

EUR [222,444,176.25] Euler Hermes-backed term loan facility agreement

relating to the design and construction of Ashiaman Roundabout – Akosombo
Junction (upgrading of Eastern Corridor Road – Lot 1)

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 [Bookrunner and] Structuring Bank)

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

THIS DRAFT FACILITY AGREEMENT REMAINS SUBJECT TO THE REVIEW AND APPROVAL OF STANDARD
CHARTERED BANK AND REVIEW OF THE EULER HERMES DOCUMENTATION. ALL ENVIRONMENTAL & SOCIAL
DEFINITIONS AND PROVISIONS REMAIN SUBJECT TO DUE DILIGENCE BY
AND APPROVAL OF STANDARD CHARTERED BANK.

CIRCULATION OF THIS DRAFT FACILITY AGREEMENT DOES NOT CONSTITUTE A COMMITMENT BY STANDARD
CHARTERED BANK OR ANY OF ITS AFFILIATES TO PROVIDE ANY FINANCING OR SUPPORT. ANY COMMITMENT
WILL BE SUBJECT TO THE DUE DILIGENCE AND INTERNAL POLICIES OF STANDARD CHARTERED BANK. ALL
FIGURES ARE INDICATIVE ONLY AND REMAIN SUBJECT TO RELEVANT APPROVALS.

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Term loan facility agreement

Dated **

Between

- (1) **The Republic of Ghana, represented by The Ministry of Finance (the Borrower);**
- (2) The financial institutions listed in Part 1 of Schedule 1 (the **Original Lenders**);
- (3) **Standard Chartered Bank**, incorporated in England by Royal Charter 1853 of One Basinghall Avenue, London, EC2V 5DD, United Kingdom as agent of the Lenders (the **Agent**);
- (4) **Standard Chartered Bank**, incorporated in England by Royal Charter 1853 of One Basinghall Avenue, London, EC2V 5DD, United Kingdom as structuring bank (the **Structuring Bank**); and
- (5) The financial institutions listed in Part 2 of Schedule 1 as mandated lead arrangers (the **Mandated Lead Arrangers**)

Recitals

- A By a contract (the **Commercial Contract**) having contract number GHA/GOC/TRC/28/2020 and dated 13 November 2020 (as amended and supplemented from time to time to time and including all exhibits thereto and all letter agreements) made between the Buyer and the Exporter (each as defined below) and having a contract value of EUR 256,008,798.23 (the **Commercial Contract Price**) in connection with the design and construction of Ashiaman Roundabout – Akosombo Junction (upgrading of Eastern Corridor Road – Lot 1) (as more particularly described in the Commercial Contract, the **Project**).
- B The Lenders have agreed to make available the Facility to the Borrower under this Agreement to provide finance, backed by Euler Hermes, for the successful completion of the Project.

It is agreed:

Section 1 – Interpretation

1 Definitions and construction

1.1 Definitions

In this Agreement (including the Recitals):

Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person (including any partnership) or any other Subsidiary of that Holding Company.

Applicable Law means:

- (a) any law, statute, decree, constitution, regulation, rule, by-law, order, authorisation, judgment, injunction or other directive of any Ghanaian Government Authority or otherwise which is applicable in Ghana;

- (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 Arrangers and the Structuring Bank.

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; and
- (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

Borrower's Signatory means any person:

- (a) authorised to execute any document to be delivered pursuant to or in connection with this Agreement on the Borrower's behalf; and
- (b) in respect of whom the Agent has received evidence satisfactory to it of such authority and a specimen signature.

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

- (a) the interest which the Lenders should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount of any Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

Budget Statement and Economic Policy means the annual national budget statement and economic policy (including a mid-year fiscal policy review of the budget statement and economic policy) of the Government of Ghana.

Business Day means:

- (a) a day (other than a Saturday or Sunday) on which banks are open for general interbank business (other than operation only of payments, purchases and rate fixing in euro) in:
 - (i) Accra, Frankfurt and London; and
 - (ii) in relation to a payment, purchase or rate fixing in or other matter relating to any currency (other than euro) the principal financial centre of the country of that currency; and
- (b) in relation to a payment or rate fixing in euro, a day on which:
 - (i) the Trans-European Automated Real-time Gross Settlement Express Transfer payment system (TARGET) is operating; and
 - (ii) banks are open for general interbank business in Frankfurt.

Buyer means The Republic of Ghana, represented by The Ministry of Roads and Highways acting through the Ghana Highway Authority.

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 [177,497,106.79].

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 arranger, agent and original lender.

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 to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

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

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

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 33 (*Confidential Information*); or

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

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

(ii) any Funding Rate.

Confidentiality Undertaking means a confidentiality undertaking substantially in a form recommended by the Loan Market Association or in any other form agreed between the Borrower and the Agent.

Contract Payments means all payments made, or as the context may require, to be made by the Buyer to the Exporter in respect of the supply of goods and services under the Commercial Contracts.

Corrupt Practices means directly or indirectly in connection with the Project, the Commercial Contract or any transaction contemplated by the Finance Documents:

(a) the offering, promising or giving of any undue pecuniary or other advantage, whether directly or through intermediaries, to an official in the public or private sectors, for that official or for a third party, to influence the official to act or refrain from acting in relation to the performance of official duties, with the purpose of obtaining or retaining business or other improper advantage in the conduct of business;

(b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997;

(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 the payment or payments to be made by the Buyer to the Exporter prior to any Utilisation under the Facility, which in aggregate amount(s) is no less than fifteen per cent (15%) of the Commercial Contract Export Value paid as an advance payment to the Exporter by the Buyer.

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 Costs means:

- (a) Eligible Imported Goods and Services in aggregate up to an amount equal to eighty-five per cent (85%) of the Commercial Contract Export Value; and
- (b) Local Costs in aggregate up to an amount equal to twenty-five per cent (25%) of the Commercial Contract Export Value.

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) which 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 Euler Hermes for financing under this Agreement.

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

Euler Hermes means Euler Hermes Aktiengesellschaft.

Euler Hermes Policy means the insurance policy covering [ninety-five per cent (95%)] of the commercial and political risks in respect of the Facility issued or to be issued by Euler Hermes to the Agent, in form and substance reasonably satisfactory to the Agent.

Euler Hermes Premium means the premium payable in respect of the Euler Hermes Policy.

EURIBOR means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero.

Event of Default means any event or circumstance specified as such in Clause 20 (*Events of Default*) or Clause 4.3.2 (*Conditions subsequent*).

Exporter means Inzag Germany GmbH of Rosenstrasse 2, 10179 Berlin, Germany.

Exporter Certificate means a certificate substantially in the form set out in Schedule 4 (*Form of Exporter Certificate*).

External Financial Indebtedness means any Financial Indebtedness incurred by Ghana which is:

- (a) denominated in or payable or optionally payable in or calculated by reference to a currency other than Ghanaian Cedi; or
- (b) owed to a person resident or having its head office or principal place of business outside Ghana,

and, for the avoidance of doubt, shall include any Financial Indebtedness under the Commercial Facility.

Facility means the EUR loan facility made available by the Lenders under this Agreement as described in Clause 2.1 (*The Facility*).

Facility Office means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

FATCA means:

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

- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in 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 earlier of:

- (a) the date falling 120 Months after the Starting Point of Credit; and
- (b) [*date certain*],

(or, if such date is not a Business Day, the immediately preceding Business Day).

Finance Documents means this Agreement, the Euler Hermes 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 transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; or
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

First Repayment Date means the date falling six Months after the Starting Point of Credit, provided if such date is not a Business Day, then the First Repayment Date shall be the immediately preceding Business Day.

Foreign Public Official means an individual who:

- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory);
- (b) exercises a public function:
 - (i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory); or
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision); or
- (c) is an official or agent of a public international organisation.

Funding Rate means any individual rate notified by a Lender to the Agent pursuant to Clause 10.4.1(b) (*Cost of funds*).

Ghana means the Republic of Ghana.

Ghanaian Tax Deduction means the Tax Deduction resulting from withholding tax payable under Ghanaian law on each payment for interest or fees to be made by the Borrower to the Finance Parties under the Finance Documents.

Ghanaian Government Authority means any national or supranational government in Ghana or any governmental, administrative, fiscal, judicial or government owned body, department, authority, tribunal, agency or entity or any central bank in Ghana (or any person, whether or not government owned and however constituted or called, that exercises the functions of a central bank in Ghana).

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

IBRD means the International Bank for Reconstruction and Development.

IMF means the International Monetary Fund.

Interest Payment Date means the last day of an Interest Period in respect of a Loan.

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 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.

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.

Margin means one point five per cent (1.5%) per annum.

Material Adverse Effect means a material adverse effect on:

- (a) the Public Assets or the financial and economic condition of the Borrower, including without limitation its balance of payments and External Financial Indebtedness;

- (b) the ability of the Borrower to perform any of its payment obligations under the Finance Documents; or
- (c) the validity or enforceability of the Finance Documents or the rights and remedies of any Finance Party under any of the Finance Documents.

Material Commercial Contract Change means any:

- (a) assignment, novation or other disposal of any rights and/or obligations under the Commercial Contract; or
- (b) amendment, acquiescence, departure from or waiver of the terms of the Commercial Contract, which:
 - (i) on its own, or when aggregated with any previous amendments, acquiescences, departures from or waivers, increases or decreases the amount payable by the Buyer under the Commercial Contract by more than ten per cent (10%); or
 - (ii) involves a material change in nature of the supply made under the Commercial Contract.

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one or, if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules (a) to (c) will only apply to the last Month of any period.

Original Lender means the financial institutions listed in Part 1 of Schedule 1 (*The Parties*).

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

Party means a party to this Agreement.

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 the payment of the Euler Hermes 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).

Reference Bank Quotation means any quotation supplied to the Agent by a Reference Bank.

Reference Bank Rate means the arithmetic mean of the rates (rounded upwards to four (4) decimal places) as supplied to the Agent at its request by the Reference Banks in relation to EURIBOR as either:

- (a) if:
- (i) the Reference Bank is a contributor to the applicable Screen Rate; and
 - (ii) it consists of a single figure,
the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or
- (b) in any other case, the rate at which the relevant Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market as the rate at which the relevant Reference Bank could borrow funds in the Relevant Market in euro and the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

Reference Banks means the principal London offices of any bank(s) as may be appointed by the Agent in consultation with the Borrower.

Related Fund in relation to a fund (the **first fund**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment

manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

Relevant 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 1/20th of the total amount of the Loans drawn on or before the last day of the Availability Period.¹

Replacement Benchmark means a benchmark rate that is:

- (a) formally designated, nominated or recommended as the replacement for the Screen Rate by:
 - (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to the Screen Rate.

Repeating Representations means each of the representations set out in Clause 17 (*Representations and warranties*).

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

Reserves of a state means the official external reserves of that state, by whoever and in whatever form owned, held, administered or controlled (including any not owned or not held or not administered or not controlled by that state but customarily regarded and held out as its official external reserves).

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

¹ This assumes that the first repayment will not take place until after the end of the Availability Period.

Restricted Party means a person that is:

- (a) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, any Sanctions List;
- (b) located in, incorporated under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a person located in or organized under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions; or
- (c) otherwise a target of Sanctions ("target of Sanctions" signifying a person with whom a US person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities).

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

- (a) the United States government;
- (b) the United Nations;
- (c) the European Union;
- (d) the United Kingdom;
- (e) Germany; or
- (f) 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 time, there is no successor administrator to continue to provide the Screen Rate;

(iii) the supervisor of the administrator of the Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or

(iv) the administrator of the Screen Rate or its supervisor announces that the Screen Rate may no longer be used; or

(c) the administrator of the Screen Rate determines that the Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:

(i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders) temporary; or

(ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than six (6) months; or

(iii) in the opinion of the Majority Lenders, the Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

Security means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

Specified Time means a time determined in accordance with Schedule 5 (*Timetables*).

Starting Point of Credit means [TBC], or if such date is not a Business Day, the immediately preceding Business Day.

Subsidiary means in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or
- (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 [222,444,176.25] 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 (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) 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).

Write-down and Conversion Powers means:

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

1.2 Construction

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

- (a) the **Agent**, any **Arranger**, any **Finance Party**, any **Lender**, any **Party**, or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and obligations under the Finance Documents;
- (b) **assets** includes revenues, property and rights of every kind, present, future, actual and contingent and whether tangible or intangible (including uncalled share capital);
- (c) **Clauses** and **Schedules** are to be construed as references to the clauses of, recitals of and schedules to, this Agreement;
- (d) a **guarantee** includes any guarantee or indemnity, bond, letter of credit, documentary or other credit, or other assurance against financial loss;
- (e) the words **include(s)**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (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 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.

1.4 Third party rights

1.4.1 Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Agreement.

1.4.2 Notwithstanding any term of any Finance Document, the Parties may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Agreement without the consent of any person who is not a Party.

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 Lenders 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.

3 Purpose

3.1 Purpose

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

- (a) direct payments to the Exporter in respect of Eligible Costs (up to a total amount of EUR [195,750,875.10]); and
- (b) up to one hundred per cent (100%) of the Euler Hermes Premium (up to a total amount of EUR [26,693,301.15]),

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 Euler Hermes (as the case may be) as specified in the relevant Utilisation Request.

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 Euler Hermes

The Borrower agrees that 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 Euler Hermes.

3.4 ECA 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 Euler Hermes under or in connection with the terms of the Euler Hermes 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 Euler Hermes Policy are complied with; and
- (b) the Agent shall not be obliged to do anything if, in its opinion, to do so could result in a breach of any requirements of Euler Hermes under or in connection with or affect the validity of the Euler Hermes Policy.

3.4.2 In case of a conflict or contradiction between the terms of this Agreement and the Euler Hermes Policy:

- (a) the Borrower and each Lender, as the case may be, shall take such action as may be deemed necessary to remove such conflict or contradiction from this Agreement to ensure that all requirements of the Euler Hermes Policy are complied with; and
- (b) in any event, the terms of the Euler Hermes Policy shall prevail.

- 3.4.3 Nothing in this Clause 3.4 shall limit the obligations of the Borrower.
- 3.4.4 The Borrower agrees and acknowledges that the Euler Hermes Policy is a separate arrangement and the Borrower shall not have any right or recourse against any Finance Party in relation to or arising by reason of any payment made by Euler Hermes to any Finance Party pursuant to the Euler Hermes Policy.

