finance Parties' rights and obligations**

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

2.2.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with Clause 2.2.3. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by the Borrower.

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

#### **2.3 Obligations of the Borrower**

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

2.3.2 Without prejudice to the generality of Clause 2.3.1, the Borrower acknowledges that its liability to pay in full any sum payable by it under this Agreement on the due date for payment:

- (a) is separate from the performance by the Exporter or any other person of their obligations under the Commercial Contract and any other agreement relating thereto; and
- (b) shall not be affected in any way by reason of any claim, dispute or defence which the Borrower or the Buyer may have or may consider that it has against the Exporter or any other person.

- (ii) Local Costs in aggregate up to an amount equal to the lesser of EUR [29,333,333.00] and [fifty per cent (50%)] of the Commercial Contract Export Value,

(up to an aggregate total amount of EUR [85,066,666.65]); and

- (b) up to one hundred per cent (100%) of the CESCE Insurance Premium (up to a total amount of EUR [12,654,949.26]),

provided always that the aggregate of such amounts shall at no time exceed the Total Commitments.

3.1.2 Accordingly, the Agent shall (on behalf of the Lenders) pay the relevant Loans to be made under this Agreement without further notice (other than the relevant Utilisation Request) from the Borrower, to the account of the Exporter or CESCE as specified in the relevant Utilisation Request.

3.1.3 Without prejudice to Clause 3.1.1, all amounts borrowed under the Facility shall be utilised by the Borrower in compliance with the Social Loan Principles.

### **3.2 Monitoring**

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

### **3.3 Instructions of CESCE**

The Borrower agrees that:

- (a) the Agent, the Lenders and the Majority Lenders may be required to exercise or refrain from exercising their rights, powers, authorities and discretions under, or in connection with, the Finance Documents in accordance with any instructions given by CESCE in accordance with the provisions of the CESCE Insurance Policy;
- (b) it shall have no claims whatsoever in respect of any loss, damage or expense suffered or incurred by it against any Finance Party as a result of that Finance Party acting on the instructions of CESCE in relation to this Agreement, save where such loss, damage or expense suffered or incurred by it is directly caused by the gross negligence or wilful misconduct of the relevant Finance Party; and
- (c) where any Finance Party is under an obligation to act reasonably when exercising a discretion granted to it under or pursuant to the Finance Documents, such Finance Party shall be deemed to be acting reasonably if it exercises such discretion in accordance with the directions of CESCE.

### **3.4 CESCE override**

3.4.1 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall oblige any Finance Party to act (or omit to act) in a manner that is inconsistent with any requirement of CESCE under or in connection with the terms of the CESCE Insurance Policy and, in particular:

- (a) the Agent shall be authorised to take all such actions as it may deem necessary to ensure that all requirements of the CESCE Insurance Policy are complied with; and

3.6.3 Each Lender acknowledges that the Agent is party to the CESCE Insurance Policy as agent on behalf of the Lenders.

### 3.7 Reimbursement

The Borrower acknowledges that CESCE may (in addition to the terms of the CESCE Insurance Policy) require it to enter into an agreement whereby the Borrower is required to promptly reimburse CESCE for any payment made by CESCE under the CESCE Insurance Policy (a **Reimbursement Agreement**) whether by direct payment or offset, in relation to, and to the extent of, the Borrower's obligations to the Lenders under this Agreement (such amounts, the **CESCE Cover Payments**).

### 3.8 Application of reimbursements

The Parties acknowledge and agree that the CESCE Cover Payments that are reimbursed by the Borrower to CESCE pursuant to any Reimbursement Agreement entered into pursuant to Clause 3.7 (*Reimbursement*) or the terms of the CESCE Insurance Policy shall satisfy the obligation of the Borrower to make payment to the relevant Lenders of the corresponding amounts of principal and interest under this Agreement in relation to which the CESCE Cover Payments were paid to the Lenders (or the Agent on their behalf) by CESCE.

## 4 Conditions of Utilisation

### 4.1 Conditions precedent to serving of Utilisation Request

4.1.1 The Borrower is not permitted to deliver a Utilisation Request (other than the Premium Utilisation Request) unless the Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent (to the extent that documents and evidence have not already been provided to the Agent to its satisfaction pursuant to a prior Utilisation and the Agent does not require updates to such documents or evidence). The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied (such date being the **Effective Date** and such notice being the **CP Satisfaction Notice**).

4.1.2 Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the CP Satisfaction Notice, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

### 4.2 Further conditions precedent

4.2.1 The Lenders will only be obliged to comply with Clause 5.3.2 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) the Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*), to the extent that documents and evidence have not already been provided to the Agent to its satisfaction pursuant to a prior Utilisation and the Agent does not require updates to such documents or evidence;
- (b) there has been no event or circumstance that in the opinion of the Majority Lenders constitutes or may constitute a material adverse change in Ghana or in its international financial, economic or political or social conditions, including any sovereign risk downgrading of Ghana by an international agency and/or deterioration

## **Section 3 – Utilisation**

### **5 Utilisation**

#### **5.1 Delivery of a Utilisation Request**

5.1.1 The Borrower may utilise the Facility during the Availability Period by way of a series of Loans by delivery to the Agent of:

- (a) the duly completed Premium Utilisation Request prior to the Effective Date; and
- (b) further duly completed Utilisation Requests to be delivered not later than the Specified Time.

5.1.2 The Borrower may not deliver a Utilisation Request (other than the Premium Utilisation Request) to the Agent unless and until the proceeds of the Premium Utilisation have been paid by the Agent to CESCE.

#### **5.2 Completion of a Utilisation Request**

5.2.1 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (a) it attaches a duly completed and executed Exporter Certificate;
- (b) the proposed Utilisation Date is a Business Day within the Availability Period;
- (c) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
- (d) it identifies the account and bank of the Exporter (or, in the case of the Premium Utilisation Request, the account and bank of CESCE) to which the proceeds of the Utilisation are to be credited;
- (e) other than in the case of the Premium Utilisation Request, it is accompanied by an invoice from the Exporter in respect of the relevant Contract Payment to be financed by the Utilisation and such other documents as are specified in the Utilisation Request; and
- (f) it is executed by a person duly authorised to do so on behalf of the Borrower.

5.2.2 Only one Loan may be requested in each Utilisation Request.

5.2.3 The Borrower may not deliver more than one (1) valid Utilisation Request (disregarding for the purposes of this sub-Clause the Premium Utilisation Request) in any calendar month.

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

5.3.1 The currency specified in a Utilisation Request must be euro.

5.3.2 The amount of the Loan shall be:

- (a) in the case of the Premium Utilisation Request, an amount equal to the CECSE Insurance Premium;

## 5.7 Payment of the CECSE Insurance Premium

- 5.7.1 The Borrower agrees and acknowledges that the repayment of the Loans to the Lenders is being insured by CESCE. The Borrower and the Lenders further agree and acknowledge that:
- (a) the proceeds of the Premium Utilisation shall be paid by the Agent to CESCE on the relevant Utilisation Date; and
  - (b) no part of the CECSE Insurance Premium is refundable under any circumstances (except at the sole discretion of CESCE in accordance with the terms and conditions of the CESCE Insurance Policy).
- 5.7.2 Notwithstanding Clause 5.7.1(b), the Agent agrees that it shall apply any amount received by it from CESCE by way of refund of the CECSE Insurance Premium against any outstanding Loans in inverse order of maturity either:
- (a) if an Event of Default or a Mandatory Prepayment Event (other than a Mandatory Prepayment Event under Clause 7.1.1 (*Illegality*)) is continuing, at the time of receipt of such amount from CESCE; or
  - (b) in any other circumstances, on the next Interest Payment Date,

and any surplus after such application shall, provided no Default or Mandatory Prepayment Event (or event or circumstance that would with the expiry of a grace period, the giving of notice, the passage of time or the making of any determination result in a Mandatory Prepayment Event) be promptly paid to the Borrower.