3.5 Obligations and Euler Hermes Policy

- 3.5.1 The Borrower agrees and acknowledges that its payment obligations under the Finance Documents to which it is a party shall in no way be affected by the Euler Hermes Policy. In case of any payment to any Finance Party pursuant to the Euler Hermes Policy, the Borrower and the relevant Finance Party acknowledge that Euler Hermes shall, in addition to any other rights which it may have under the Euler Hermes Policy or otherwise, have, to the extent of such payment, full rights of recourse against the Borrower pursuant to its right of subrogation as referred to in Clause 25.2 (*Subrogation to Euler Hermes*).
- 3.5.2 The Borrower acknowledges and agrees that the rights of recourse of Euler Hermes shall in no way be affected by any dispute, claim or counterclaim whatsoever between the Borrower and any one or more of the Finance Parties, or between any other parties (other than a dispute, claim or counterclaim solely between the Borrower and Euler Hermes).
- 3.5.3 Each Lender acknowledges that the Agent is party to the Euler Hermes Policy as agent on behalf of the Lenders.

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 5.4.1 (*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 in financial sector of Ghana, war, civil war, revolution, uprising, acts of terrorism and/or sabotage, an extension of exchange controls or a debt moratorium, or a change in law or regulation or in the political, economic, financial, commercial, legal and fiscal environment of Ghana, and which in the opinion of the Majority Lenders would make it inadvisable to proceed with any Utilisation;
- (c) the Agent is satisfied that each of the Euler Hermes Policy and the Commercial Contract remains in full force and effect;
- (d) no event described in Clause 7.3 (*Material Commercial Contract Change*) has occurred;
- (e) no Default is continuing or would result from the proposed Loan; and
- (f) the Repeating Representations to be made by the Borrower are true.

4.2.2 The conditions specified in this Clause 4.2 are inserted for the sole benefit of the Lenders and may be waived on their behalf in whole or in part and with or without conditions by the Agent on behalf of the Lenders.

4.3 Conditions subsequent

4.3.1 To the extent that any conditions precedent under either of Clauses 4.1 or 4.2 are waived on condition that the same are received or completed (as the case may be) by such date(s) and on such other conditions as may be agreed in writing by the Agent then the fulfilment of such conditions by such date(s) and on such other conditions as may be required by the Agent shall be deemed to be required under this Clause 4.3.

4.3.2 Any breach by the Borrower of its obligations under Clause 4.3.1 (*Conditions subsequent*) shall constitute an Event of Default if the breach is not remedied or (at the sole discretion of the Agent) waived within five (5) Business Days from the date of such breach.

4.3.3 Any breach by the Borrower of its obligations under Clause 4.3.2 (*Conditions subsequent*) shall constitute an immediate Event of Default for the purposes of this Agreement and any grace periods which would otherwise be applicable shall not apply.

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 Euler Hermes.

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 Euler Hermes) 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 Euler Hermes Premium

- (b) in the case of any other Utilisation Request:
 - (i) the total amount certified in the Utilisation Request as being due to the Exporter under the Commercial Contract; or
 - (ii) if less, the Available Facility.

5.4 Lenders' participation

- 5.4.1 If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- 5.4.2 The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately before making the Loan.
- 5.4.3 The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 Acknowledgement and instruction by the Borrower; authority to disburse

- 5.5.1 The Borrower irrevocably authorises and instructs the Agent to date the Premium Utilisation Request on the Effective Date and, once so dated, the Premium Utilisation Request shall be considered properly delivered to the Agent. All Parties acknowledge that any Premium Utilisation Request delivered to the Agent pursuant to paragraph 9(h) of Schedule 2 (*Conditions precedent*) shall not have any effect until dated by the Agent on the Effective Date in accordance with this Clause 5.5.1.
- 5.5.2 The Borrower irrevocably and unconditionally acknowledges and agrees that:
 - (a) the Agent shall be entitled to assume (without any duty to make any enquiry whatsoever) that any document which appears to the Agent on its face to be a Utilisation Request, and which appears to have been delivered to it by or on behalf of the Borrower in accordance with and in compliance with this Clause 5.5, has been delivered by the Borrower, and that the Borrower approves that Utilisation Request for all purposes of the Finance Documents; and
 - (b) the Borrower will not dispute any such Utilisation Request received and treated in accordance with this Clause 5.5.

5.5.3 The Agent and the Lenders are irrevocably authorised and instructed by the Borrower to pay the proceeds of each Loan to the Exporter (or, in the case of the Loan requested in the Premium Utilisation Request, to Euler Hermes) and the Borrower acknowledges to each of the Finance Parties that such payments shall constitute Utilisations of the Facility and the making of a Loan to the Borrower by the Lenders on the Utilisation Date, and a liability on the part of the Borrower which the Borrower will have an unconditional and irrevocable obligation to repay in accordance with Clause 6 (*Repayment*) and all other provisions of this Agreement.

5.6 Cancellation of Commitment

Any unutilised Commitments shall be cancelled immediately at the end of the Availability Period.

5.7 Payment of the Euler Hermes Premium

5.7.1 The Borrower agrees and acknowledges that the repayment of the Loans to the Lenders is being insured by Euler Hermes. The Borrower and the Lenders further agree and acknowledge that:

- (a) the proceeds of the Premium Utilisation shall be paid by the Agent to Euler Hermes on the relevant Utilisation Date; and
- (b) no part of the Euler Hermes Premium is refundable under any circumstances (except at the sole discretion of Euler Hermes in accordance with the terms and conditions of the Euler Hermes Policy).

5.7.2 Notwithstanding Clause 5.7.1(b), the Agent agrees that it shall apply any amount received by it from Euler Hermes by way of refund of the Euler Hermes 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 Euler Hermes; 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.

Section 4 – Repayment, prepayment and cancellation

6 Repayment

6.1 Repayment of Loans

6.1.1 The Borrower shall repay the Loans by paying a Repayment Instalment to the Agent (for the account of the Lenders) on each Repayment Date.

6.1.2 The principal amount of the Loans must be repaid on or before the Final Repayment Date.

6.2 Re-borrowing

6.2.1 The Borrower may not re-borrow any part of the Facility which is repaid or prepaid.

6.2.2 Any amount repaid or prepaid shall reduce each Lender's Commitment rateably.

7 Prepayment and cancellation

7.1 Mandatory prepayment events

7.1.1 Illegality

If, at any time, it is or will become unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to Clause 7.6 (*Right of repayment and cancellation in relation to a single Lender*), the Borrower shall repay that Lender's participation in the Loans made to the Borrower on the last day of the Interest Period for the Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participations repaid.

7.1.2 Euler Hermes withdrawal of cover

If the Euler Hermes Policy ceases to provide the full benefit of cover to a Lender or it becomes unlawful for Euler Hermes to perform any of its obligations under the Euler Hermes Policy in respect of a Lender or any obligation or obligations of Euler Hermes under the Euler Hermes Policy are not or cease to be legal, valid, binding or enforceable or the Euler Hermes Policy is not or ceases to be in full force and effect other than as a direct result of the gross negligence or wilful misconduct of the relevant Lender:

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

- (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 7.4 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.

7.5 Voluntary cancellation

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

7.6 Right of replacement in relation to a single Lender

7.6.1 If:

- (a) (other than in respect of any withholding tax payable under Ghanaian law as at the date of this Agreement) any sum payable to any Lender by the Borrower is required to be increased under Clause 12.2 (*Tax gross-up*); or
- (b) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13 (*Increased Costs*),

the Borrower may, with the prior written consent of the Agent, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of its intention to replace that Lender in accordance with Clause 7.6.2.

7.6.2 If:

- (a) any of the circumstances set out in Clause 7.6.1 apply to a Lender; or
- (b) the Borrower becomes obliged to pay any amount in accordance with Clause 7.1.1 (*Illegality*) to any Lender,

the Borrower may, on not less than fifteen (15) Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 21 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 21 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 21.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation to such participation under the Finance Documents.

7.6.3 The replacement of a Lender pursuant to Clause 7.6.2 shall be subject to the following conditions:

- (a) the Borrower shall have no right to replace the Agent;
- (b) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
- (c) Euler Hermes has consented to the replacement;
- (d) in no event shall the Lender replaced under Clause 7.6.2 be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and

- (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.

Section 5 – Costs of utilisation

8 Interest

8.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of:

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

8.2 Payment of interest

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

8.3 Default interest

8.3.1 If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to Clause 8.3.2, is two per cent (2%) higher than (i) the applicable rate of interest for each Loan as set forth in Clause 8.1 (*Calculation of interest*) and (ii) the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods (whichever is higher), each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Agent.

8.3.2 If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

- (a) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
- (b) the rate of interest applying to the overdue amount during that first Interest Period shall be the per annum rate that is two per cent (2%) higher than (i) the applicable rate of interest for each Loan as set forth in Clause 8.1 (*Calculation of interest*) and (ii) the rate which would have applied if the overdue amount had not become due (whichever is higher).

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

8.4 Notification of rates of interest

The Agent shall promptly notify the Lenders and the Borrower of any determination of an applicable rate of interest under this Agreement.

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 *Reference Bank Rate*: 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,

the applicable EURIBOR shall be the Reference Bank Rate, as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of the Loan.

- 10.1.3 *Cost of funds*: If Clause 10.1.2 applies but no Reference Bank Rate is available for the relevant currency or Interest Period there shall be no EURIBOR for that Loan and Clause 10.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

10.2 Calculation of Reference Bank Rate

- 10.2.1 Subject to Clause 10.2.2, if EURIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- 10.2.2 If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed thirty-three per cent (33%) of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of EURIBOR (or, if applicable, the Replacement Benchmark) then Clause 10.4 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

10.4 Cost of funds

- 10.4.1 If this Clause 10.4 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (a) the Margin; and
 - (b) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select and, if any such rate is below zero, such rate shall be deemed to be zero.
- 10.4.2 If this Clause 10.4 applies pursuant to Clause 10.3 (*Market disruption*) and a Lender's Funding Rate is less than EURIBOR, the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of Clause 10.4.1, to be EURIBOR.
- 10.4.3 If this Clause 10.4 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- 10.4.4 Subject to Clause 32.3 (*Replacement of Screen Rate*), any alternative basis agreed pursuant to Clause 10.4.3 shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

10.4.5 If this Clause 10.4 applies but any Lender does not supply a quotation by the time specified in Clause 10.4.1(b) the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

10.5 Break Costs

10.5.1 The Borrower shall, within fifteen (15) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the Repayment Date for that Loan or Unpaid Sum.

10.5.2 Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

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.

Section 6 – Additional payment obligations

12 Tax gross-up and indemnities

12.1 Tax Definitions

12.1.1 In this Agreement:

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

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

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

Tax Payment means either the increase in a payment made by the Borrower to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

12.1.2 Unless a contrary indication appears, in this Clause 12 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

12.2.1 The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

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

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

12.2.4 If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

12.2.5 Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

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.

12.5 Stamp taxes

The Borrower shall pay and, within fifteen (15) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document **provided that** the Borrower shall have no obligation to indemnify a Finance Party for any stamp duty paid by that Finance Party in relation to the Finance Documents where the Borrower was exempt from payment of such stamp duty pursuant to the Stamp Duty Act, 2005 (Act 689) of Ghana.

12.6 VAT

- 12.6.1 All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to Clause 12.6.2, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- 12.6.2 If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (a) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Clause 12.6.2(a) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (b) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- 12.6.3 Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- 12.6.4 Any reference in this Clause 12.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).

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

- (b) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.

12.7.6 The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to Clause 12.7.5 to the Borrower.

12.7.7 If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to Clause 12.7.5 is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.

12.7.8 The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with Clauses 12.7.5, 12.7.6 or 12.7.7.

12.7.9 Without prejudice to any other term of this Agreement, if a Lender fails to supply any withholding certificate, withholding statement, document, authorisation, waiver or information in accordance with Clause 12.7.5, or any withholding certificate, withholding statement, document, authorisation, waiver or information provided by a Lender to the Agent is or becomes materially inaccurate or incomplete, then such Lender shall indemnify the Agent, within three Business Days of demand, against any cost, loss, Tax or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (including any related interest and penalties) in acting as Agent under the Finance Documents as a result of such failure.

12.8 FATCA Deduction

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

12.8.2 Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) and, in any case, at least three (3) Business Days prior to making a FATCA Deduction, notify the Party to whom it is making the payment and, on or prior to the day on which it notifies that Party, shall also notify the Borrower, the Agent and the other Finance Parties.

13 Increased Costs

13.1 Increased Costs

13.1.1 Subject to Clause 13.3 (*Exceptions*), the Borrower shall, within fifteen (15) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement

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:

- (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.

CRR means Regulation (EU) no. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no. 648/2012.

Increased Costs means:

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

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

13.2 Increased Cost claims

- 13.2.1 A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- 13.2.2 Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 12.3.2 (*Tax indemnity*) applied); or
- (d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14 Other indemnities

14.1 Currency indemnity

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

- (a) making or filing a claim or proof against 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) 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 Euler Hermes 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
- (d) 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;
 - (ii) entering into or performing any foreign exchange contract for the purposes of Clause 26.9 (*Change of currency*); or
 - (iii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iv) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers and experts as permitted under this Agreement; and
- (b) against any cost, loss or liability (including for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct or, in the case of any cost, loss or liability pursuant to Clause 26.10 (*Disruption to payment systems etc.*), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents.

15 Mitigation by the Lenders

15.1 Mitigation

- 15.1.1 Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*) (other than in respect of any withholding tax

payable under Ghanaian law as at the date of this Agreement) or Clause 13 (*Increased Costs*) including transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

15.1.2 Clause 15.1.1 does not in any way limit the obligations of the Borrower under the Finance Documents.

15.2 Limitation of liability

15.2.1 The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).

15.2.2 A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it or adversely affect any Lender's rights under the Euler Hermes Policy.

16 Costs and expenses

16.1 Transaction expenses

The Borrower shall, promptly on demand, pay the Agent and the Arrangers 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 (*ECA 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 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 in responding to, evaluating, negotiating, complying with or implementing that request, requirement or actual or contemplated agreement; and
- (ii) pay to the Agent 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) 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 the amount of all costs and expenses (including legal fees) incurred by the Agent, any Lender or Euler Hermes (for the account of the Agent, that Lender or Euler Hermes, as appropriate) in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

16.4 Euler Hermes 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 any Finance Party in connection with obtaining or maintaining the cover provided by the Euler Hermes Policy (including issuance of the Euler Hermes Policy and any amendments thereto).

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.

17.4 Validity and admissibility in evidence

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

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
- (b) to enable the Buyer lawfully to enter into, exercise its rights and comply with its obligations in the Commercial Contract;
- (c) to ensure that the obligations expressed to be assumed by the Borrower in the Finance Documents are legal valid, binding and enforceable;
- (d) to ensure that the obligations expressed to be assumed by the Buyer in the Commercial Contract are legal valid, binding and enforceable;
- (e) to make the Finance Documents to which it is a party admissible in evidence in Ghana; and
- (f) to make the Commercial Contract admissible in evidence in Ghana,

have been obtained, done, fulfilled, performed or effected and are in full force and effect.

17.4.2 Except for those which have been obtained as of the date of this Agreement, no further Authorisation is required to effect free acquisition and transfer of euro necessary to discharge each of:

- (a) the Borrower's obligations under the Finance Documents in the manner and at the place provided therein; and
- (b) the Buyer's obligations under the Commercial Contract in the manner and at the place provided therein.

17.5 Governing law and enforcement

17.5.1 The choice of the law stated to be the governing law of each Finance Document and all non-contractual obligations arising from or connected with them will be recognised and enforced in Ghana.

17.5.2 Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in Ghana.

17.5.3 Any arbitral award obtained in relation to a Finance Document in the seat of that arbitral tribunal as specified in that Finance Document will be recognised and enforced in Ghana.

17.5.4 The agreement not to claim immunity in relation to a Finance Document to which the Borrower or its assets may be entitled will be recognised and enforced in Ghana.

17.5.5 The submission to arbitration as specified in the Finance Documents will be recognised and enforced in Ghana.

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.

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.

17.12 Pari passu ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors in respect of External Financial Indebtedness, save for such obligations as may be preferred by provisions of law that are of mandatory application at the date hereof and, in the case of the Borrower, will be payable out of the public revenues and other assets of the Borrower.

17.13 Security and External Financial Indebtedness

None of its External Financial Indebtedness is secured by any Security or Quasi Security on or with respect to any Public Assets other than as permitted by this Agreement.

17.14 No Immunity

In any proceedings taken in Ghana in relation to Finance Documents, it will not be entitled to claim for itself or any of its assets immunity from suit or other legal process, except for immunity from execution or attachment or like process in respect of:

- (a) present or future "premises of the mission" as such term is defined in the Vienna Convention on Diplomatic Relations of 1961 or "consular premises" as such term is defined in the Vienna Convention on Consular Relations of 1963;
- (b) property of a military character or in use for military purposes and in each case under control of a military authority or defence agency;
- (c) property, assets and infrastructure located in Ghana and dedicated to public or governmental use (as distinct from property, assets or infrastructure dedicated to a commercial use) by the Borrower; or
- (d) petroleum assets protected in the Petroleum Revenue Management Act, 2011 (Act 815, as amended).

17.15 Private and commercial acts

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

17.16 No proceedings pending or threatened

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

17.16.2 No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it.

17.17 Status

17.17.1 Each of the Borrower and the Buyer has the power to own its assets and carry on its operations and activities as they are being conducted.

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 laws

[provision to be included if required following E&S due diligence]

17.24 Anti-corruption law

The Borrower has conducted its businesses in compliance with applicable anti-corruption laws (including the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 (of the US)) and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws. The Borrower has not, nor, to the knowledge of the Borrower, its or the Buyer's ministers, officials officers, agents or representatives, have, for the purpose of gaining or maintaining unlawful or improper benefits for the Borrower, directly or indirectly:

- (a) violated applicable anti-corruption laws or made, undertaken, offered to make, promised to make or authorised the payment or giving of a prohibited payment;
- (b) used funds or other assets, or made any promise or undertaking in such regard, for the establishment or maintenance of a secret or unrecorded fund; or
- (c) made any false or fictitious entries in any books or records of the Borrower or the Buyer relating to any prohibited payment.

17.25 Corrupt Practices

17.25.1 No Corrupt Practices have been engaged in, directly or indirectly, by it or any of its respective officers or any other person acting on its behalf, to or for the benefit of any Ghanaian Government Authority (or any official, officer, agent or key employee of, or other person with management responsibilities in any Ghanaian Government Authority), or any other person.

17.25.2 Neither it nor any of its directors, officers, agents, employees or Affiliates or the Buyer has engaged in any activity or conduct which would violate any applicable anti-bribery, anti-corruption or anti-money laundering laws or regulations in any applicable jurisdiction.

17.25.3 It has the means and the internal procedures in place to detect and to intercept money-laundering channels or chains involving the proceeds of terrorist activities, drug-trafficking or organised crime.

17.26 Sanctions

None of the Borrower, the Buyer, the Exporter or any Subsidiary or joint venture of the Exporter, nor any of their respective personnel (including, in the case of the Exporter or any of the Exporter's Subsidiaries or joint ventures, directors, officers or employees) nor, to the knowledge of the Borrower or the Buyer, any persons acting on any of their behalf:

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

17.27 Repetition

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

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 Euler Hermes in connection with or pursuant to the Euler Hermes 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 by posting this information onto an electronic website designated by the Borrower and the Agent (the **Designated Website**) if:

- (a) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
- (b) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (c) the information is in a format previously agreed between the Borrower and the Agent.

18.3.2 If any Lender (a **Paper Form Lender**) does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form.

18.3.3 In any event the Borrower shall supply the Agent with at least one copy in paper form of any information required to be provided by it. This Clause 18.3.3 shall not apply to the Borrower's obligation to provide a copy of the Budget Statement and Economic Policy pursuant to Clause 18.1(a) (*Information*), provided that:

- (a) the Budget Statement and Economic Policy is made available on the Designated Website promptly after its presentation to Parliament; and
- (b) the Borrower gives prompt notice to the Agent that it has been so made available.

18.3.4 The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.

18.3.5 The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:

- (a) the Designated Website cannot be accessed due to technical failure;
- (b) the password specifications for the Designated Website change;
- (c) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
- (d) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
- (e) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

18.3.6 If the Borrower notifies the Agent under Clause 18.3.5(a) or Clause 18.3.5(e), all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

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

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 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).

18.5 Notifications relating to the Commercial Contract

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

- (a) a Material Commercial Contract Change has been made without the prior written consent of the Agent or is proposed to be made;
- (b) either party to the Commercial Contract is or becomes entitled to or expresses an intention to terminate, cancel, suspend or revoke the Commercial Contract prior to its stated maturity or term; or
- (c) any disputes or the commencement of arbitration or other legal proceedings in connection with the Commercial Contract have occurred.

18.6 Environmental information

[provision to be included if required following E&S due diligence]

19 Positive undertakings

The undertakings in this Clause 19 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.

19.1 Authorisations

The Borrower shall promptly obtain all Authorisations and comply with and perform all other acts, conditions and things required or necessary:

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

19.2 Compliance with laws

The Borrower shall (and shall ensure that the Buyer shall) comply in all respects with the Applicable Law, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents or the Commercial Contract, as the case may be.

19.3 IMF

The Borrower shall fulfil its obligations as a member of the IMF and IBRD (or any successor of the IMF or IBRD) at all times.

19.4 Negative pledge

In this Clause 19.4, **Quasi-Security** means an arrangement or transaction described in Clause 19.4.2.

- 19.4.1 The Borrower shall not, and shall ensure that each Ghanaian Government Authority shall not, create or permit to subsist any Security over Public Assets, owned or subsequently acquired,

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

Indebtedness secured is not increased and such renewal or extension is limited to the original property covered thereby; and

- (h) in addition to the Security or Quasi Security described in Clauses 19.4.3(a) to (g), Security over Public Assets in any calendar year having a market value of fifteen million US dollars (\$15,000,000) or its equivalent in other currencies.

19.5 Disposals

- 19.5.1 The Borrower shall procure that the Buyer does not enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, transfer, license, loan or otherwise dispose of any Asset or enter into an agreement to make any such disposal.
- 19.5.2 For the purpose of Clause 19.5.1, **Assets** means each and all of the commodities, raw material, machinery and equipment, and other materials that the Exporter is required to supply to the Buyer in connection with the Project pursuant to the Commercial Contract.

19.6 Budget and limits

- 19.6.1 The Borrower shall include all amounts due and payable or that will fall due and payable to the Finance Parties under the Finance Documents during a calendar year in its annual Appropriation Act (including any amendments thereof) and its budget statements or other financial plans for that calendar year and shall ensure that there will at no time be any restriction on the ability of the Borrower to meet its obligations under the Finance Documents.
- 19.6.2 The Borrower shall maintain the funds necessary for the repayment of all of its obligations under the Finance Documents that have been provided for under the annual Appropriation Act (including any amendments thereof) for the relevant financial year.
- 19.6.3 If at any time any limit is set on the Borrower's borrowings and guarantees by the IMF, the World Bank or any applicable international treaty, the Borrower shall:
 - (a) promptly notify the Agent of such limit; and
 - (b) ensure that, at all times, its borrowings and guarantees remain within such limit.

19.7 Compliance with Commercial Contract

The Borrower shall ensure that the Buyer will:

- (a) comply in all material respects with its obligations under, and in the manner and at the times provided in the Commercial Contract;
- (b) not repudiate or evidence an intention to repudiate the Commercial Contract nor take nor omit to take any action that might result in any default on any of the Buyer's payment or other material obligations under the Commercial Contract; and
- (c) not terminate, cancel, suspend or revoke or serve notice to terminate, cancel, suspend or revoke (whether in whole or in part) the Commercial Contract without giving to the Agent at least fourteen (14) days prior written notice stating:
 - (i) the grounds for termination, cancellation, suspension or revocation, giving reasonable detail; and

- (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 etc.

[provision to be included if required following E&S due diligence]

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

cash, cheques, wire transfers, tangible and intangible gifts, favours, services, and those entertainment and travel expenses that go beyond what is reasonable and customary and of modest value to:

- (a) an executive, official, employee or agent of a governmental department, agency or instrumentality;
- (b) a director, officer, employee or agent of a wholly or partially government-owned or controlled company or business;
- (c) a political party or official thereof, or candidate for political office;
- (d) a Foreign Public Official; or
- (e) any other person; while knowing or having a reasonable belief that all or some portion will be used for any the purpose of:
 - (i) influencing any act, decision or failure to act by any such person in his or her official capacity;
 - (ii) inducing any such person to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity; or
 - (iii) securing an unlawful advantage; in order to obtain, retain or direct business.

19.12 Sanctions

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

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

19.13 Euler Hermes Policy

19.13.1 The Borrower shall not, to the extent that it has been notified by the Agent of the relevant terms and conditions of the Euler Hermes Policy, take any action or omit to take action which would:

- (a) permit the restriction, revocation, annulment or termination of the Euler Hermes Policy; or
- (b) give rise to an exclusion or defence to payment applicable to an insured loss under the Euler Hermes Policy.

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 Euler Hermes 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 Euler Hermes 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, Euler Hermes and/or accountants or other professional advisers and contractors of the Agent or Euler Hermes 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 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 connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

20.4 Cross default

- 20.4.1 Any External Financial Indebtedness of the Borrower (including, for the avoidance of doubt, under the Commercial Facility) is not paid when due or within any originally applicable grace period.
- 20.4.2 As a result of an event of default (however described), any Financial Indebtedness of the Borrower or any Ghanaian Government Authority (including, for the avoidance of doubt, under the Commercial Facility) is:
- (a) declared to be or otherwise becomes due and payable prior to its specified maturity;
or
 - (b) placed on demand.
- 20.4.3 Any commitment for any External Financial Indebtedness of the Borrower (including, for the avoidance of doubt, under the Commercial Facility) is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).
- 20.4.4 Any creditor of the Borrower becomes entitled to declare any External Financial Indebtedness of the Borrower (including, for the avoidance of doubt, under the Commercial Facility) due and payable prior to its specified maturity as a result of an event of default (however described).
- 20.4.5 Any Security or Quasi-Security for External Financial Indebtedness of the Borrower (including, for the avoidance of doubt, any Security or Quasi-Security created in connection with the Commercial Facility) becomes capable of being enforced as a result of an event of default (however described).
- 20.4.6 No Event of Default will occur under this Clause 20.4 (other than in respect of the Commercial Facility), if the aggregate amount of the External Financial Indebtedness or Financial Indebtedness or commitment for External Financial Indebtedness or Financial Indebtedness (as applicable) falling within Clauses 20.4.1 to 20.4.5 is less than fifteen million US dollars (\$15,000,000) (or its equivalent in any other currency or currencies as determined by the Agent).

20.5 Moratorium

A moratorium is declared or de facto comes into effect on the payment of any External Financial Indebtedness of the Borrower or the Borrower commences negotiations with any one or more of its External Financial Indebtedness creditors with a view to the general readjustment or rescheduling of its indebtedness.

20.6 IMF and IBRD

Ghana ceases to be a member in good standing or becomes ineligible to use the resources of the IMF or IBRD or is unable for any reason to draw or make use of funds available to it under any IMF or IBRD funding programme or any such programme is cancelled or suspended.

20.7 Creditors' process

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of the Borrower or any Ghanaian Government 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

[provision to be included if required following E&S due diligence]

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.

20.13 Convertibility/Transferability

Any foreign exchange law is amended, enacted or introduced in Ghana or is reasonably likely to be amended, enacted or introduced in each case in Ghana that (in the opinion of the Lender):

- (a) has or is reasonably likely to have the effect of prohibiting, or restricting or delaying in any material respect any payment that the Borrower is required to make pursuant to the terms of any of the Finance Documents; or

- (b) is materially prejudicial to the interests of the Finance Parties under or in connection with any of the Finance Documents.

20.14 Acceleration

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

- (a) cancel all or part of the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions 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 Euler Hermes, 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; 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, 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 Euler Hermes.

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 assignment becomes effective in accordance with this Agreement and that it is bound by that

decision to the same extent as the Existing Lender would have been had it remained a Lender.

21.3 Assignment or transfer fee

21.3.1 Subject to Clause 21.3.2, the New Lender shall, on the date upon which an assignment or transfer takes effect (provided that such assignment or transfer takes effect no earlier than ninety (90) days from the date of this Agreement), pay to the Agent (for its own account) a fee of USD 2,000.