## 5.8 CECSE Insurance Premium supplement

- 5.8.1 The Borrower irrevocably undertakes to pay the CECSE Insurance Premium and any supplement thereof which may be requested by CESCE after the date of issuance of the CESCE Insurance Policy or any amendment thereafter (if applicable).
- 5.8.2 If, at any time after the date of this Agreement, CESCE advises the Agent that an additional amount of premium towards the CECSE Insurance Premium (an **Additional Amount**) is due and payable resulting from the variation in the terms and conditions of the CESCE Insurance Policy, the Agent shall promptly notify the Borrower of such Additional Amount and the Borrower shall, within fifteen (15) Business Days of such notice, remit the Additional Amount to the account of CESCE as directed by the Agent.
- 5.8.3 The Borrower acknowledges that none of the Finance Parties is in any way involved in the calculation, final determination or payment of the CECSE Insurance Premium or any other amount as requested by CESCE (as the case may be) and that the Borrower will not raise any claim or defence of any kind whatsoever against any of the Finance Parties in relation to the calculation or payment or refund of the CECSE Insurance Premium or any other amount as requested by CESCE (as the case may be).



- (b) if the Lender so requires, the Agent shall, by not less than five (5) Business Days' notice to the Borrower, cancel the Commitment of that Lender and declare the participation of that Lender in all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents in favour of that Lender immediately due and payable, whereupon that Lender's Commitment will be cancelled and all such outstanding amounts will become immediately due and payable.

## **7.2 Commercial Contract Event**

If a Commercial Contract Event has occurred and is continuing:

- (a) no Lender shall be obliged to fund a Utilisation; and
- (b) if the Majority Lenders so require, the Agent shall, by not less than five (5) Business Days' notice (the **Prepayment Notice**) to the Borrower, cancel the Total Commitments and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents due and payable, whereupon the Total Commitments will be cancelled and all such outstanding amounts will become immediately due and payable within 90 days of the date of the Prepayment Notice.

## **7.3 Material Commercial Contract Change**

If a Material Commercial Contract Change is made without the prior written consent of the Agent:

- (a) no Lender shall be obliged to fund a Utilisation; and
- (b) if the Majority Lenders so require, the Agent shall, by not less than five (5) Business Days' notice to the Borrower, cancel the Total Commitments and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

## **7.4 Voluntary prepayment of Loans**

- 7.4.1 The Borrower may, if it gives the Agent not less than thirty (30) Business Days' (or such shorter period as the Agent may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the amount of that Loan by a minimum amount of EUR 3,000,000.00).
- 7.4.2 A Loan may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero (0)).
- 7.4.3 Any prepayment under this Clause 7.3 shall satisfy the obligations under Clause 6.1 (*Repayment of Loans*) in inverse order of maturity and rateably amongst the Lenders.
- 7.4.4 A Loan may only be pre-paid on an Interest Payment Date unless otherwise agreed by the Lenders.

- (e) the Lender shall only be obliged to transfer its rights and obligations pursuant to Clause 7.6.2 once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws in relation to that transfer.

7.6.4 A Lender shall perform the checks described in Clause 7.6.3(e) as soon as reasonably practicable following delivery of a notice referred to in Clause 7.6.2 and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

## **7.7 Restrictions**

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

7.7.2 Any prepayment under this Agreement shall be made together with:

- (a) any Break Costs as set forth in this Agreement; and
- (b) if applicable, accrued interest on the amount prepaid.

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

7.7.4 No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

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

## **7.8 Effect of Repayment and Prepayment on Commitments**

If all or part of any Lender's participation in a Loan is repaid or prepaid, an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) in respect of the Facility will be deemed to be cancelled on the date of repayment or prepayment.

## **7.9 Application of prepayments**

Any prepayment of a Loan pursuant to Clause 7.2 (*Commercial Contract Event*), 7.3 (*Material Commercial Contract Change*) or Clause 7.4 (*Voluntary prepayment of Loans*) shall be applied *pro rata* to each Lender's participation in that Loan.

## **9 Interest Periods**

### **9.1 Selection of Interest Periods**

- 9.1.1 Subject to this Clause 9, each Interest Period shall be for a duration of six (6) Months or any other period agreed between the Borrower and the Agent (acting on instructions of all the Lenders).
- 9.1.2 An Interest Period for a Loan shall not extend beyond a Repayment Date for such Loan.
- 9.1.3 An Interest Period for a Loan shall not extend beyond the Final Repayment Date.
- 9.1.4 The first Interest Period for a Loan shall start on that Loan's Utilisation Date and end on the Interest Payment Date on or immediately following such Utilisation Date, and each subsequent Interest Period shall start on the last day of its preceding Interest Period.

### **9.2 Changes to Interest Periods**

- 9.2.1 Before determining the interest rate for a Loan, the Agent shall (if applicable) shorten any interest period for such Loan to ensure that it ends on a Repayment Date relating to such Loan as set out in Clauses 9.1.2 and 9.1.3.
- 9.2.2 If the Agent makes any of the changes to an Interest Period referred to in this Clause 9.2, it shall promptly notify the Borrower and the Lenders.

### **9.3 Non-Business Days**

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

### **9.4 Consolidation of Loans**

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. The first Interest Period for any Utilisation (other than the Premium Utilisation) shall end on the same day as the then current Interest Period in relation to the Premium Utilisation.

## **10 Changes to the calculation of interest**

### **10.1 Unavailability of Screen Rate**

- 10.1.1 *Interpolated Screen Rate*: If no Screen Rate is available for EURIBOR for the Interest Period of the Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- 10.1.2 *Cost of funds*: If no Screen Rate is available for EURIBOR for:
- (a) the currency of a Loan; or
  - (b) the Interest Period of a Loan and it is not possible to calculate an Interpolated Screen Rate,

## **11 Fees**

### **11.1 Commitment fee**

11.1.1 The Borrower shall pay to the Agent (for the account of each Lender) a commitment fee, computed at the rate of zero point five per cent (0.5%) per annum on each Lender's Available Commitment.

11.1.2 The accrued commitment fee is payable in arrears on the last day of each successive period of six (6) months from the date of this Agreement and on the last day of the Availability Period, and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

### **11.2 Structuring and arrangement fee**

The Borrower shall pay to the Agent (for the account of the Structuring Bank) a structuring and arrangement fee, payable in accordance with the terms of the relevant Fee Letter.

### 12.3 Tax indemnity

12.3.1 The Borrower shall (within fifteen (15) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document **provided that** such loss, liability or cost is documented.

12.3.2 Clause 12.3.1 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:

(i) loss, liability or cost is compensated for by an increased payment under Clause 12.2 (*Tax gross-up*); or

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

12.3.3 A Protected Party making, or intending to make, a claim under Clause 12.3.1 shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.

12.3.4 A Protected Party shall, on receiving a payment from the Borrower under this Clause 12.3, notify the Agent.

### 12.4 Tax Credit

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

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

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

the Finance Party shall pay an amount to the Borrower 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 Borrower.

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

## **12.7 FATCA Information**

12.7.1 Subject to Clause 12.7.3, each Party shall, within ten (10) Business Days of a reasonable request by another Party:

- (a) confirm to that other Party whether it is:
  - (i) a FATCA Exempt Party; or
  - (ii) not a FATCA Exempt Party;
- (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.

12.7.2 If a Party confirms to another Party pursuant to Clause 12.7.1 that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.

12.7.3 Clause 12.7.1 shall not oblige any Finance Party to do anything, and Clause 12.7.1(c) shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:

- (a) any law or regulation;
- (b) any fiduciary duty; or
- (c) any duty of confidentiality.

12.7.4 If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with Clause 12.7.1(a) or (b) (including, for the avoidance of doubt, where Clause 12.7.3 applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

12.7.5 If the 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 the date of a request from the Agent, supply to the Agent:

- (a) a withholding certificate on Form W-8, Form W-8EXP, Form W-9 or any other relevant form; or

including the implementation or application of, or compliance with, Basel III or CRD IV or any law or regulation that implements or applies Basel III or CRD IV.