21.3.2 No fee is payable pursuant to Clause 21.3.1 if:

- (a) the Agent agrees that no fee is payable; or
- (b) the assignment or transfer is made by an Existing Lender:
 - (i) to, or at the instruction of, Euler Hermes;
 - (ii) to an Affiliate of that Existing Lender;
 - (iii) to a fund that is a Related Fund of that Existing Lender; or
 - (iv) in connection with the primary syndication of the Facility.

21.4 Limitation of responsibility of Existing Lenders

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

- (a) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
- (b) the financial condition of the Borrower;
- (c) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
- (d) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

21.4.2 Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- (a) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document;
- (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 Euler Hermes Policy and has not relied exclusively on any information provided to it by the Existing Lender in connection with the Euler Hermes 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 Euler Hermes of its obligations under the Euler Hermes 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 it has complied with all necessary "know your customer" or other similar checks under its own internal procedures and all applicable laws and regulations in relation to the transfer to such New Lender.

21.5.4 Subject to Clause 21.10 (*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**);
- (b) the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
- (c) the Agent, the Arrangers, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to

that extent the Agent, the Arrangers and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

- (d) the New Lender shall become a Party as a Lender.

21.6 Procedure for assignment

21.6.1 Subject to the conditions set out in Clause 21.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with Clause 21.6.3 when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 21.6.2, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

21.6.2 The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

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

- (a) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
- (b) the Existing Lender will be released by the Borrower and the other Finance Parties from the obligations owed by it (the **Relevant Obligations**) and expressed to be the subject of the release in the Assignment Agreement; and
- (c) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

21.6.4 Lenders may utilise procedures other than those set out in this Clause 21.6 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with Clause 21.5 (*Procedure for transfer*), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 21.2 (*Conditions of assignment or transfer*).

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

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

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 Euler Hermes], 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
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 21.10, have been payable to it on that date, but after the deduction of the Accrued Amounts.

21.11 No assignment by Borrower

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

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 Euler Hermes Policy, maintaining necessary information to ensure that the Euler Hermes Policy remains in full force and effect and any other matter in connection with the Euler Hermes 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 Subject to Clause 22.2.3, 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.
- 22.2.3 Without prejudice to Clause 21.8 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), Clause 22.2.2 shall not apply to any Transfer Certificate or to any Assignment Agreement.
- 22.2.4 Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 22.2.5 If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- 22.2.6 If the 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.
- 22.2.7 If the Agent is aware of the full or partial withdrawal, suspension, termination or cancellation of the Euler Hermes Policy, or that it has otherwise ceased to be in full force and effect and binding on and enforceable against Euler Hermes, it shall promptly notify the Lenders.
- 22.2.8 The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- 22.2.9 The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no other shall be implied).

22.3 Role of the Arrangers

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

22.4 No fiduciary duties

22.4.1 Nothing in the Finance Documents constitutes the Agent or any Arranger as a trustee or fiduciary of any other person.

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

22.5 Business with the Borrower

The Agent and each Arranger and any associated company of any of them may:

- (a) act in an agency, trustee, fiduciary or other capacity on behalf of any other bank or financial institution providing facilities to the Borrower or any entity associated with the Borrower as freely in all respects as if they had not been appointed to act for the Arrangers or the Lenders under this Agreement in any such capacity;
- (b) subscribe for, hold, be beneficially entitled to or dispose of securities or other rights to and interests in securities issued by the Borrower or any entity associated with the Borrower; and
- (c) accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower,

without any obligation to disclose to the Lenders, or to account to them for or in respect of, any such arrangement or activity.

22.6 Rights and discretions of the Agent

22.6.1 The Agent may:

- (a) rely on any representation, warranty, notice, communication or document believed by it to be genuine, correct and appropriately authorised; and
- (b) assume that:
 - (i) any instructions received by it from the Majority Lenders, any Lender or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (ii) unless it has received notice of revocation, that those instructions have not been revoked; and
- (c) rely on a certificate from any person:
 - (i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

- (ii) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

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

22.6.2 The 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 Euler Hermes 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.

22.6.9 The Agent may disclose to any other Party and to any person engaged by it or through whom it acts in accordance with this Clause 22 any information it reasonably believes it has received as agent under this Agreement or the Euler Hermes Policy.

22.6.10 Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

22.6.11 The Borrower and the Lenders hereby acknowledge and agree that the Agent has the ability to exercise its rights severally and independently under the Finance Document (including in connection with Clause 20.14 (*Acceleration*)).

22.6.12 Notwithstanding any provision of any Finance Document to the contrary neither the Agent nor any Arranger is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

22.7 Majority Lenders' instructions

22.7.1 Unless a contrary indication appears in a Finance Document, the Agent (subject to its legal obligations) shall:

- (a) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the applicable Majority Lenders (or, if so instructed by the applicable Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent); and
- (b) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the applicable Majority Lenders.

22.7.2 The Agent shall act on the instructions of a Lender provided in connection with any split of its Commitment under Clause 32.4 (*Split voting*) and shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with such instructions.

22.7.3 The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

22.7.4 Unless a contrary indication appears in a Finance Document, any instructions given by the applicable Majority Lenders will be binding on all the Finance Parties.

22.7.5 The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

22.7.6 In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

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.

22.8 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 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 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 regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

22.10.4 Notwithstanding the provisions of Clause 26 (*Payment mechanics*), the Agent shall not be liable to the Borrower or any Lender for the failure, or the consequences of any failure, of any cross-border payment system to effect same-day settlement to an account of the Borrower or any Lender.

22.10.5 Nothing in this Agreement shall oblige the Agent or any Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender

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

22.10.6 Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (such loss shall be determined as at the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at the time of entering into this Agreement, or at the time of accepting any relevant instructions, which increase the amount of the loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

22.10.7 The liability of the Agent under this Agreement will not extend to any liabilities arising through any acts, events or circumstances not reasonably within its control, or resulting from the general risks of investment in or the holding of assets in any jurisdiction, including, but not limited to, liabilities arising from: nationalisation, expropriation or other governmental actions; any law, order or regulation of a governmental, supranational or regulatory body; regulation of the banking or securities industry including changes in market rules or practice, currency restrictions, devaluations or fluctuations; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; and strikes or industrial action.

22.11 Lenders' indemnity to the Agent

22.11.1 Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately before their reduction to zero) indemnify the Agent and its officers and employees, within three Business Days of demand, against any cost, loss or liability (including for negligence, in relation to any FATCA-related liability or any other category of liability whatsoever) incurred by the Agent or any of its officers and employees (otherwise than by reason of the Agent's gross negligence, fraud or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 26.10 (*Disruption to payment systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent or an officer or employee has been reimbursed by the Borrower pursuant to a Finance Document).

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) 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.

22.14.2 The Agent may notify Euler Hermes of the identity and notice details of each Lender.

22.15 Credit appraisal by the Lenders

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal

and investigation of all risks arising under or in connection with any Finance Document including:

- (a) the financial condition, status and nature of the Borrower and any surety for, or provider of Security in respect of, its obligations under any Finance Document;
- (b) the adequacy or value of any such Security, or the title of any provider of Security;
- (c) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the adequacy, accuracy and/or completeness of any information provided by the Agent, any Arranger, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

22.16 Agent's management time

If the Agent requires, any amount payable to the Agent by any Party under any indemnity or in respect of any costs or expenses incurred by the Agent under the Finance Documents after the date of this Agreement may include the cost of using its management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the relevant Party. This is in addition to any amount in respect of fees or expenses paid or payable to the Agent under any other term of the Finance Documents.

22.17 Deduction from amounts payable by the Agent

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

22.18 Claims under the Euler Hermes Policy

The Agent (in its capacity as Agent under the Euler Hermes Policy) shall, if instructed to do so by any Lender, submit a claim under the Euler Hermes 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 Euler Hermes 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.

24 Sharing among the Finance Parties

24.1 Payments to Finance Parties

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from the Borrower or any other person other than in accordance with Clause 26 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 26 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within (3) three Business Days of demand by the Agent, pay to the Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 26.5 (*Partial payments*).

24.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 26.5 (*Partial payments*).

24.3 Recovering Finance Party's rights

- 24.3.1 On a distribution by the Agent under Clause 24.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.
- 24.3.2 If and to the extent that the Recovering Finance Party is not able to rely on its rights under Clause 24.3.1, the Borrower shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

24.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 24.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) 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 Euler Hermes Policy

25.1 Compliance with terms of the Euler Hermes Policy

25.1.1 Each Lender undertakes:

- (a) to provide to the Agent all relevant information the Agent requires to enter into the Euler Hermes Policy;
- (b) to the Agent that each representation and warranty, and all information required to be provided by it to Euler Hermes is true, correct and valid on the date the Euler Hermes 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 Euler Hermes Policy continues in full force and effect; and

- (d) shall indemnify and hold harmless each other Finance Party in the event that the Euler Hermes 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 Euler Hermes Policy.

25.2 Subrogation to Euler Hermes

Notwithstanding anything to the contrary in this Agreement at any time following a payment by Euler Hermes in respect of a claim under the Euler Hermes Policy:

- (a) to the extent such payment under the Euler Hermes Policy, Euler Hermes may become subrogated to the interests of the Lenders, either by operation of law or by contract; and
- (b) each of the Parties agrees that Euler Hermes shall have the right to receive an assignment by the Lenders of their rights under the Finance Documents to the extent of such payment under the Euler Hermes Policy. Any such assignment shall take effect in accordance with its terms and, for the avoidance of doubt, the provisions of Clause 21.1 (*Assignments and transfers by the Lenders*) to 21.5 (*Procedure for transfer*) shall not apply to any such subrogation, assignment or transfer.

25.3 Lender Assignment to Euler Hermes

Each of the Lenders agrees for the benefit of Euler Hermes, at any time following a payment under the Euler Hermes Policy and upon written request from Euler Hermes, to assign to Euler Hermes its rights (but not obligations) under the Finance Documents (to the extent the Finance Documents are capable of assignment) to the extent of such payment under the Euler Hermes Policy in accordance with Clause 25.2 (*Subrogation to Euler Hermes*).

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.

26.2 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.
- 26.4.3 If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive fund from a Lender in respect of a sum which it paid to the Borrower:

- (a) the Borrower shall on demand refund it to the Agent; and
- (b) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

26.5 Partial payments

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

- (a) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of each Arranger and the Agent under the Finance Documents;
- (b) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement in respect of the Facility;
- (c) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- (d) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

26.5.2 Clause 26.5.1 will override any appropriation made by the Borrower.

26.6 No set-off by the Borrower

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

26.7 Business Days

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

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

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*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 26.10; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to Clause 26.10(d).

27 Set-off

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

28 Notices

28.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by letter or, subject to Clause 28.5, electronic mail.

28.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified next to its name in Part 3 of Schedule 1;
- (b) in the case of each Original Lender, that identified next to its name in Part 1 of Schedule 1;
- (c) in the case of any New Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party;
- (d) in the case of the Agent or an Arranger, that identified next to its name in Part 2 of Schedule 1,

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

28.3 Delivery

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

- (a) when it has been left at the relevant address; or
- (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.

28.6.2 All other documents provided under or in connection with any Finance Document must be:

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

29 Calculations and certificates

29.1 Accounts

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

29.2 Certificates and determinations

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

29.3 Day count convention

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

30 Partial invalidity

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

31 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law.

32 Amendments and waivers

32.1 Required consents

32.1.1 Subject to Clause 32.2 (*Exceptions to amendment*) any term of the Finance Documents may be amended or waived only with the written consent of the applicable Majority Lenders, Euler Hermes and the Borrower, and any such amendment or waiver will be binding on all Parties.

32.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

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 Euler Hermes 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 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;
 - (ii) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (iii) implementing market conventions applicable to that Replacement Benchmark;
 - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or

- (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

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

32.3.2 If, as at 1 July 2021 this Agreement provides that the rate of interest for a Loan is to be determined by reference to the Screen Rate:

- (a) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate; and
- (b) the Agent, (acting on the instructions of the Majority Lenders) and the Borrower shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in place of that Screen Rate from and including a date no later than 31 December 2021.

32.4 Split voting

32.4.1 For the purposes of responding (or failing to respond) to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of the Lenders under the terms of this Agreement, a Lender may split its Commitment into any number of portions and may respond (or fail to respond) or otherwise exercise its rights in respect of each such individual portion on a several basis.

32.4.2 If a Lender exercises its rights under Clause 32.4.1 in respect of any part of its Commitment, such Lender shall notify the Agent of the portions into which it has split its Commitment.

33 Confidential Information

33.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 33.2 (*Disclosure of Confidential Information*) or Clause 33.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

33.2 Disclosure of Confidential Information

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(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;
 - (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(c)(iii) or 33.2(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(c)(iii) or 33.2(c)(iv) above;
 - (vii) any person who is a Party;
 - (viii) the Exporter or the Buyer; or
 - (ix) any person with the consent of the Borrower,

in each case, such Confidential Information as that Finance Party shall consider appropriate and if in relation to Clauses 33.2(c)(i) and (ii), the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except

that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information; and
- (e) to Euler Hermes.

33.3 Disclosure to numbering service providers

33.3.1 Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or the Borrower the following information:

- (a) name of the Borrower;
- (b) country of domicile of the Borrower;
- (c) date of this Agreement;
- (d) Clause 36 (*Governing law*);
- (e) the names of the Agent and the Mandated Lead Arranger;
- (f) date of each amendment and restatement of this Agreement;
- (g) amounts of, and names of, the Facility (and any tranches);
- (h) amount of Total Commitments;
- (i) currency of the Facility;
- (j) type of Facility;
- (k) ranking of Facility;
- (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(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.

33.7 Continuing obligations

The obligations in this Clause 33 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

34 Confidentiality of Funding Rates and Reference Bank Quotations

34.1 Confidentiality and disclosure

34.1.1 The Agent and the Borrower agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by Clauses 34.1.2, 34.1.3 and 34.1.4.

34.1.2 The Agent may disclose:

- (a) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the relevant Borrower pursuant to Clause 8.4 (*Notification of rates of interest*); and
- (b) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Reference Bank, as the case may be.

34.1.3 The Agent may disclose any Funding Rate or any Reference Bank Quotation, and the Borrower may disclose any Funding Rate, to:

- (a) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this Clause 34.1.3(a) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
- (b) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances;
- (c) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and

- (d) any person with the consent of the relevant Lender or Reference Bank, as the case may be.

34.1.4 The Agent's obligations in this Clause 34 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.4 (*Notification of rates of interest*) provided that (other than pursuant to Clause 34.1.2(a)) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

34.2 Related obligations

34.2.1 The Agent and the Borrower acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and the Borrower undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation 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 or Reference Bank, as the case may be:

- (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.

Section 11 – Governing law and enforcement

36 Governing law

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

37 Arbitration

37.1 Arbitration

Subject to Clause 37.5 (*Agent's option*), any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a **Dispute**) shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration (LCIA).

37.2 Formation of arbitral tribunal, seat and language of arbitration

37.2.1 The arbitral tribunal shall consist of three arbitrators. The claimant(s), irrespective of number, shall nominate jointly one arbitrator; the respondent(s), irrespective of number, shall nominate jointly the second arbitrator, and a third arbitrator (who shall act as presiding arbitrator) shall be nominated by the arbitrators nominated by or on behalf of the claimant(s) and respondent(s) or, in the absence of agreement on the third arbitrator within 30 days of the date of nomination of the later of the two party-nominated arbitrators to be nominated, he shall be chosen by the LCIA Court (as defined in the Arbitration Rules of the LCIA).

37.2.2 The seat of arbitration shall be London, England.

37.2.3 The language of the arbitration shall be English.

37.2.4 This arbitration agreement is governed by and shall be construed in accordance with English law.

37.3 Recourse to courts

For the purposes of arbitration pursuant to this Clause 37 (*Arbitration*), the Parties waive any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 and 69 of the Arbitration Act 1996 (UK).

37.4 Consolidation of arbitrations

37.4.1 The following shall apply to any disputes arising out of or in connection with this Agreement and out of or in connection with any other Finance Document in respect of which a Request for Arbitration has been delivered (or, where impossible, effectively notified) to all other parties to the arbitration. In relation to any such disputes if, in the absolute discretion of the first arbitral tribunal to be appointed in any of the disputes, they are so closely connected that it is expedient for them to be resolved in the same proceedings, that arbitral tribunal shall have the power to order that the proceedings to resolve that dispute shall be consolidated with those to resolve any of the other disputes, provided that no date for the final hearing of the first arbitration has been fixed. If that arbitral tribunal so orders, the parties to each dispute

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 Combined 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.

38.2 Service of process

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

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

38.2.2 The Borrower waives any and all rights, privileges, immunities and inviolabilities that it has or may have that might otherwise prevent or inhibit service being effected at the offices (13 Belgrave Square, London, SW1X 8PN) of the High Commission or Embassy of the Republic of Ghana in the United Kingdom.

38.2.3 If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower must immediately (and in any event within five (5) days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may, at the Borrower's cost, appoint another agent for this purpose.

38.2.4 The Borrower expressly agrees and consents to the provisions of Clause 36 (*Governing Law*), Clause 37 (*Arbitration*) and this Clause 38 (*Jurisdiction*).

38.3 Waiver of immunity

38.3.1 The Borrower waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (a) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
- (b) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its assets and revenues.

but excluding immunity in respect of:

- (i) property or assets used by a diplomatic or consular mission of the Borrower;
- (ii) property or assets of a military character and under the control of a military authority or defence agency of the Borrower;
- (iii) property, assets and infrastructure located in Ghana and dedicated to a public or governmental use (as distinct from property, assets or infrastructure dedicated to a commercial use) by the Borrower; or
- (iv) petroleum assets protected in the Petroleum Revenue Management Act, 2011 (Act 815 as amended) (Ghana).

38.3.2 The Borrower agrees that in any proceedings in England this waiver shall have the fullest scope permitted by the United Kingdom's State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purpose of such Act. The Borrower consents generally for

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

Schedule 1 – The Parties

Part 1 – The Original Lender[s]

Name of Original Lender	Facility Office and Notices	Commitment
Standard Chartered Bank	One Basinghall Avenue London EC2V 5DD England	EUR **

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

Agent	Facility Office	Notices
Standard Chartered Bank	One Basinghall Avenue London EC2V 5DD England	One Basinghall Avenue London EC2V 5DD England Attention: Asset Servicing – Manager Email: loans.agencyuk@sc.com

Mandated Lead Arranger[s]	Facility Office	Notices
Standard Chartered Bank	One Basinghall Avenue London EC2V 5DD England	One Basinghall Avenue London EC2V 5DD England Attention: The Arranger Email: Faruq.Muhammad@sc.com

Part 3 – The Borrower

Borrower

The Republic of Ghana,
represented by The Ministry of Finance

Notices

The Ministry of Finance
Ministries, P.O. Box MB40
Accra
Ghana

Tel No: +233(0) 302 747 197 /
+233(0) 302 665 310

Email: iarthur@mofep.gov.gh /
sarkhurst@mofep.gov.gh /
chiefdirector@mofep.gov.gh

Attention: Director, Treasury & Debt
Management Division

Schedule 2 – Conditions precedent

1 Authorisations

- (a) A certified 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 certified 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 certificate signed by the Minister of Finance identifying other persons 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.
- (d) A specimen of the signature of each person authorised on behalf of the Borrower in paragraphs (b) and (c) above.
- (e) A certified copy of the identification documents of each person authorised on behalf of the Borrower in paragraphs (b) and (c) above (e.g., a copy of a valid passport or authorised National Identification Card attesting his/her domicile).
- (f) A certificate of the Borrower (signed by the Borrower's Signatory)
 - (i) certifying that:
 - (A) each copy document relating to it specified in this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement;
 - (B) no Default is in existence or would result from the utilisation of the Facility; and
 - (C) there is no other event or circumstance in existence which may have a Material Adverse Effect;
 - (ii) confirming that utilisation of the Facility would not breach any restriction on its sovereign borrowing powers, whether such limit is set out in any law, parliamentary restriction or any legal instrument or agreement entered into by or between the Borrower and any international organisation or entity, including without limitation any obligation of the Borrower towards the IMF or the IBRD; and
 - (iii) ~~appending, and in each case certifying that it is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement:~~
 - (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 Commercial Contract (therefore authorising the Buyer to enter into the Commercial Contract and to perform its obligations thereunder);
 - (B) 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);

- (C) 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);
- (D) 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; and
- (E) 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.

3 Commercial Contract

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

4 Exporter

In respect of the Exporter:

- (a) evidence that the signatory who signed the Commercial Contract on behalf of the Exporter was duly authorised to sign it;
- (b) the name of a specified person or persons who are duly authorised on its behalf to sign and/or despatch documents related to this Agreement (including any Exporter Certificate) together with evidence of their authority;
- (c) a specimen signature of each person authorised in the manner described in paragraph (b) above; and
- (d) evidence that the Exporter has complied with any obligations owed by it to any Finance Party in connection with the transactions contemplated by this Agreement or the Commercial Contract.

5 Exporter confirmations

The Exporter shall have provided to the Agent:

- (a) written confirmation that it has received payment in cash of EUR [34,544,272.08] being the amount of the Down Payment;
- (b) evidence that either the bank guarantee annexed to the Particular Conditions of Contract at annex B to the Commercial Contract or the surety bond annexed to the Particular Conditions of Contract at annex C to the Commercial Contract has been duly executed in accordance with the terms of the Commercial Contract;
- (c) written confirmation that all Authorisations (if any), including export licences (if required), in respect of the goods and/or services to be supplied in accordance with the Commercial Contract have been obtained and remain in full force and effect.

6 Legal opinions

- (a) A legal opinion of Dentons UK and Middle East LLP, legal advisers to the Agent as to the laws of England and Wales, substantially in the form approved by the Lenders prior to the first Utilisation Date.
- (b) A legal opinion of Dentons Europe, legal advisers to the Agent as to the laws of Germany, substantially in the form approved by the Lenders prior to the first Utilisation Date.
- (c) A legal opinion of ENSafrica Ghana, legal advisers to the Agent as to the laws of Ghana, substantially in the form approved by the Lenders prior to the first Utilisation Date.
- (d) A legal opinion of the Attorney General of Ghana substantially in the form set out in Schedule 9 (*Form of Attorney General legal opinion*) or in any other form acceptable to the Finance Parties.

7 Euler Hermes Policy

- (a) The Euler Hermes Policy duly issued by Euler Hermes and all conditions precedent to the effectiveness thereof in each case have been satisfied as approved by all Lenders.
- (b) A copy of any other Authorisation or other document, opinion or assurance which is required by Euler Hermes in relation to the issuance of the Euler Hermes Policy.

8 Environmental and social matters

[to be included as necessary following E&S due diligence]

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 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 connection with the entry into and performance of the transactions contemplated by the Commercial Contract or for the validity and enforceability of the Commercial Contract.
- (h) The Premium Utilisation Request, duly completed (but undated).
- (i) A copy of the Value for Money Audit Report relating to the Project.

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 upgrading of Eastern Corridor Road project – Lot 1**

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 invoice(s): [**]

Amount of the Loan: EUR [[*amount of Euler Hermes Premium*]]² [** , or, if less, the Available Facility]

Payment instructions: To the account specified in the attached Exporter Certificate

Proposed Utilisation Date: [the date falling four Business Days after the Effective Date]³ [**] (or, if that is not a Business Day, the next Business Day)]⁴.
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 account of the Exporter set out in the attached Exporter Certificate]⁵ [the following account of Euler Hermes:

[*insert details of Euler Hermes account*]]⁶.
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.

² For the Premium Utilisation Request only

³ For the Premium Utilisation Request only

⁴ For Utilisation Requests other than the Premium Utilisation Request

⁵ For Utilisation Requests other than the Premium Utilisation Request

⁶ For the Premium Utilisation Request only

8. This Utilisation Request is a Finance Document.
9. This Utilisation Request is irrevocable.
10. This Utilisation Request shall be governed by English law.

Yours faithfully

.....

duly authorised by and for and on behalf of
The Republic of Ghana,
represented by The Ministry of Finance

Schedule 4 – Form of Exporter Certificate

[subject to further discussion]

From: Inzag Germany GmbH

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 upgrading of Eastern Corridor Road project – Lot 1

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. The Utilisation Amount should be paid to the following account:

[insert details of Exporter's account]
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 Commercial Contract is in full force and effect;
 - c. 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;
 - d. the Down Payment has been paid to us;
 - e. each of the parties to the Commercial Contract have performed their respective obligations in full; and
 - f. 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.

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

Yours faithfully

.....

duly authorised by and for and on behalf of
Inzag Germany GmbH

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 5.4.3 (<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 5.4.3 (<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

Schedule 6 – Form of Assignment Agreement

To: The Agent and The Republic of Ghana, represented by The Ministry of Finance as Borrower

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

Dated: **

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 upgrading of Eastern Corridor Road project – Lot 1**

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 21.6 (*Procedure for assignment*):
 - a. The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
 - b. The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement specified in the Schedule.
 - c. The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph b above.
3. The proposed Transfer Date is [**].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 28.2 (Addresses) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 21.4 (Limitation of responsibility of Existing Lenders).
7. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 21.8 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), to the Borrower of the assignment referred to in this Assignment Agreement.
8. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
9. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it, are governed by English law.
10. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility office address 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:

Schedule 7 – Form of Transfer Certificate

To: Standard Chartered Bank as Agent

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

Dated: **

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 upgrading of Eastern Corridor Road project – Lot 1

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 21.5 (*Procedure for transfer*) of the Agreement:
 - a. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights, interests and obligations referred to in the Schedule in accordance with Clause 21.5 (*Procedure for transfer*).
 - b. The proposed Transfer Date is [**].
 - c. The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 28.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 21.4 (*Limitation of Responsibility of Existing Lenders*) of the Agreement.
4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
5. This Transfer Certificate is a Finance Document.
6. This Transfer Certificate is governed by English law.

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 8 – Existing Security

Name of Borrower / Ghanaian Government Authority	Security	Total principal amount of indebtedness secured
None	None	None

Schedule 9 – Form of Attorney General legal opinion

[agreed form to be included]

Schedule 10 – Form of process agent letter

[On Letterhead of the Ghana High Commission in London, United Kingdom]

ACCEPTANCE OF APPOINTMENT AND CONSENT TO SERVE AS SERVICE OF PROCESS AGENT

To:

**Standard Chartered Bank
1 Basinghall Avenue
London EC2V 5DD**

**E-mail: loans.agencyuk@sc.com
Attention: Asset Servicing – Manager**

From: **H.E. THE HIGH COMMISSIONER
GHANA HIGH COMMISSION,
13 BELGRAVE SQUARE, LONDON,
UNITED KINGDOM, SW1X 8PS**

Dated: [●]

Dear Sirs

I refer to

- (a) EUR ** Euler Hermes-backed facility agreement dated [**] (the Agreement) between, inter alios, Standard Chartered Bank as Agent and The Republic of Ghana, represented by The Ministry of Finance (the "**Borrower**") relating to the upgrading of Eastern Corridor Road project – Lot 1, as amended from time to time (the "**Euler Hermes Facility Agreement**");
- (b) EUR ** facility agreement dated [**] between, inter alios, Standard Chartered Bank as Agent and the Borrower, as amended from time to time (the "**Commercial Facility Agreement**")
- (c) the appointment letter dated [●] from the Borrower to the Republic of Ghana High Commission (the "**High Commission**") in the United Kingdom.

I write in my capacity as the High Commissioner of the Republic of Ghana to irrevocably accept and consent to the appointment of the High Commission as the agent of the Borrower for the service of process in England in relation to any legal action or proceeding that may arise before the courts of England in connection with the Finance Documents (as defined in the Euler Hermes Facility Agreement) or the Finance Documents (as defined in the Commercial Facility Agreement), and designate the address of the High Commission to serve as the Borrower's address to receive such services of process in England. I confirm that the High Commission has waived all rights, privileges, inviolabilities and immunities that it has, or may have, that might otherwise prevent or inhibit such service of process.

We agree to promptly forward a copy of any summons, complaint or other legal process served on the High Commission as the agent of the Borrower to the Borrower.