13.1.2 In this Agreement:

**Basel III** means:

- (a) the agreements on capital requirements, leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity, risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;
- (b) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated;
- (c) the agreements contained in "Basel III: Finalising post-crisis reforms" published by the Basel Committee on Banking Supervision in December 2017 as amended, supplemented or restated; and
- (d) 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 Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

(the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:

- (a) making or filing a claim or proof against it; or
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall, as an independent obligation, within fifteen (15) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (aa) the rate of exchange used to convert that Sum from the First Currency into the Second Currency, and (bb) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

#### **14.2 Other indemnities**

The Borrower shall, within fifteen (15) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date, including any cost, loss or liability arising as a result of Clause 24 (*Sharing among the Finance Parties*);
- (c) any costs, charges, liabilities, fees or expenses payable to CESCE from time to time including, without limitation, in connection with the issuance of, or extension or amendment of, the CESCE Insurance Policy (without prejudice to Clause 5.7 (*Payment of the CECSE Insurance Premium*)) under or pursuant to the CESCE Insurance Policy;
- (d) funding, or making arrangements to fund, its participation in a Utilisation requested by the Borrower in a Utilisation Request or pursuant to Clause 5.7 (*Payment of the CECSE Insurance Premium*) 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
- (e) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower.

#### **14.3 Indemnity to the Agent**

The Borrower shall promptly indemnify the Agent and its officers and employees:

- (a) against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
  - (i) investigating any event which it reasonably believes is a Default;



## **16 Costs and expenses**

### **16.1 Transaction expenses**

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

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

### **16.2 Amendment costs**

If:

- (a) the Borrower requests an amendment, waiver or release of, or consent in relation to, any Finance Document
- (b) an amendment is required pursuant to Clause 3.4 (*CESCE override*) or Clause 26.9 (*Change of currency*); or
- (c) an amendment or waiver is contemplated or agreed pursuant to Clause 32.3 (*Replacement of Screen Rate*),

the Borrower shall, within fifteen (15) Business Days of demand:

- (i) reimburse the Agent and/or CESCE for the amount of all costs and expenses (including pre-agreed legal fees together with VAT thereon, such pre-agreement not to be unreasonably withheld by the Borrower) reasonably incurred by the Agent and/or CESCE in responding to, evaluating, negotiating, complying with or implementing that request, requirement or actual or contemplated agreement; and
- (ii) pay to the Agent and/or CESCE an amount equal to all costs and expenses (including pre-agreed legal fees together with VAT thereon, such pre-agreement not to be unreasonably withheld by the Borrower) reasonably incurred by the Lenders (for the account of the Lenders) and/or CESCE in responding to, evaluating, negotiating, complying with or implementing that request, requirement or actual or contemplated agreement.

### **16.3 Enforcement costs**

The Borrower shall, within fifteen (15) Business Days of demand, pay to the Agent (for the account of the Agent or the relevant Lender, as appropriate) and/or CESCE the amount of all costs and expenses (including legal fees) incurred by the Agent, any Lender or CESCE in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

### **16.4 CESCE Insurance Policy**

Without prejudice to the generality of the foregoing provisions of this Clause 16, the Borrower shall pay to the Agent (for the account of the relevant Finance Party) any costs incurred by

## **Section 7 – Representations, warranties, undertakings and Events of Default**

### **17 Representations and warranties**

Each Finance Party has entered into this Agreement in reliance on the representations of the Borrower set out in this Clause 17, and the Borrower warrants to each Finance Party on the date of this Agreement as set out in this Clause 17.

#### **17.1 Binding obligations**

The obligations expressed to be assumed by:

- (a) it in each Finance Document; and
- (b) the Buyer in the Commercial Contract,

are legal, valid, binding and enforceable obligations.

#### **17.2 Non-conflict with other obligations**

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

- (a) any Applicable Law;
- (b) the constitution of Ghana or the constitutional documents of either it or the Buyer; or
- (c) any agreement, mortgage, bond, judgment, arbitral award or other instrument, international agreement or treaty to which it or the Buyer is a party, including with the IMF or any other international institution, to which it or the Buyer are party or which is binding upon them or any of their assets or constitute a default or termination event (howsoever described) under any such agreement or instrument.

#### **17.3 Power and authority**

- 17.3.1 It has the power, and has obtained the necessary approvals from the Parliament of Ghana, to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.
- 17.3.2 No limit on its powers will be exceeded as a result of the borrowing or giving of guarantees or indemnities contemplated by the Finance Documents to which it is a party.
- 17.3.3 It has the capacity to sue and be sued before any court and/or arbitration tribunal which may be competent pursuant to the Finance Documents.
- 17.3.4 The Buyer has the power, and has obtained the necessary approvals from the Parliament of Ghana, to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Commercial Contract and the transactions contemplated by the Commercial Contract.

## **17.6 Deduction of Tax**

Other than the Ghanaian Tax Deduction, it is not required to make any Tax Deduction for any payment it may make under the Finance Documents.

## **17.7 No filing or stamp taxes**

Under the law of Ghana it is not necessary that any of the Finance Documents or the Commercial Contract be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to any of the Finance Documents or the Commercial Contract or the transactions contemplated by the Finance Documents and the Commercial Contract (other than nominal or exempt stamping of the Finance Documents under the Stamp Duty Act, 2005 (Act 689) (Ghana)).

## **17.8 No Default**

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

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

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## **17.9 No misleading information**

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

17.9.2 Nothing has occurred or been omitted and no information has been given or withheld that results in the information provided by or on behalf of the Borrower, the Buyer or any Ghanaian Government Authority (including by their advisers) being untrue or misleading in any material respect.

## **17.10 Financial position**

17.10.1 There has been no material adverse change in its economic condition since the date of this Agreement.

17.10.2 Any budgets and forecasts supplied to the Agent were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

## **17.11 No breach of laws**

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

17.17.2 The Ministry of Finance of Ghana has the ability to bind Ghana.

#### **17.18 Exchange controls**

17.18.1 Under the laws of Ghana, all payments to be made under the Finance Documents and the Commercial Contract may be freely transferred out of Ghana and may be paid in, or freely converted into, euro.

17.18.2 The Borrower has obtained all foreign exchange control approvals or such other Authorisations, if any, as are required to assure the availability of euro to enable the Borrower to perform all of its obligations under the Finance Documents to which it is a party and the Buyer to perform its obligations under the Commercial Contract.

17.18.3 There are no restrictions or requirements currently in effect that limit the availability or transfer of foreign exchange which would restrict the ability of the Borrower to perform its obligations under any Finance Document or the Buyer to perform its obligations under the Commercial Contract.

#### **17.19 Public procurement rules**

17.19.1 All public procurement rules in Ghana which are applicable to its entry into and the exercise of its rights and performance of its obligations under the Finance Documents to which it is a party have been complied with.

17.19.2 To the best of its knowledge and belief (having made due and careful enquiry), all public procurement rules in Ghana which are applicable to the Buyer's entry into and the exercise of the Buyer's rights and performance of the Buyer's obligations under the Commercial Contract have been complied with.

#### **17.20 Budget and limits**

17.20.1 The funds necessary for the repayment of all of the obligations of the Borrower falling due in a particular fiscal year under the Finance Documents have been provided for under the applicable Appropriation Act until the Facility is fully repaid.

17.20.2 There are no limits imposed on Ghana in respect of borrowings and guarantees by the IMF, the World Bank or applicable international treaties.

#### **17.21 Reserves**

The Borrower has full power and authority to use any available Reserves of Ghana for the satisfaction and discharge of its obligations under the Finance Documents and does not require any licence or any other Authorisation of any person or Ghanaian Government Authority or other agency to use the same.

#### **17.22 IMF**

Ghana is a member in good standing and eligible to use the resources of the IMF and the IBRD and is able to draw or make use of funds available to it under any IMF or IBRD funding programme and no such programme has been cancelled or suspended.

#### **17.23 Environmental and social matters**

*[to be inserted]*

## **18 Information undertakings**

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any obligation of the Borrower is outstanding under the Finance Documents or any Commitment is in force.