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

Facility Agreement – execution page

The Borrower

Signed by)
duly authorised for and)
on behalf of)
The Republic of Ghana,)
represented by The Ministry of Finance)

The Original Lender[s]

Signed by)
duly authorised for and)
on behalf of)
Standard Chartered Bank)

The Agent

Signed by)
duly authorised for and)
on behalf of)
Standard Chartered Bank)

The Structuring Bank

Signed by)
duly authorised for and)
on behalf of)
Standard Chartered Bank)

The Mandated Lead Arranger[s]

Signed by)
duly authorised for and)
on behalf of)
Standard Chartered Bank)

EUR [60,257,921.13] term loan facility agreement

relating to the design and construction of Ashiaman Roundabout – Akosombo Junction (upgrading of Eastern Corridor Road – Lot 1)

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 [Bookrunner and] Structuring Bank)

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

THIS DRAFT FACILITY AGREEMENT REMAINS SUBJECT TO THE REVIEW AND APPROVAL OF STANDARD CHARTERED BANK. ALL ENVIRONMENTAL & SOCIAL DEFINITIONS AND PROVISIONS REMAIN SUBJECT TO DUE DILIGENCE BY AND APPROVAL OF STANDARD CHARTERED BANK.

CIRCULATION OF THIS DRAFT FACILITY AGREEMENT DOES NOT CONSTITUTE A COMMITMENT BY STANDARD CHARTERED BANK OR ANY OF ITS AFFILIATES TO PROVIDE ANY FINANCING OR SUPPORT. ANY COMMITMENT WILL BE SUBJECT TO THE DUE DILIGENCE AND INTERNAL POLICIES OF STANDARD CHARTERED BANK. ALL FIGURES ARE INDICATIVE ONLY AND REMAIN SUBJECT TO RELEVANT APPROVALS.

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Term loan facility agreement

Dated **

Between

- (1) **The Republic of Ghana, represented by The Ministry of Finance (the Borrower);**
- (2) **The financial institutions listed in Part 1 of Schedule 1 (the Original Lenders);**
- (3) **Standard Chartered Bank, incorporated in England by Royal Charter 1853 of One Basinghall Avenue, London, EC2V 5DD, United Kingdom as agent of the Lenders (the Agent);**
- (4) **Standard Chartered Bank, incorporated in England by Royal Charter 1853 of One Basinghall Avenue, London, EC2V 5DD, United Kingdom as structuring bank (the Structuring Bank); and**
- (5) **The financial institutions listed in Part 2 of Schedule 1 as mandated lead arrangers (the Mandated Lead Arrangers)**

Recitals

- A By a contract (the **Commercial Contract**) having contract number GHA/GOC/TRC/28/2020 and dated 13 November 2020 (as amended and supplemented from time to time to time and including all exhibits thereto and all letter agreements) made between the Buyer and the Exporter (each as defined below) and having a contract value of EUR 256,008,798.23 (the **Commercial Contract Price**) in connection with the design and construction of Ashiaman Roundabout – Akosombo Junction (upgrading of Eastern Corridor Road – Lot 1) (as more particularly described in the Commercial Contract, the **Project**).
- B The Lenders have agreed to make available the Facility to the Borrower under this Agreement to provide finance for the successful completion of the Project.

It is agreed:

Section 1 – Interpretation

1 Definitions and construction

1.1 Definitions

In this Agreement (including the Recitals):

Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person (including any partnership) or any other Subsidiary of that Holding Company.

Applicable Law means:

- (a) any law, statute, decree, constitution, regulation, rule, by-law, order, authorisation, judgment, injunction or other directive of any Ghanaian Government Authority or otherwise which is applicable in Ghana;

- (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 Arrangers and the Structuring Bank.

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 twelve (12) 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 is 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; and
- (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

Borrower's Signatory means any person:

- (a) authorised to execute any document to be delivered pursuant to or in connection with this Agreement on the Borrower's behalf; and
- (b) in respect of whom the Agent has received evidence satisfactory to it of such authority and a specimen signature.

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

- (a) the interest which the Lenders should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount of any Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

Budget Statement and Economic Policy means the annual national budget statement and economic policy (including a mid-year fiscal policy review of the budget statement and economic policy) of the Government of Ghana.

Business Day means:

- (a) a day (other than a Saturday or Sunday) on which banks are open for general interbank business (other than operation only of payments, purchases and rate fixing in euro) in:
 - (i) Accra and London; and
 - (ii) in relation to a payment, purchase or rate fixing in or other matter relating to any currency (other than euro) the principal financial centre of the country of that currency; and
- (b) in relation to a payment or rate fixing in euro, a day on which:
 - (i) the Trans-European Automated Real-time Gross Settlement Express Transfer payment system (TARGET) is operating; and
 - (ii) banks are open for general interbank business in Frankfurt.

Buyer means The Republic of Ghana, represented by The Ministry of Roads and Highways acting through the Ghana Highway Authority.

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 [177,497,106.79].

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 to, or for the purpose of becoming a Finance Party under, the Finance Documents or the Facility from either:

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

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

- (i) information that:
 - (A) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 32 (*Confidential Information*); or
 - (B) is identified in writing at the time of delivery as non-confidential by the Borrower or any of its advisers; or

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

(ii) any Funding Rate.

Confidentiality Undertaking means a confidentiality undertaking substantially in a form recommended by the Loan Market Association or in any other form agreed between the Borrower and the Agent.

Contract Payments means all payments made, or as the context may require, to be made by the Buyer to the Exporter in respect of the supply of goods and services under the Commercial Contracts.

Corrupt Practices means directly or indirectly in connection with the Project, the Commercial Contract or any transaction contemplated by the Finance Documents:

- (a) the offering, promising or giving of any undue pecuniary or other advantage, whether directly or through intermediaries, to an official in the public or private sectors, for that official or for a third party, to influence the official to act or refrain from acting in relation to the performance of official duties, with the purpose of obtaining or retaining business or other improper advantage in the conduct of business;
- (b) any offer, gift, payment, promise to pay, commission, fee, loan or other consideration which would or might constitute bribery within the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 17 December 1997;
- (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 the payment or payments to be made as an advance payment by the Buyer to the Exporter which in aggregate amount(s) is no less than fifteen per cent (15%) of the Commercial Contract Export Value.

ECA Facility means the Euler Hermes-backed facility agreement relating to the Project dated on or about the date of this Agreement, made between the Borrower and Standard Chartered Bank as arranger, agent and original lender.

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*).

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

Euler Hermes means Euler Hermes Aktiengesellschaft.

EURIBOR means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero.

Event of Default means any event or circumstance specified as such in Clause 20 (*Events of Default*) or Clause 4.3.2 (*Conditions subsequent*).

Exporter means Inzag Germany GmbH of Rosenstrasse 2, 10179 Berlin, Germany.

Exporter Certificate means a certificate substantially in the form set out in Schedule 4 (*Form of Exporter Certificate*).

External Financial Indebtedness means any Financial Indebtedness incurred by Ghana which is:

- (a) denominated in or payable or optionally payable in or calculated by reference to a currency other than Ghanaian Cedi; or
- (b) owed to a person resident or having its head office or principal place of business outside Ghana,

and, for the avoidance of doubt, shall include any Financial Indebtedness under the ECA Facility.

Facility means the EUR loan facility made available by the Lenders under this Agreement as described in Clause 2.1 (*The Facility*).

Facility Office means the office or offices notified by a Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement.

FATCA means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in 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 60 Months after the date of this Agreement (or, if such date is not a Business Day, the immediately preceding Business Day).

Finance Documents means this Agreement, 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 transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; or
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

First Repayment Date means the date falling six Months after the last day of the Availability Period, provided if such date is not a Business Day, then the First Repayment Date shall be the immediately preceding Business Day.

Foreign Public Official means an individual who:

- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory);
- (b) exercises a public function:

- (i) for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory); or
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision); or
- (c) is an official or agent of a public international organisation.

Funding Rate means any individual rate notified by a Lender to the Agent pursuant to Clause 10.4.1(b) (*Cost of funds*).

Ghana means the Republic of Ghana.

Ghanaian Tax Deduction means the Tax Deduction resulting from withholding tax payable under Ghanaian law on each payment for interest or fees to be made by the Borrower to the Finance Parties under the Finance Documents.

Ghanaian Government Authority means any national or supranational government in Ghana or any governmental, administrative, fiscal, judicial or government owned body, department, authority, tribunal, agency or entity or any central bank in Ghana (or any person, whether or not government owned and however constituted or called, that exercises the functions of a central bank in Ghana).

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

IBRD means the International Bank for Reconstruction and Development.

IMF means the International Monetary Fund.

Interest Payment Date means the last day of an Interest Period in respect of a Loan.

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 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.

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.

Margin means five point five per cent (5.5%) per annum.

Material Adverse Effect means a material adverse effect on:

- (a) the Public Assets or the financial and economic condition of the Borrower, including without limitation its balance of payments and External Financial Indebtedness;
- (b) the ability of the Borrower to perform any of its payment obligations under the Finance Documents; or
- (c) the validity or enforceability of the Finance Documents or the rights and remedies of any Finance Party under any of the Finance Documents.

Material Commercial Contract Change means any:

- (a) assignment, novation or other disposal of any rights and/or obligations under the Commercial Contract; or
- (b) amendment, acquiescence, departure from or waiver of the terms of the Commercial Contract, which:
 - (i) on its own, or when aggregated with any previous amendments, acquiescences, departures from or waivers, increases or decreases the amount payable by the Buyer under the Commercial Contract by more than ten per cent (10%); or
 - (ii) involves a material change in nature of the supply made under the Commercial Contract.

Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one or, if there is not, on the immediately preceding Business Day;

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules (a) to (c) will only apply to the last Month of any period.

Original Lender means the financial institutions listed in Part 1 of Schedule 1 (*The Parties*).

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

Party means a party to this Agreement.

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.

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).

Reference Bank Quotation means any quotation supplied to the Agent by a Reference Bank.

Reference Bank Rate means the arithmetic mean of the rates (rounded upwards to four (4) decimal places) as supplied to the Agent at its request by the Reference Banks in relation to EURIBOR as either:

- (a) if:
 - (i) the Reference Bank is a contributor to the applicable Screen Rate; and
 - (ii) it consists of a single figure,

the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or

- (b) in any other case, the rate at which the relevant Reference Bank could fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market, as the rate at which the relevant Reference Bank could borrow funds in the Relevant Market in euro and the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

Reference Banks means the principal London offices of any bank(s) as may be appointed by the Agent in consultation with the Borrower.

Related Fund in relation to a fund (the **first fund**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

Relevant 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 1/8th of the total amount of the Loans drawn on or before the last day of the Availability Period.

Replacement Benchmark means a benchmark rate that is:

- (a) formally designated, nominated or recommended as the replacement for the Screen Rate by:
- (i) the administrator of that Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate); or
 - (ii) any Relevant Nominating Body,
- and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to the Screen Rate.

Repeating Representations means each of the representations set out in Clause 17 (*Representations and warranties*).

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

Reserves of a state means the official external reserves of that state, by whoever and in whatever form owned, held, administered or controlled (including any not owned or not held or not administered or not controlled by that state but customarily regarded and held out as its official external reserves).

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

Restricted Party means a person that is:

- (a) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, any Sanctions List;
- (b) located in, incorporated under the laws of, or owned or (directly or indirectly) controlled by, or acting on behalf of, a person located in or organized under the laws of a country or territory that is the target of country-wide or territory-wide Sanctions; or
- (c) otherwise a target of Sanctions ("target of Sanctions" signifying a person with whom a US person or other national of a Sanctions Authority would be prohibited or restricted by law from engaging in trade, business or other activities).

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

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

(together the **Sanctions Authorities**).

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

Screen Rate means the 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 time, there is no successor administrator to continue to provide the Screen Rate;
 - (iii) the supervisor of the administrator of the Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
 - (iv) the administrator of the Screen Rate or its supervisor announces that the Screen Rate may no longer be used; or
- (c) the administrator of the Screen Rate determines that the Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than six (6) months; or
 - (iii) in the opinion of the Majority Lenders, the Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

Security means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect

of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

Specified Time means a time determined in accordance with Schedule 5 (*Timetables*).

Starting Point of Credit means [TBC], or if such date is not a Business Day, the immediately preceding Business Day.

Subsidiary means in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly by the first mentioned company or corporation; or
- (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 [60,257,921.13] 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 (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) 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).

Uncovered Contract Payments means payments due and payable by the Buyer under the Commercial Contract that are not eligible for financing under the ECA Facility, other than the Down Payment.

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).

Write-down and Conversion Powers means:

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

- (ii) any similar or analogous powers under that UK Bail-In Legislation.

1.2 Construction

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

- (a) the **Agent**, any **Arranger**, any **Finance Party**, any **Lender**, any **Party**, or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and obligations under the Finance Documents;
- (b) **assets** includes revenues, property and rights of every kind, present, future, actual and contingent and whether tangible or intangible (including uncalled share capital);
- (c) **Clauses** and **Schedules** are to be construed as references to the clauses of, recitals of and schedules to, this Agreement;
- (d) a **guarantee** includes any guarantee or indemnity, bond, letter of credit, documentary or other credit, or other assurance against financial loss;
- (e) the words **include(s)**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (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 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.

1.4 Third party rights

1.4.1 Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Agreement.

1.4.2 Notwithstanding any term of any Finance Document, the Parties may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Agreement without the consent of any person who is not a Party.

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 Lenders 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.

3 Purpose

3.1 Purpose

3.1.1 The Borrower shall apply all amounts borrowed by it under the Facility towards financing direct payments to the Exporter in respect of:

- (a) the Down Payment (up to a total amount of EUR [34,544,272.08]); and
- (b) Uncovered Contract Payments (up to a total amount of EUR [25,713,649.05]),

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 as specified in the Utilisation Request or relevant Exporter Certificate, as the case may be.

3.2 Monitoring

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

4 Conditions of Utilisation

4.1 Conditions precedent to serving of Utilisation Request

4.1.1 The Borrower is not permitted to deliver a 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 5.4.1 (*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 in financial sector of Ghana, war, civil war, revolution, uprising, acts of terrorism and/or sabotage, an extension of exchange controls or a debt moratorium, or a change in law or regulation or in the political, economic, financial, commercial, legal and fiscal environment of Ghana, and which in the opinion of the Majority Lenders would make it inadvisable to proceed with any Utilisation;

- (c) no event described in Clause 7.3 (*Material Commercial Contract Change*) has occurred;
- (d) no Default is continuing or would result from the proposed Loan; and
- (e) the Repeating Representations to be made by the Borrower are true.

4.2.2 The conditions specified in this Clause 4.2 are inserted for the sole benefit of the Lenders and may be waived on their behalf in whole or in part and with or without conditions by the Agent on behalf of the Lenders.

4.3 Conditions subsequent

4.3.1 To the extent that any conditions precedent under either of Clauses 4.1 or 4.2 are waived on condition that the same are received or completed (as the case may be) by such date(s) and on such other conditions as may be agreed in writing by the Agent then the fulfilment of such conditions by such date(s) and on such other conditions as may be required by the Agent shall be deemed to be required under this Clause 4.3.

4.3.2 Any breach by the Borrower of its obligations under Clause 4.3.1 (*Conditions subsequent*) shall constitute an Event of Default if the breach is not remedied or (at the sole discretion of the Agent) waived within five (5) Business Days from the date of such breach.

4.3.3 Any breach by the Borrower of its obligations under Clause 4.3.2 (*Conditions subsequent*) shall constitute an immediate Event of Default for the purposes of this Agreement and any grace periods which would otherwise be applicable shall not apply.

Section 3 – Utilisation

5 Utilisation

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility during the Availability Period by way of a series of Loans by delivery to the Agent of a duly completed Utilisation Request to be delivered not later than the Specified Time.

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) the proposed Utilisation Date is a Business Day within the Availability Period;
- (b) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*);
- (c) in the case of the first Utilisation only, it identifies the account and bank of the Exporter to which the proceeds of the Utilisation are to be credited and it is accompanied by an invoice or invoices from the Exporter in respect of the Down Payment and such other documents as are specified in the Utilisation Request;
- (d) in the case of any other Utilisation, it is accompanied by a duly completed and executed Exporter Certificate and such other documents as are specified in the Utilisation Request; and
- (e) 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 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 first Utilisation, an amount equal to the Down Payment; or
- (b) in the case of any other Utilisation, the total amount of Uncovered Contract Payments certificate in the Utilisation Request as being due to the Exporter under the Commercial Contract or, if less, the Available Facility.

5.4 Lenders' participation

5.4.1 If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

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

5.4.3 The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 Acknowledgement and instruction by the Borrower; authority to disburse

5.5.1 The Borrower irrevocably and unconditionally acknowledges and agrees that:

- (a) the Agent shall be entitled to assume (without any duty to make any enquiry whatsoever) that any document which appears to the Agent on its face to be a Utilisation Request, and which appears to have been delivered to it by or on behalf of the Borrower in accordance with and in compliance with this Clause 5.5, has been delivered by the Borrower, and that the Borrower approves that Utilisation Request for all purposes of the Finance Documents; and
- (b) the Borrower will not dispute any such Utilisation Request received and treated in accordance with this Clause 5.5.

5.5.2 The Agent and the Lenders are irrevocably authorised and instructed by the Borrower to pay the proceeds of each Loan to the Exporter and the Borrower acknowledges to each of the Finance Parties that such payments shall constitute Utilisations of the Facility and the making of a Loan to the Borrower by the Lenders on the Utilisation Date, and a liability on the part of the Borrower which the Borrower will have an unconditional and irrevocable obligation to repay in accordance with Clause 6 (*Repayment*) and all other provisions of this Agreement.

5.6 Cancellation of Commitment

Any unutilised Commitments shall be cancelled immediately at the end of the Availability Period.

Section 4 – Repayment, prepayment and cancellation

6 Repayment

6.1 Repayment of Loans

6.1.1 The Borrower shall repay the Loans by paying a Repayment Instalment to the Agent (for the account of the Lenders) on each Repayment Date.

6.1.2 The principal amount of the Loans must be repaid on or before the Final Repayment Date.

6.2 Re-borrowing

6.2.1 The Borrower may not re-borrow any part of the Facility which is repaid or prepaid.

6.2.2 Any amount repaid or prepaid shall reduce each Lender's Commitment rateably.

7 Prepayment and cancellation

7.1 Illegality

If, at any time, it is or will become unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and
- (c) to the extent that the Lender's participation has not been transferred pursuant to Clause 7.6 (*Right of repayment and cancellation in relation to a single Lender*), the Borrower shall repay that Lender's participation in the Loan made to the Borrower on the last day of the Interest Period for the Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law) and that Lender's corresponding Commitment shall be cancelled in the amount of the participations repaid.

7.2 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 the 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 If the Borrower makes any prepayment under the ECA Facility, the Borrower shall prepay an amount under this Agreement which shall be in the same proportion in respect of the Total Commitments as is prepaid under the ECA Facility.
- 7.4.4 Any prepayment under this Clause 7.4 shall satisfy the obligations under Clause 6.1 (*Repayment of Loans*) in inverse order of maturity and rateably amongst the Lenders.
- 7.4.5 A Loan may only be pre-paid on an Interest Payment Date unless otherwise agreed by the Lenders.

7.5 Voluntary cancellation

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

7.6 Right of replacement in relation to a single Lender

- 7.6.1 If:
 - (a) (other than in respect of any withholding tax payable under Ghanaian law as at the date of this Agreement) any sum payable to any Lender by the Borrower is required to be increased under Clause 12.2 (*Tax gross-up*); or
 - (b) any Lender claims indemnification from the Borrower under Clause 12.3 (*Tax indemnity*) or Clause 13 (*Increased Costs*),

the Borrower may, with the prior written consent of the Agent, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of its intention to replace that Lender in accordance with Clause 7.6.2.

7.6.2 If:

- (a) any of the circumstances set out in Clause 7.6.1 apply to a Lender; or
- (b) the Borrower becomes obliged to pay any amount in accordance with Clause 7.1 (*Illegality*) to any Lender,

the Borrower may, on not less than fifteen (15) Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and, to the extent permitted by law, that Lender shall) transfer pursuant to Clause 21 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to a Lender or other bank, financial institution, trust, fund or other entity selected by the Borrower which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 21 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 21.10 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation to such participation under the Finance Documents.

7.6.3 The replacement of a Lender pursuant to Clause 7.6.2 shall be subject to the following conditions:

- (a) the Borrower shall have no right to replace the Agent;
- (b) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
- (c) in no event shall the Lender replaced under Clause 7.6.2 be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
- (d) 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(d) 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.

Section 5 – Costs of utilisation

8 Interest

8.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of:

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

8.2 Payment of interest

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

8.3 Default interest

8.3.1 If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to Clause 8.3.2, is two per cent (2%) higher than (i) the applicable rate of interest for each Loan as set forth in Clause 8.1 (*Calculation of interest*) and (ii) the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods (whichever is higher), each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Agent.

8.3.2 If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

- (a) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
- (b) the rate of interest applying to the overdue amount during that first Interest Period shall be the per annum rate that is two per cent (2%) higher than (i) the applicable rate of interest for each Loan as set forth in Clause 8.1 (*Calculation of interest*) and (ii) the rate which would have applied if the overdue amount had not become due (whichever is higher).

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

8.4 Notification of rates of interest

The Agent shall promptly notify the Lenders and the Borrower of any determination of an applicable rate of interest under this Agreement.

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 first Utilisation) shall end on the same day as the then current Interest Period in relation to the first 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 *Reference Bank Rate*: 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,

the applicable EURIBOR shall be the Reference Bank Rate, as of the Specified Time for the currency of that Loan and for a period equal in length to the Interest Period of the Loan.

- 10.1.3 *Cost of funds*: If Clause 10.1.2 applies but no Reference Bank Rate is available for the relevant currency or Interest Period there shall be no EURIBOR for that Loan and Clause 10.4 (*Cost of funds*) shall apply to that Loan for that Interest Period.

10.2 Calculation of Reference Bank Rate

- 10.2.1 Subject to Clause 10.2.2, if EURIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- 10.2.2 If at or about noon on the Quotation Day none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

10.3 Market disruption

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed thirty-three per cent (33%) of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of EURIBOR (or, if applicable, the Replacement Benchmark) then Clause 10.4 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

10.4 Cost of funds

- 10.4.1 If this Clause 10.4 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
- (a) the Margin; and
 - (b) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select and, if any such rate is below zero, such rate shall be deemed to be zero.
- 10.4.2 If this Clause 10.4 applies pursuant to Clause 10.3 (*Market disruption*) and a Lender's Funding Rate is less than EURIBOR, the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of Clause 10.4.1, to be EURIBOR.
- 10.4.3 If this Clause 10.4 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- 10.4.4 Subject to Clause 31.3 (*Replacement of Screen Rate*), any alternative basis agreed pursuant to Clause 10.4.3 shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

10.4.5 If this Clause 10.4 applies but any Lender does not supply a quotation by the time specified in Clause 10.4.1(b) the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

10.5 Break Costs

10.5.1 The Borrower shall, within fifteen (15) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the Repayment Date for that Loan or Unpaid Sum.

10.5.2 Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

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 seven five per cent (0.75%) 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.

Section 6 – Additional payment obligations

12 Tax gross-up and indemnities

12.1 Tax Definitions

12.1.1 In this Agreement:

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

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

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

Tax Payment means either the increase in a payment made by the Borrower to a Finance Party under Clause 12.2 (*Tax gross-up*) or a payment under Clause 12.3 (*Tax indemnity*).

12.1.2 Unless a contrary indication appears, in this Clause 12 a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

12.2 Tax gross-up

12.2.1 The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

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

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

12.2.4 If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

12.2.5 Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

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.

12.5 Stamp taxes

The Borrower shall pay and, within fifteen (15) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document **provided that** the Borrower shall have no obligation to indemnify a Finance Party for any stamp duty paid by that Finance Party in relation to the Finance Documents where the Borrower was exempt from payment of such stamp duty pursuant to the Stamp Duty Act, 2005 (Act 689) of Ghana.

12.6 VAT

- 12.6.1 All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to Clause 12.6.2, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- 12.6.2 If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (a) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Clause 12.6.2(a) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (b) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- 12.6.3 Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- 12.6.4 Any reference in this Clause 12.6 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value Added Tax Act 1994).

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

- (b) any withholding statement or other document, authorisation or waiver as the Agent may require to certify or establish the status of such Lender under FATCA or that other law or regulation.

12.7.6 The Agent shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to Clause 12.7.5 to the Borrower.

12.7.7 If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Agent by a Lender pursuant to Clause 12.7.5 is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Agent unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Agent). The Agent shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.

12.7.8 The Agent may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Agent shall not be liable for any action taken by it under or in connection with Clauses 12.7.5, 12.7.6 or 12.7.7.

12.7.9 Without prejudice to any other term of this Agreement, if a Lender fails to supply any withholding certificate, withholding statement, document, authorisation, waiver or information in accordance with Clause 12.7.5, or any withholding certificate, withholding statement, document, authorisation, waiver or information provided by a Lender to the Agent is or becomes materially inaccurate or incomplete, then such Lender shall indemnify the Agent, within three Business Days of demand, against any cost, loss, Tax or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (including any related interest and penalties) in acting as Agent under the Finance Documents as a result of such failure.

12.8 FATCA Deduction

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

12.8.2 Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) and, in any case, at least three (3) Business Days prior to making a FATCA Deduction, notify the Party to whom it is making the payment and, on or prior to the day on which it notifies that Party, shall also notify the Borrower, the Agent and the other Finance Parties.

13 Increased Costs

13.1 Increased Costs

13.1.1 Subject to Clause 13.3 (*Exceptions*), the Borrower shall, within fifteen (15) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement

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:

- (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.

CRR means Regulation (EU) no. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no. 648/2012.

Increased Costs means:

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

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

13.2 Increased Cost claims

- 13.2.1 A Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- 13.2.2 Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

13.3 Exceptions

Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by Clause 12.3 (*Tax indemnity*) (or would have been compensated for under Clause 12.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 12.3.2 (*Tax indemnity*) applied); or
- (d) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14 Other indemnities

14.1 Currency indemnity

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

- (a) making or filing a claim or proof against 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) funding, or making arrangements to fund, its participation in a Utilisation requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) 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;
 - (ii) entering into or performing any foreign exchange contract for the purposes of Clause 25.9 (*Change of currency*); or
 - (iii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iv) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers and experts as permitted under this Agreement; and
- (b) against any cost, loss or liability (including for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct or, in the case of any cost, loss or liability pursuant to Clause 25.10 (*Disruption to payment systems etc.*), notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents.

15 Mitigation by the Lenders

15.1 Mitigation

- 15.1.1 Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross-up and indemnities*) (other than in respect of any withholding tax payable under Ghanaian law as at the date of this Agreement) or Clause 13 (*Increased*

Costs) including transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

15.1.2 Clause 15.1.1 does not in any way limit the obligations of the Borrower under the Finance Documents.

15.2 Limitation of liability

15.2.1 The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).

15.2.2 A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

16 Costs and expenses

16.1 Transaction expenses

The Borrower shall, promptly on demand, pay the Agent and the Arrangers 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 25.9 (*Change of currency*); or
- (c) an amendment or waiver is contemplated or agreed pursuant to Clause 31.3 (*Replacement of Screen Rate*),

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

- (i) reimburse the Agent 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 in responding to, evaluating, negotiating, complying with or implementing that request, requirement or actual or contemplated agreement; and
- (ii) pay to the Agent 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) 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 the amount of all costs and expenses (including legal fees) incurred by the Agent or any Lender (for the account of the Agent or that Lender, as appropriate) in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

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.

17.4 Validity and admissibility in evidence

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

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
- (b) to enable the Buyer lawfully to enter into, exercise its rights and comply with its obligations in the Commercial Contract;
- (c) to ensure that the obligations expressed to be assumed by the Borrower in the Finance Documents are legal valid, binding and enforceable;
- (d) to ensure that the obligations expressed to be assumed by the Buyer in the Commercial Contract are legal valid, binding and enforceable;
- (e) to make the Finance Documents to which it is a party admissible in evidence in Ghana; and
- (f) to make the Commercial Contract admissible in evidence in Ghana,

have been obtained, done, fulfilled, performed or effected and are in full force and effect.

17.4.2 Except for those which have been obtained as of the date of this Agreement, no further Authorisation is required to effect free acquisition and transfer of euro necessary to discharge each of:

- (a) the Borrower's obligations under the Finance Documents in the manner and at the place provided therein; and
- (b) the Buyer's obligations under the Commercial Contract in the manner and at the place provided therein.