### **18.1 Information**

The Borrower shall supply to the Agent:

- (a) promptly following its presentation to Parliament the Budget Statement and Economic Policy;
- (b) all documents dispatched by the Borrower to its External Financial Indebtedness creditors generally at the same time as they are dispatched;
- (c) any documents required to be provided by the Lenders to CESCE in connection with or pursuant to the CESCE Insurance Policy;
- (d) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against the Borrower and/or any Ghanaian Government Authority, and which might, if adversely determined, have a Material Adverse Effect;
- (e) promptly, such other financial, statistical and general information regarding the financial condition, assets, functions and operations (about the Borrower and/or any Ghanaian Government Authority as the Agent may reasonably request, including any requested amplification or explanation or projections or any requested amplification or explanation of other material provided by the Borrower under this Agreement); and
- (f) promptly, a copy of any changes to:
  - (i) any Applicable Law in Ghana that affects the status of the Borrower; or
  - (ii) any other laws relevant to this Agreement, including any public sector financing or borrowing laws or regulations.

### **18.2 Notification of default**

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

18.2.2 Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by the Borrower's Signatory on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

### **18.3 Use of websites**

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

## **18.4 "Know your customer" checks**

### **18.4.1 If:**

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) a change in a Lender's or CESCE's internal practices and procedures relating to "know your customer" checks;
- (c) any change to the persons authorised to act on behalf of the Borrower;
- (d) any change in any law or regulations applicable to the Borrower;
- (e) any change in the status of the Borrower after the date of this Agreement; or
- (f) a proposed assignment or transfer by a Lender of any of its rights or obligations under this Agreement to a party that is not the Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of Clause 18.4.1(e), any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in Clause 18.4.1(e), on behalf of any prospective new Lender) in order for the Agent, such existing Lender or, in the case of the event described in Clause 18.4.1(e), any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable law pursuant to the transactions contemplated in the Finance Documents.

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

**18.4.3** The Borrower will (not more than once in every financial year unless the Agent reasonably suspects a Default is continuing or may occur) permit, following consultation between the Agent and the Borrower, the Agent and/or accountants or other professional advisers and contractors of the Agent free access at all reasonable times and on reasonable notice at the cost of the Borrower to the premises of relevant public offices and to meet with the necessary public officials so as to discuss and monitor the implementation and administration of the Finance Documents, the Commercial Contract and the parties' performance thereunder, including by procuring any necessary visas and ensuring security arrangements for the representatives of the Agent. The Agent will consult in good faith with the Borrower in respect of the number of proposed attendees for any access requested pursuant to this Clause 18.4.3 (but any failure to consult shall not affect the Agent's rights under this Clause 18.4.3).

securing the payment of the Borrower's External Financial Indebtedness, unless at the same time or prior thereto, it or the relevant Ghanaian Government Authority (as applicable) secure the Loans equally and rateably with such Security or provide such other arrangement (whether or not comprising Security) as is satisfactory to the Agent.

19.4.2 The Borrower shall ensure that neither it nor any Ghanaian Government Authority will:

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any Ghanaian Government Authority;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,
- (e) in circumstances where the arrangement or transaction is entered into primarily as a method of raising External Financial Indebtedness.

19.4.3 Clauses 19.4.1 and 19.4.2 above do not apply to any Security or (as the case may be) Quasi-Security, listed below:

- (a) any Security or Quasi-Security listed in Schedule 8 (*Existing security*) except to the extent the principal amount secured by that Security or Quasi-Security exceeds the amount stated in that Schedule;
- (b) any netting or set-off arrangement entered into by the Borrower or any Ghanaian Government Authority in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by the Borrower or any Ghanaian Government Authority for the purpose of:
  - (i) hedging any risk to which any Ghanaian Government Authority is exposed in its ordinary course of operations; or
  - (ii) its interest rate or currency management operations which are carried out in the ordinary course of operations and for non-speculative purposes only,

excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;

- (d) any lien arising by operation of law;
- (e) any Security or Quasi Security upon property incurred solely for the purpose of financing the acquisition or construction of such property;
- (f) any Security or Quasi Security existing on property at the time of its acquisition;
- (g) any renewal or extension of any Security or Quasi Security of the kind described in Clauses 19.4.3(a) to (f), provided that the principal amount of the External Financial

- (ii) the proposed termination date.

#### **19.8 Insurance**

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

- (a) procure that any goods and/or services to be supplied under the Commercial Contract will be insured to the satisfaction of the Agent against the risk of loss or damage in accordance with normal commercial practice for similar contracts until final acceptance of those goods and/or services under the Commercial Contract; and
- (b) produce to the Agent (from time to time at the Agent's request) evidence that such insurance has been effected and maintained.

#### **19.9 Pari passu ranking**

The Borrower shall ensure that at all times all its unsecured and unsubordinated obligations to the Finance Parties (or any of them) against it under the Finance Documents rank at least *pari passu* with its obligations to all of its other unsecured and unsubordinated creditors, save for such obligations as may be preferred by provisions of law that are of mandatory application and will be payable out of the public revenues and other assets of the Borrower.

#### **19.10 Compliance with Environmental Law**

[to be inserted]

#### **19.11 Anti-corruption law**

19.11.1 The Borrower shall not, for the purpose of gaining or maintaining unlawful or improper benefits for itself or the Buyer, directly or indirectly:

- (a) make, undertake, offer to make, promise to make, encourage, solicit, receive or authorize the payment or giving of a prohibited payment; or otherwise engaged in acts of bribery corruption;
- (b) used funds or other assets, or make any promise or undertaking in such regard, for the establishment or maintenance of a secret or unrecorded fund; or
- (c) make any false or fictitious entries in its books or records relating to any prohibited payment with respect to the transactions contemplated by the Finance Documents.

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

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

19.11.3 The Borrower shall ensure that no part of the proceeds of the Facility shall be used, directly or indirectly, for any purpose that would breach the Bribery Act 2010, the (US) Foreign Corrupt Practices Act of 1977, other similar legislation in other jurisdictions or any other applicable anti-bribery and corruption laws.

19.11.4 The Borrower shall not (and shall ensure that the Buyer will not) directly or indirectly, authorise, offer, promise, or make payments of anything of value, including but not limited to



19.13.2 The Borrower agrees that, in the event that the Agent notifies the Borrower that it has or intends to file a claim for payment under the CESCE Insurance Policy, the Borrower shall:

- (a) use its best efforts to assist in the filing of any claim for compensation, indemnity or reimbursement; and
- (b) use their reasonable efforts to co-operate in good faith with the Agent and/or CESCE with respect to any verification of claim, eligibility or amount by any such person (including but not limited to providing evidence, documentation, information, certificates and other forms of proof reasonably requested in connection therewith).

#### **19.14 Access**

The Borrower shall, and shall procure that the Buyer will, permit the Agent, CESCE and/or accountants or other professional advisers and contractors of the Agent or CESCE free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower or the Buyer, as the case may be, to the premises, assets, books, accounts and records of each of the Borrower and the Buyer (including all sites relating to the Project).

### **20 Events of Default**

Each of the events or circumstances set out in this Clause 20 is an Event of Default (save for Clause 20.14 (*Acceleration*)).

#### **20.1 Non-payment**

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

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within three (3) Business Days of its due date.

#### **20.2 Other obligations**

20.2.1 The Borrower does not comply with any provision of the Finance Documents (other than Clauses 2.4.3 (*Social loan*) and 3.1.3 (*Purpose*) and those referred to in Clause 20.1 (*Non-payment*) [and Clause 20.11 (*Environmental*)]).

20.2.2 No Event of Default under Clause 20.2.1 will occur if the failure to comply is capable of remedy and is remedied within ten (10) Business Days of the earlier of:

- (a) the Agent giving notice to the Borrower; and
- (b) the Borrower becoming aware of the failure to comply.

#### **20.3 Misrepresentation**

Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in

Authority having an aggregate value of more than fifteen million US dollars (\$15,000,000) and is not discharged within ten (10) days.

## **20.8 Unlawfulness**

20.8.1 It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.

20.8.2 Any obligation or obligations of the Borrower under any Finance Document are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

20.8.3 At any time any act, condition or thing required to be done, fulfilled or performed in order to:

- (a) enable the Borrower to lawfully enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in a Finance Document;
- (b) ensure that the obligations expressed to be assumed by the Borrower in the Finance Documents are legal, valid, binding and enforceable; or
- (c) make the Finance Documents admissible in evidence in Ghana,

is not done, fulfilled or performed, or any Authorisation required for Clauses 20.8.3(a) to (c) above is withdrawn or modified or otherwise ceases to be in full force and effect.

## **20.9 Repudiation**

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

## **20.10 Exchange controls**

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

## **20.11 [Environmental**

*[to be included if required by SCB/CESCE]*

## **20.12 Material adverse change**

Any circumstances arise which give reasonable grounds in the opinion of the Agent for belief that there has been a material adverse change in:

- (a) the economic condition of the Borrower; or
- (b) the ability of the Borrower to comply with any of its obligations under the Finance Documents.

## **Section 8 – Changes to Parties**

### **21 Changes to the Lenders**

#### **21.1 Assignments and transfers by the Lenders**

Subject to this Clause 21 and the prior written consent of CESCE, a Lender (the **Existing Lender**) may:

- (a) assign any of its rights under the Finance Documents; or
- (b) transfer by novation any of its rights and obligations under the Finance Documents, to a Permitted Participant (the **New Lender**).

#### **21.2 Conditions of assignment or transfer**

21.2.1 An assignment will only be effective on:

- (a) receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it had been an Original Lender (other than where such assignment is an assignment to CESCE); and
- (b) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender (unless such New Lender is CESCE), the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

21.2.2 A transfer will only be effective if the procedure set out in Clause 21.5 (*Procedure for transfer*) is complied with.

21.2.3 If:

- (a) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
- (b) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This Clause 21.2.3 shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of the Facility or to any assignment or transfer to CESCE.

21.2.4 Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or

- (b) will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force; and
- (c) has made (and shall continue to make) its own independent investigation and assessment of the CESCE Insurance Policy and has not relied exclusively on any information provided to it by the Existing Lender in connection with the CESCE Insurance Policy.

21.4.3 Nothing in any Finance Document obliges an Existing Lender to:

- (a) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 21; or
- (b) support any losses directly or indirectly incurred by the New Lender by reason of:
  - (i) the non-performance by the Borrower of its obligations under the Finance Documents; or
  - (ii) any non-performance by CESCE of its obligations under the CESCE Insurance Policy,
 or otherwise

## 21.5 Procedure for transfer

21.5.1 Subject to the conditions set out in Clause 21-2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 21.5.4 when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender.

21.5.2 The Agent shall, subject to Clause 21.5.3, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

21.5.3 The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied that:

- (a) it has complied with all necessary "know your customer" or other similar checks under its own internal procedures and all applicable laws and regulations in relation to the transfer to such New Lender; and
- (b) CESCE has consented to the transfer to such New Lender.

21.5.4 Subject to Clause 21.10 (*Pro rata interest settlement*), on the Transfer Date:

- (a) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the **Discharged Rights and Obligations**);

### 21.7 Transfer of Facility Office

Any Lender or the Agent may, at any time, transfer its Facility Office to another jurisdiction.

### 21.8 Copy of Transfer Certificate or Assignment Agreement to Borrower and CESCE

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

### 21.9 Security over Lender's rights

In addition to the other rights provided to Lenders under this Clause 21, each Lender may without consulting with or obtaining consent from the Borrower [or CESCE], at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representative of holders) of obligations owed, or securities issued, by that Lender as Security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or
- (ii) require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

### 21.10 Pro rata interest settlement

If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 21.5 (*Procedure for transfer*) or any assignment pursuant to Clause 21.6 (*Procedure for assignment*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (a) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without interest accruing on them) on the last day of the current Interest Period; and
- (b) the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:
  - (i) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and

## **Section 9 – The Finance Parties**

### **22 Role of the Agent**

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

Each Lender and each Arranger:

- (a) appoints the Agent to act as its agent under and in connection with the Finance Documents; and
- (b) authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions (which includes dealing as Agent with any communication, claim, identification, modification or dispute under the CESCE Insurance Policy, maintaining necessary information to ensure that the CESCE Insurance Policy remains in full force and effect and any other matter in connection with the CESCE Insurance Policy).

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

- 22.2.1 Except as specifically provided in the Finance Documents or as required by applicable law, the Agent has no obligations or duties of any kind to any other Party under or in connection with any Finance Document.
- 22.2.2 The Agent shall promptly forward to the Lenders a copy of any instructions given to it by CESCE and details of any actions that it has taken or proposes to take pursuant to such instructions.
- 22.2.3 Subject to Clause 22.2.4, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- 22.2.4 Without prejudice to Clause 21.8 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), Clause 22.2.3 shall not apply to any Transfer Certificate or to any Assignment Agreement.
- 22.2.5 Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 22.2.6 If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- 22.2.7 If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or an Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- 22.2.8 If the Agent is aware of the full or partial withdrawal, suspension, termination or cancellation of the CESCE Insurance Policy, or that it has otherwise ceased to be in full force and effect and binding on and enforceable against CESCE, it shall promptly notify the Lenders.

- (c) rely on a certificate from any person:
  - (i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (ii) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of Clause 22.6.1(c)(i), may assume the truth and accuracy of that certificate.

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

- (a) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 20.1 (*Non-payment*));
- (b) no Finance Document has been changed or amended; and
- (c) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised.

22.6.3 The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.

22.6.4 Without prejudice to the generality of Clause 22.6.3 or Clause 22.6.5, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be desirable.

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

22.6.6 The Agent may act in relation to the Finance Documents through its personnel and agents, and shall not be liable for any error of judgment made by such person or be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person, unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct.

22.6.7 The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses arising as a result of its so relying.

22.6.8 Each Lender acknowledges and agrees that the Agent may from time to time delegate responsibility for liaising and coordinating with CESCE to an Affiliate of the Agent or a Lender (for the avoidance of doubt, that Lender may be the same legal entity as the Agent or an Affiliate of the Agent) as it deems necessary. Such Affiliate of the Agent or such Lender shall act in such an agency capacity without any liability to any other Lender.

- 22.7.7 The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.
- 22.7.8 Each Lender authorises the Agent to follow any instructions that it receives from CESCE which are in accordance with the terms and conditions of the CESCE Insurance Policy.
- 22.7.9 Each Lender acknowledges that any failure by the Agent to conform to any instructions in accordance with Clause 22.7.8, or to the terms and conditions of the CESCE Insurance Policy may result in lapse of coverage thereunder.

## **22.8 Responsibility for documentation and customer identification**

Neither the Agent nor any Arranger, nor any of their respective officers, employees or agents from time to time is responsible or liable for:

- (a) the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, any Arranger, the Borrower, CESCE or any other person given in or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

## **22.9 No duty to monitor**

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party or CESCE of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

## **22.10 Exclusion of liability**

- 22.10.1 Without limiting Clause 22.10.2, the Agent will not be liable (including without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) for any damages, costs or losses arising from any action taken by it or not taken by it under or in connection with any Finance Document.
- 22.10.2 No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Act.
- 22.10.3 The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the



22.11.2 The Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Agent pursuant to Clause 22.11.1.

#### **22.12 Resignation of the Agent**

22.12.1 The Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.

22.12.2 Alternatively the Agent may resign by giving thirty (30) days' notice to the other Finance Parties and the Borrower, in which case the relevant Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.

22.12.3 If the relevant Majority Lenders have not appointed a successor Agent in accordance with Clause 22.12.2 within thirty (30) days after notice of resignation was given, the Agent (after consultation with the Borrower and CESCE) may appoint a successor Agent.

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

22.12.5 The Agent's resignation notice shall only take effect upon the appointment of a successor.

22.12.6 Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*) and this Clause 22.12 (*Resignation of the Agent*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

22.12.7 After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with Clause 22.12.2. In this event, the Agent shall resign in accordance with Clause 22.12.2 and the costs of such resignation and appointment of a successor agent shall be for the Borrower's account.

#### **22.13 Confidentiality**

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

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

#### **22.14 Relationship with the Lenders**

22.14.1 The Agent may treat the person shown in its records as a Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as a Lender, entitled to payments under this Agreement and acting through its Facility Office 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.

## **22.18 CESCE Insurance Policy**

Each Lender confirms to the Agent that:

- (a) it has been provided with a copy of the CESCE Insurance Policy and has made (and shall continue to make) its own independent investigation and assessment of the CESCE Insurance Policy;
- (b) the Agent will be entering into the CESCE Insurance Policy on behalf of the Lenders (and ratifies the acceptance on its behalf of the CESCE Insurance Policy already accepted by the Agent);
- (c) the Agent and CESCE have been provided with all information requested from it by the Agent in order for the Agent to enter into the CESCE Insurance Policy;
- (d) all information provided by it to the Agent in relation to the CESCE Insurance Policy is correct, complete and up to date and is not misleading; and
- (e) any communication between it and CESCE in connection with the CESCE Insurance Policy or any other Finance Document shall be made through the Agent.

## **22.19 Claims under the CESCE Insurance Policy**

The Agent (in its capacity as Agent under the CESCE Insurance Policy) shall, if instructed to do so by any Lender, submit a claim under the CESCE Insurance Policy promptly upon receiving instructions to do so by such Lender. Such claim shall be submitted on behalf of all of the Lenders (excluding any Lender that has failed to provide the information required to submit the claim under the terms of the CESCE Insurance Policy as requested by the Agent until such time as that information is provided). Each Lender may independently instruct the Agent to make such a claim and the Agent shall not require the consent of any other Lender to make such a claim.

## **23 Conduct of business by the Finance Parties**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

- (b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the Borrower will be liable to the reimbursing Finance Party for the amount so reimbursed.

## **24.5 Exceptions**

24.5.1 This Clause 24 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Borrower.

24.5.2 A Recovering Finance Party is not obliged to share the Sharing Payment recovered by the Recovering Finance Party with any other Finance Party who has not participated in the process of acceleration as set forth in Clause 20.14 (*Acceleration*).

24.5.3 A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

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

## **25 The CESCE Insurance Policy**

### **25.1 Compliance with terms of the CESCE Insurance Policy**

25.1.1 Each Lender undertakes:

- (a) to provide to the Agent all relevant information the Agent requires to enter into the CESCE Insurance Policy;
- (b) to the Agent that each representation and warranty, and all information required to be provided by it to CESCE is true, correct and valid on the date the CESCE Insurance Policy is provided;
- (c) to co-operate with the Agent and each other Lender, and take such action and/or refrain from taking such action as may be reasonably necessary, to ensure that the CESCE Insurance Policy continues in full force and effect; and
- (d) shall indemnify and hold harmless each other Finance Party in the event that the CESCE Insurance Policy does not continue in full force and effect due to its fraud, gross negligence or wilful misconduct.

25.1.2 Each Lender is severally responsible for complying with the terms of the CESCE Insurance Policy.

## **Section 10 – Administration**

### **26 Payment mechanics**

#### **26.1 Payments to the Agent**

- 26.1.1 On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or that Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment (such time being 10:00 am as at the date of this Agreement).
- 26.1.2 All payments payable by the Borrower under this Agreement shall be made to such account as the Agent may notify to the Borrower in writing from time to time.
- 26.1.3 If at any time CSECE requires the Lenders or the Agent to pay any fees or other amounts in respect of the CESCE Insurance Policy, each Lender shall pay such amount (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) in accordance with the instructions of the Agent.

#### **26.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 26.3 (*Distributions to the Borrower*) and Clause 26.4 (*Clawback and pre-funding*), be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency.

#### **26.3 Distributions to the Borrower**

The Agent may (with the consent of the Borrower or in accordance with Clause 26.10 (*Set-off*)) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

#### **26.4 Clawback and pre-funding**

- 26.4.1 Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- 26.4.2 Unless Clause 26.4.3 applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

## **26.8 Currency of account**

- 26.8.1 Subject to Clauses 26.8.2 and 26.8.3, euro is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- 26.8.2 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- 26.8.3 Any amount expressed to be payable in a currency other than euro shall be paid in that other currency.

## **26.9 Change of currency**

- 26.9.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
- (a) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
  - (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- 26.9.2 If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

## **26.10 Disruption to payment systems etc.**

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

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in Clause 26.10(a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in Clause 26.10(a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 32 (*Amendments and waivers*);

- (b) two (2) Business Days (or, in the case of airmail or courier, five (5) Business Days) after being deposited in the post postage prepaid (or, as the case may be, airmail postage prepaid) or with the courier, in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 28.2 (*Addresses*), if addressed to that department or officer.

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

28.3.3 All notices under this Agreement from or to the Borrower shall be sent through the Agent.

#### **28.4 Notification of address**

Promptly upon receipt of notification of an address or change of address pursuant to Clause 28.2 (*Addresses*) or changing its own address, the Agent shall notify the other Parties.

#### **28.5 Electronic communication**

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

- (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 by not less than five Business Days' notice.

28.5.2 Any such electronic communication as specified in Clause 28.5.1 to be made between the Borrower 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.

28.5.3 Any such electronic communication as specified in Clause 28.5.1 made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

28.5.4 Any electronic communication which becomes effective, in accordance with Clause 28.5.3, 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.

28.5.5 Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 28.5.

#### **28.6 English language**

28.6.1 Any notice given under or in connection with any Finance Document must be in English.

## **32.2 Exceptions to amendment**

32.2.1 Subject to Clause 32.3 (*Replacement of Screen Rate*) an amendment or waiver that has the effect of changing or which relates to:

- (a) the definition of Majority Lenders in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) an increase in or an extension of any Commitment;
- (e) an extension of the Availability Period;
- (f) a change to the Borrower;
- (g) any amendment to the CESCE Insurance Policy;
- (h) any provision which expressly requires the consent of all the Lenders;
- (i) a change in the currency of any payment under any Finance Document; or
- (j) any change to Clause 2.2 (*Finance Parties' rights and obligations*), Clause 5.1 (*Delivery of a Utilisation Request*), Clause 6 (*Repayment*), Clause 7 (*Prepayment and cancellation*), Clause 8 (*Interest*), Clause 9 (*Interest Periods*), Clause 11.1 (*Commitment fee*), Clause 21 (*Changes to the Lenders*), Clause 24 (*Sharing among the Finance Parties*), this Clause 32, Clause 36 (*Governing law*), Clause 37 (*Arbitration*) or Clause 38 (*Jurisdiction*),

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

32.2.2 An amendment or waiver that has the effect of changing or which relates to any change to Clause 3.1 (*Purpose*) or [*relevant clauses*], any definition used within any of those Clauses or the form of any document to be delivered pursuant to any of those Clauses, Schedule 3 or Schedule 4 may not be effected without the consent of the Social Loan Co-ordinator.

32.2.3 An amendment or waiver which relates to, or would otherwise affect, the rights or obligations of the Agent may not be effected without the consent of the Agent.

## **32.3 Replacement of Screen Rate**

32.3.1 If a Screen Rate Replacement Event has occurred in relation to the Screen Rate, any amendment or waiver which relates to:

- (a) providing for the use of a Replacement Benchmark in relation to euro in place of the Screen Rate; and
- (b)
  - (i) aligning any provision of any Finance Document to the use of that Replacement Benchmark;

## 33.2 Disclosure of Confidential Information

### 33.2.1 Any Finance Party may disclose:

- (a) to any of its Affiliates such Confidential Information as that Finance Party shall consider appropriate;
- (b) to any of its Related Funds and any of its or its Affiliates' or Related Funds' officers, directors, employees, professional advisers, auditors, partners, delegates, service providers, insurers, insurance brokers, reinsurers, reinsurance brokers, agents, managers, administrators, nominees, attorneys, Representatives, trustees or custodians such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this Clause 33.2.1(b) 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;
- (c) to:
  - (i) any person to whom information is required or requested to be disclosed by any court or tribunal 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 (including the Equator Principles);
  - (ii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
  - (iii) any person to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially succeed) it as Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers
  - (iv) any person with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
  - (v) any person appointed by any Finance Party or by a person to whom paragraph 33.2.1(c)(iii) or 33.2.1(c)(iv) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
  - (vi) any person who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph 33.2.1(c)(iii) or 33.2.1(c)(iv) above;



- (l) Final Repayment Date for the Facility;
  - (m) changes to any of the information previously supplied pursuant to Clauses 33.3.1(a) to (l); and
  - (n) such other information agreed between such Finance Party and the Borrower,
- to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

33.3.2 The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

33.3.3 The Borrower represents that none of the information set out in Clauses 33.3.1(a) to (n) is, nor will at any time be, unpublished price-sensitive information.

33.3.4 Each Finance Party shall notify the Borrower and the other Finance Parties of:

- (a) the name of any numbering service provider appointed by that Finance Party in respect of this Agreement, the Facility and/or the Borrower; and
- (b) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or the Borrower by such numbering service provider.

#### **33.4 Entire agreement**

This Clause 33 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **33.5 Inside information**

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

#### **33.6 Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to Clauses 33.2.1(c)(i) (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory functions; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 33.

information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and

- (d) any person with the consent of the relevant Lender.

### **34.2 Related obligations**

34.2.1 The Agent and the Borrower acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and the Borrower undertake not to use any Funding Rate for any unlawful purpose.

34.2.2 The Agent and the Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender:

- (a) of the circumstances of any disclosure made pursuant to Clause 34.1.3(b) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that any information has been disclosed in breach of this Clause 34.

### **34.3 No Event of Default**

No Event of Default will occur under Clause 20.2 (*Other obligations*) by reason only of the Borrower's failure to comply with this Clause 34.

### **35 Counterparts**

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

which is a subject of its order shall be treated as having consented to that dispute being finally decided:

- (a) by the arbitral tribunal that ordered the consolidation unless the LCIA decides that that arbitral tribunal would not be suitable or impartial; and
- (b) in accordance with the procedure, at the seat and in the language specified in the relevant Finance Document under which the arbitral tribunal that ordered the consolidation was appointed, save as otherwise agreed by all parties to the consolidated proceedings or, in the absence of any such agreement, ordered by the arbitral tribunal in the consolidated proceedings.

Any dispute which is subject to a contractual option to litigate shall only be capable of consolidation pursuant to this Clause 37.4.1 if:

- (i) exercise of the option to which the dispute is subject is no longer permitted pursuant to the terms upon which the option was granted; or
- (ii) right of the option-holder to exercise the option has otherwise been validly waived.

37.4.2 Clause 37.4.1 shall apply even where powers to consolidate proceedings exist under any applicable arbitration rules (including those of an arbitral institution) and, in such circumstances, the provisions of Clause 37.4.1 shall apply in addition to those powers.

### **37.5 Agent's option**

Before the Finance Parties have delivered to the Registrar of the LCIA Court a Request for Arbitration or Response as defined in the Arbitration Rules of the LCIA (as the case may be), the Agent may (and shall, if so instructed by the Majority Lenders) by notice in writing to all other Parties require that all Disputes or a specific Dispute be heard by a court of law. If the Agent gives such notice, the Dispute to which such notice refers shall be determined in accordance with Clause 38 (*Jurisdiction*).

## **38 Jurisdiction**

If the Agent issues a notice pursuant to Clause 37.5 (*Agent's option*) the provisions of this Clause 38 (*Jurisdiction*) shall apply.

### **38.1 Jurisdiction**

- 38.1.1 The courts of England have exclusive jurisdiction to settle any Dispute.
- 38.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 38.1.3 Notwithstanding Clauses 38.1.1 and 38.1.2, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

the purposes of the State Immunity Act 1978 (UK) to the giving of any relief or the issue of any process in connection with any proceedings.

### **39 Governing language**

Although this Agreement may be translated into any language other than English, such non-English version of this Agreement is for information purposes only. In the event of any conflict or inconsistency between the English language version and such non-English version of this Agreement or any Dispute regarding the interpretation of any provision in the English language version or non-English version of this Agreement, the English language version of this Agreement shall prevail and questions of interpretation shall be addressed solely by reference to the English language version.

### **40 Contractual recognition of bail-in**

Notwithstanding any other term of any Finance 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 Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) 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;
  - (ii) 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
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

**Signed** by the parties or their duly authorised representatives

## Part 2 – The Agent and the Mandated Lead Arranger[s]

| <b>Agent</b>            | <b>Facility Office</b>                                 | <b>Notices</b>  |
|-------------------------|--|---|
| Standard Chartered Bank | One Basinghall Avenue<br>London<br>EC2V 5DD<br>England | One Basinghall Avenue<br>London<br>EC2V 5DD<br><br>England<br><br>Attention: Asset Servicing – Manager<br>Email: <a href="mailto:loans.agencyuk@sc.com">loans.agencyuk@sc.com</a> |

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| <b>Mandated Lead Arranger[s]</b> | <b>Facility Office</b>                                     | <b>Notices</b>   |
|----------------------------------|--|--|
| Standard Chartered Bank          | One Basinghall Avenue<br>London<br>EC2V 5DD<br><br>England | One Basinghall Avenue<br>London<br>EC2V 5DD<br><br>England<br><br>Attention: The Arranger<br>Email: <a href="mailto:Faruq.Muhammad@sc.com">Faruq.Muhammad@sc.com</a> |

PARLIAMENT OF GHANA LIBRARY

## Schedule 2 – Conditions precedent

### 1 Authorisations

- (a) A copy of the relevant approval of the parliament of the Republic of Ghana duly signed by the Clerk of Parliament, approving the terms and conditions of the Finance Documents.
- (b) A copy of the relevant appointment letter of the Minister of Finance, being evidence of the Minister of Finance's authority to sign the Finance Documents (including any Utilisation Request) on behalf of The Ministry of Finance for the account of the Republic of Ghana in its capacity as Borrower.
- (c) A copy of the relevant approval of the Parliament of the Republic of Ghana duly signed by the Clerk of Parliament, approving the terms and conditions of the Commercial Contract (therefore authorising the Buyer to enter into the Commercial Contract and to perform its obligations thereunder).
- (d) Evidence that the Buyer has obtained all Authorisations in Ghana necessary for the purchase and import of the goods and/or services to be supplied under the Commercial Contract and payment in euro in the principal financial centre of a Participating Member State or London, as required by the Commercial Contract, and that such Authorisations remain in full force and effect (or a confirmation that no such Authorisations are required).
- (e) A certificate signed by the Minister of Finance:
  - (i) identifying other persons (if any) as authorised to sign any and all notices or certificates in connection with the Finance Documents (including any Utilisation Request) on behalf of The Ministry of Finance for the account of the Republic of Ghana in its capacity as Borrower (the **Delegated Signatories**);
  - (ii) setting out a specimen of the signature of the Minister of Finance and each of the Delegated Signatories;
  - (iii) certifying that each copy document provided in satisfaction of the conditions specified in paragraphs 1, 3, 8 and 9(c), (g), (i) and (j) [TBC] of this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (f) A copy of the identification documents of the Minister of Finance and each of the Delegated Signatories (e.g., a copy of a valid passport or authorised National Identification Card attesting his/her domicile).
- (g) Evidence that the signatory who signed the Commercial Contract (and any other documents) on behalf of the Buyer was duly authorised to sign it (or such other document).
- (h) A copy of the identification documents of the person authorised to sign or approve the Commercial Contract (and any other documents) on behalf of the Buyer.
- (i) A copy of the relevant approval of the Public Procurement Authority authorising the Buyer to single source the Exporter for the Project.

### 2 Finance Documents

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

## **7 CESCE Insurance Policy**

- (a) The executed CESCE Insurance Policy (in form and substance satisfactory to [each][the] Original Lender) has been delivered to [each][the] Original Lender, or evidence that it will be delivered to [each][the] Original Lender by the first Utilisation Date.
- (b) A copy of the final approval, if applicable, from CESCE that shall, subject only to payment in full of the CESCE Insurance Premium from the proceeds of the first Utilisation, be in full force and effect and all conditions to the effectiveness thereof shall have been satisfied.
- (c) Evidence of such other matters as the Agent (acting on behalf of the Lenders) shall require in order to comply with the terms of the CESCE Insurance Policy.
- (d) The CESCE Undertaking of Reimbursement (*Compromiso de Reembolso*) in the form annexed to the CESCE General Conditions duly signed by the Exporter.
- (e) Confirmation from CESCE that CESCE has received a satisfactory OECD declaration of non-bribery signed by the Exporter.
- (f) A copy of any other Authorisation or other document, opinion or assurance which is required by CESCE in relation to the issuance of the CESCE Insurance Policy.

## **8 Environmental and social matters**

[to be inserted as appropriate]

## **9 Other documents and evidence**

- (a) Evidence that this Agreement and each Fee Letter have been duly stamped with the relevant authorities in Ghana.
- (b) A letter substantially in the form set out in Schedule 10 (*Form of process agent letter*) or in any other form and substance acceptable to the Agent from the High Commissioner for the Republic of Ghana confirming the High Commissioner's appointment to receive, on behalf of the Borrower, service of process and other documents in relation to any suit, action or proceeding (including, without limitation, process or other documents by which such suit, action or proceeding is begun) in the courts of England and Wales and elsewhere, arising in relation to any of the Finance Documents in a form approved by the Agent and the Lender.
- (c) A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by the Finance Documents or for the validity and enforceability of any Finance Document.
- (d) Evidence that the reimbursement of all legal fees due from the Borrower pursuant to Clause 16.1 (*Transaction expenses*) have been paid or will be paid on or before the first Utilisation Date.
- (e) Evidence that the fees, costs and expenses due from the Borrower pursuant to or in connection with the Finance Documents (including pursuant to Clause 11 (*Fees*) and Clause 16 (*Costs and Expenses*)) have been paid or will be paid on or before the first Utilisation Date.
- (f) Evidence that [each][the] Original Lender's "know your customer" and client adoption requirements have been completed.
- (g) A certified copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Borrower accordingly) in

### Schedule 3 – Form of Utilisation Request

From: The Republic of Ghana , represented by The Ministry of Finance

To: Standard Chartered Bank as Agent

Dated: [\*\* ]

Dear Sirs

**FACILITY AGREEMENT dated [\*\* ] (the Agreement) between, inter alios, Standard Chartered Bank as Agent and The Republic of Ghana, represented by The Ministry of Finance relating to the construction of the Yapei, Buipe and Daboya bridges in Ghana**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning when used in this Utilisation Request unless given a different meaning in this Utilisation Request.

2. We hereby request a Loan to be made on the following terms:

Amount of the Loan: EUR [[12,654,949.26]]<sup>4</sup> [\*\* ], or, if less, the Available Facility]

Payment instructions: To the account specified below

Proposed-Utilisation-Date: [the date falling four Business Days after the Effective Date]<sup>5</sup> [[\*\* ] (or, if that is not a Business Day, the next Business Day) ]<sup>6</sup>.

3. We refer to the attached Exporter Certificate and certify that the information specified in the Exporter Certificate is true and accurate and has not been amended or superseded at the date of this Utilisation Request.

4. This Loan is to be made in respect of amounts due and payable under the Commercial Contract for Eligible Goods and Services.

5. The proceeds of this Loan should be credited to the following account of [the Exporter]<sup>7</sup> [CESCE]<sup>8</sup>:

*[insert account details].*

6. We acknowledge and confirm that any Loan will be used in accordance with the Agreement.

7. We hereby confirm that each applicable condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.

8. This Utilisation Request is a Finance Document.

<sup>4</sup> For the Premium Utilisation Request only

<sup>5</sup> For the Premium Utilisation Request only

<sup>6</sup> For Utilisation Requests other than the Premium Utilisation Request

<sup>7</sup> For Utilisation Requests other than the Premium Utilisation Request

<sup>8</sup> For the Premium Utilisation Request only



## Schedule 4 – Form of Exporter Certificate

[subject to further discussion]

From: QGMI Construcciones e Infraestructuras Globales S.L.U.

To: Standard Chartered Bank as Agent

Dated: [\*\* ]

Dear Sirs

**FACILITY AGREEMENT** dated [\*\* ] (the Agreement) between, inter alios, Standard Chartered Bank as Agent and The Republic of Ghana, represented by The Ministry of Finance relating to the construction of the Yapei, Buipe and Daboya bridges in Ghana

1. We refer to the Agreement and the Commercial Contract. Terms defined in the Agreement shall have the same meaning in this Exporter Certificate unless given a different meaning in this Exporter Certificate. This is the Exporter Certificate issued in respect of the attached Utilisation Request..
2. We confirm that:
  - a. the commercial invoice(s) attached to the Utilisation Request are due and payable and issued by us in respect of the Eligible Goods and Services described in the Commercial Contract, the aggregate amount of such invoice(s) being the **Utilisation Amount**.
  - b. The Utilisation Amount remains due and payable but unpaid to us.
3. We attach [insert reference to relevant invoice(s)].
4. We confirm that:
  - a. the Utilisation Amount does not include any sums which have been the subject of any other Exporter Certificate;
  - b. the cost to us of procuring any Local Costs in respect of which this Exporter Certificate is being submitted does not, when added to the cost to us of procuring any Local Costs in respect of which previous Exporter Certificates and Utilisation Requests have been submitted, exceed [fifty per cent (50%)] of the Commercial Contract Export Value;
  - c. the Commercial Contract is in full force and effect;
  - d. no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency has or have been started or threatened in relation to the Commercial Contract or the transactions contemplated under the Commercial Contract;
  - e. the Down Payment has been paid to us;
  - f. each of the parties to the Commercial Contract have performed their respective obligations in full; and
  - g. all relevant Authorisations necessary for the export and import of the goods and services described above have been obtained and are in full force and effect.

## Schedule 5 – Timetables

|   |  |
|---|--|
| Delivery of a duly completed Utilisation Request other than the Premium Utilisation Request (Clause 5.1 ( <i>Delivery of a Utilisation Request</i> )) | U - 10, 09.00am                                    |
| Agent notifies the Lenders of the Loan in accordance with Clause 5.3.2 ( <i>Lenders' participation</i> ) in the case of the Premium Utilisation       | Next Business Day after the Effective Date, 4:00pm |
| Agent notifies the Lenders of the Loan in accordance with Clause 5.3.2 ( <i>Lenders' participation</i> ) in the case of other Utilisations            | U – 7, 4:00pm                                      |
| EURIBOR is fixed for the Loan   | Quotation Day as of 10.00 a.m.                     |

"U" = date of Utilisation

"U – 10" = ten (10) Business Days prior to the date of Utilisation

"U – 7" = seven (7) Business Days prior to the date of Utilisation

**THE SCHEDULE**

**Rights to be assigned and obligations to be released and undertaken**

*[insert relevant details]*

*[Facility office address and attention details for notices and account details for payments]*

*[Existing Lender]*

*[New Lender]*

By:

By:

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

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

[Agent]

By:

**The Schedule – Commitment/rights and obligations to be transferred**

All our Commitment and all our rights, interests and liabilities under the following Finance Documents:

(a) The Agreement

(b) \*\*

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

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as \*\*

[\*\* ] as Agent

By: \*\*

**Schedule 9 – Form of Attorney General legal opinion**

*[agreed form to be inserted]*

This letter and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law.

Yours faithfully,

.....  
**High Commissioner for the Republic of Ghana**