17.5 Governing law and enforcement

17.5.1 The choice of the law stated to be the governing law of each Finance Document and all non-contractual obligations arising from or connected with them will be recognised and enforced in Ghana.

17.5.2 Any judgment obtained in England in relation to a Finance Document will be recognised and enforced in Ghana.

17.5.3 Any arbitral award obtained in relation to a Finance Document in the seat of that arbitral tribunal as specified in that Finance Document will be recognised and enforced in Ghana.

17.5.4 The agreement not to claim immunity in relation to a Finance Document to which the Borrower or its assets may be entitled will be recognised and enforced in Ghana.

17.5.5 The submission to arbitration as specified in the Finance Documents will be recognised and enforced in Ghana.

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.

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.

17.12 Pari passu ranking

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors in respect of External Financial Indebtedness, save for such obligations as may be preferred by provisions of law that are of mandatory application at the date hereof and, in the case of the Borrower, will be payable out of the public revenues and other assets of the Borrower.

17.13 Security and External Financial Indebtedness

None of its External Financial Indebtedness is secured by any Security or Quasi Security on or with respect to any Public Assets other than as permitted by this Agreement.

17.14 No Immunity

In any proceedings taken in Ghana in relation to Finance Documents, it will not be entitled to claim for itself or any of its assets immunity from suit or other legal process, except for immunity from execution or attachment or like process in respect of:

- (a) present or future "premises of the mission" as such term is defined in the Vienna Convention on Diplomatic Relations of 1961 or "consular premises" as such term is defined in the Vienna Convention on Consular Relations of 1963;
- (b) property of a military character or in use for military purposes and in each case under control of a military authority or defence agency;
- (c) property, assets and infrastructure located in Ghana and dedicated to public or governmental use (as distinct from property, assets or infrastructure dedicated to a commercial use) by the Borrower; or
- (d) petroleum assets protected in the Petroleum Revenue Management Act, 2011 (Act 815, as amended).

17.15 Private and commercial acts

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

17.16 No proceedings pending or threatened

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

17.16.2 No judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is reasonably likely to have a Material Adverse Effect has (to the best of its knowledge and belief (having made due and careful enquiry)) been made against it.

17.17 Status

17.17.1 Each of the Borrower and the Buyer has the power to own its assets and carry on its operations and activities as they are being conducted.

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 laws

[to reflect the corresponding provision in the ECA Facility]

17.24 Anti-corruption law

The Borrower has conducted its businesses in compliance with applicable anti-corruption laws (including the Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 (of the US)) and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws. The Borrower has not, nor, to the knowledge of the Borrower, its or the Buyer's ministers, officials officers, agents or representatives, have, for the purpose of gaining or maintaining unlawful or improper benefits for the Borrower, directly or indirectly:

- (a) violated applicable anti-corruption laws or made, undertaken, offered to make, promised to make or authorised the payment or giving of a prohibited payment;
- (b) used funds or other assets, or made any promise or undertaking in such regard, for the establishment or maintenance of a secret or unrecorded fund; or
- (c) made any false or fictitious entries in any books or records of the Borrower or the Buyer relating to any prohibited payment.

17.25 Corrupt Practices

17.25.1 No Corrupt Practices have been engaged in, directly or indirectly, by it or any of its respective officers or any other person acting on its behalf, to or for the benefit of any Ghanaian Government Authority (or any official, officer, agent or key employee of, or other person with management responsibilities in any Ghanaian Government Authority), or any other person.

17.25.2 Neither it nor any of its directors, officers, agents, employees or Affiliates or the Buyer has engaged in any activity or conduct which would violate any applicable anti-bribery, anti-corruption or anti-money laundering laws or regulations in any applicable jurisdiction.

17.25.3 It has the means and the internal procedures in place to detect and to intercept money-laundering channels or chains involving the proceeds of terrorist activities, drug-trafficking or organised crime.

17.26 Sanctions

None of the Borrower, the Buyer, the Exporter or any Subsidiary or joint venture of the Exporter, nor any of their respective personnel (including, in the case of the Exporter or any of the Exporter's Subsidiaries or joint ventures, directors, officers or employees) nor, to the knowledge of the Borrower or the Buyer, any persons acting on any of their behalf:

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

17.27 Repetition

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

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) 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;
- (d) 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
- (e) 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 by posting this information onto an electronic website designated by the Borrower and the Agent (the **Designated Website**) if:

- (a) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;

- (b) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (c) the information is in a format previously agreed between the Borrower and the Agent.
- 18.3.2 If any Lender (a **Paper Form Lender**) does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form.
- 18.3.3 In any event the Borrower shall supply the Agent with at least one copy in paper form of any information required to be provided by it. This Clause 18.3.3 shall not apply to the Borrower's obligation to provide a copy of the Budget Statement and Economic Policy pursuant to Clause 18.1(a) (*Information*), provided that:
- (a) the Budget Statement and Economic Policy is made available on the Designated Website promptly after its presentation to Parliament; and
 - (b) the Borrower gives prompt notice to the Agent that it has been so made available.
- 18.3.4 The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.
- 18.3.5 The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:
- (a) the Designated Website cannot be accessed due to technical failure;
 - (b) the password specifications for the Designated Website change;
 - (c) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (d) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (e) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.
-
- 18.3.6 If the Borrower notifies the Agent under Clause 18.3.5(a) or Clause 18.3.5(e), all information to be provided by the Borrower under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.
- 18.3.7 Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.

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 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).

18.5 Notifications relating to the Commercial Contract

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

- (a) a Material Commercial Contract Change has been made without the prior written consent of the Agent or is proposed to be made;
- (b) either party to the Commercial Contract is or becomes entitled to or expresses an intention to terminate, cancel, suspend or revoke the Commercial Contract prior to its stated maturity or term; or
- (c) any disputes or the commencement of arbitration or other legal proceedings in connection with the Commercial Contract have occurred.

18.6 Environmental information

[to reflect the corresponding provision in the ECA Facility]

19 Positive undertakings

The undertakings in this Clause 19 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.

19.1 Authorisations

The Borrower shall promptly obtain all Authorisations and comply with and perform all other acts, conditions and things required or necessary:

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

19.2 Compliance with laws

The Borrower shall (and shall ensure that the Buyer shall) comply in all respects with the Applicable Law, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents or the Commercial Contract, as the case may be.

19.3 IMF

The Borrower shall fulfil its obligations as a member of the IMF and IBRD (or any successor of the IMF or IBRD) at all times.

19.4 Negative pledge

In this Clause 19.4, **Quasi-Security** means an arrangement or transaction described in Clause 19.4.2.

- 19.4.1 The Borrower shall not, and shall ensure that each Ghanaian Government Authority shall not, create or permit to subsist any Security over Public Assets, owned or subsequently acquired,

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

Indebtedness secured is not increased and such renewal or extension is limited to the original property covered thereby; and

- (h) in addition to the Security or Quasi Security described in Clauses 19.4.3(a) to (g), Security over Public Assets in any calendar year having a market value of fifteen million US dollars (\$15,000,000) or its equivalent in other currencies.

19.5 Disposals

- 19.5.1 The Borrower shall procure that the Buyer does not enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, transfer, license, loan or otherwise dispose of any Asset or enter into an agreement to make any such disposal.
- 19.5.2 For the purpose of Clause 19.5.1, **Assets** means each and all of the commodities, raw material, machinery and equipment, and other materials that the Exporter is required to supply to the Buyer in connection with the Project pursuant to the Commercial Contract.

19.6 Budget and limits

- 19.6.1 The Borrower shall include all amounts due and payable or that will fall due and payable to the Finance Parties under the Finance Documents during a calendar year in its annual Appropriation Act (including any amendments thereof) and its budget statements or other financial plans for that calendar year and shall ensure that there will at no time be any restriction on the ability of the Borrower to meet its obligations under the Finance Documents.
- 19.6.2 The Borrower shall maintain the funds necessary for the repayment of all of its obligations under the Finance Documents that have been provided for under the annual Appropriation Act (including any amendments thereof) for the relevant financial year.
- 19.6.3 If at any time any limit is set on the Borrower's borrowings and guarantees by the IMF, the World Bank or any applicable international treaty, the Borrower shall:
 - (a) promptly notify the Agent of such limit; and
 - (b) ensure that, at all times, its borrowings and guarantees remain within such limit.

19.7 Compliance with Commercial Contract

The Borrower shall ensure that the Buyer will:

- (a) comply in all material respects with its obligations under, and in the manner and at the times provided in the Commercial Contract;
- (b) not repudiate or evidence an intention to repudiate the Commercial Contract nor take nor omit to take any action that might result in any default on any of the Buyer's payment or other material obligations under the Commercial Contract; and
- (c) not terminate, cancel, suspend or revoke or serve notice to terminate, cancel, suspend or revoke (whether in whole or in part) the Commercial Contract without giving to the Agent at least fourteen (14) days prior written notice stating:
 - (i) the grounds for termination, cancellation, suspension or revocation, giving reasonable detail; and

- (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 etc.

[to reflect the corresponding provision in the ECA Facility]

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

cash, cheques, wire transfers, tangible and intangible gifts, favours, services, and those entertainment and travel expenses that go beyond what is reasonable and customary and of modest value to:

- (a) an executive, official, employee or agent of a governmental department, agency or instrumentality;
- (b) a director, officer, employee or agent of a wholly or partially government-owned or controlled company or business;
- (c) a political party or official thereof, or candidate for political office;
- (d) a Foreign Public Official; or
- (e) any other person; while knowing or having a reasonable belief that all or some portion will be used for any the purpose of:
 - (i) influencing any act, decision or failure to act by any such person in his or her official capacity;
 - (ii) inducing any such person to use his or her influence with a government or instrumentality to affect any act or decision of such government or entity; or
 - (iii) securing an unlawful advantage; in order to obtain, retain or direct business.

19.12 Sanctions

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

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

19.13 Access

The Borrower shall, and shall procure that the Buyer will, permit 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 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 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 connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

20.4 Cross default

20.4.1 Any External Financial Indebtedness of the Borrower (including, for the avoidance of doubt, under the ECA Facility) is not paid when due or within any originally applicable grace period.

20.4.2 As a result of an event of default (however described), any Financial Indebtedness of the Borrower or any Ghanaian Government Authority (including, for the avoidance of doubt, under the ECA Facility) is:

- (a) declared to be or otherwise becomes due and payable prior to its specified maturity; or
- (b) placed on demand.

20.4.3 Any commitment for any External Financial Indebtedness of the Borrower (including, for the avoidance of doubt, under the ECA Facility) is cancelled or suspended by a creditor of the Borrower as a result of an event of default (however described).

20.4.4 Any creditor of the Borrower becomes entitled to declare any External Financial Indebtedness of the Borrower (including, for the avoidance of doubt, under the ECA Facility) due and payable prior to its specified maturity as a result of an event of default (however described).

20.4.5 Any Security or Quasi-Security for External Financial Indebtedness of the Borrower (including, for the avoidance of doubt, any Security or Quasi-Security created in connection with the ECA Facility) becomes capable of being enforced as a result of an event of default (however described).

20.4.6 No Event of Default will occur under this Clause 20.4 (other than in respect of the ECA Facility), if the aggregate amount of the External Financial Indebtedness or Financial Indebtedness or commitment for External Financial Indebtedness or Financial Indebtedness (as applicable) falling within Clauses 20.4.1 to 20.4.5 is less than fifteen million US dollars (\$15,000,000) (or its equivalent in any other currency or currencies as determined by the Agent).

20.5 Moratorium

A moratorium is declared or de facto comes into effect on the payment of any External Financial Indebtedness of the Borrower or the Borrower commences negotiations with any one or more of its External Financial Indebtedness creditors with a view to the general readjustment or rescheduling of its indebtedness.

20.6 IMF and IBRD

Ghana ceases to be a member in good standing or becomes ineligible to use the resources of the IMF or IBRD or is unable for any reason to draw or make use of funds available to it under any IMF or IBRD funding programme or any such programme is cancelled or suspended.

20.7 Creditors' process

Any expropriation, attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affects any asset or assets of the Borrower or any Ghanaian Government 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 reflect the corresponding provision in the ECA Facility]

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.

20.13 Convertibility/Transferability

Any foreign exchange law is amended, enacted or introduced in Ghana or is reasonably likely to be amended, enacted or introduced in each case in Ghana that (in the opinion of the Lender):

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

20.14 Acceleration

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

- (a) cancel all or part of the Total Commitments whereupon they shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or
- (d) exercise any or all of its rights, remedies, powers or discretions 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, 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; 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, 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.

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 assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

21.3 Assignment or transfer fee

21.3.1 Subject to Clause 21.3.2, the New Lender shall, on the date upon which an assignment or transfer takes effect (provided that such assignment or transfer takes effect no earlier than ninety (90) days from the date of this Agreement), pay to the Agent (for its own account) a fee of USD 2,000.

21.3.2 No fee is payable pursuant to Clause 21.3.1 if:

- (a) the Agent agrees that no fee is payable; or
- (b) the assignment or transfer is made by an Existing Lender:
 - (i) to an Affiliate of that Existing Lender;
 - (ii) to a fund that is a Related Fund of that Existing Lender; or
 - (iii) in connection with the primary syndication of the Facility.

21.4 Limitation of responsibility of Existing Lenders

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

- (a) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
- (b) the financial condition of the Borrower;
- (c) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
- (d) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

21.4.2 Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- (a) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Borrower and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document; and
- (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.

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

- (a) accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 21; or

- (b) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

21.5 Procedure for transfer

- 21.5.1 Subject to the conditions set out in Clause 21.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 21.5.4 when the 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 it has complied with all necessary "know your customer" or other similar checks under its own internal procedures and all applicable laws and regulations in relation to the transfer to such New Lender.
- 21.5.4 Subject to Clause 21.10 (*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**);
 - (b) the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
 - (c) the Agent, the Arrangers, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arrangers and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
 - (d) the New Lender shall become a Party as a **Lender**.

21.6 Procedure for assignment

- 21.6.1 Subject to the conditions set out in Clause 21.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with Clause 21.6.3 when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 21.6.2, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

21.6.2 The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

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

- (a) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
- (b) the Existing Lender will be released by the Borrower and the other Finance Parties from the obligations owed by it (the **Relevant Obligations**) and expressed to be the subject of the release in the Assignment Agreement; and
- (c) the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

21.6.4 Lenders may utilise procedures other than those set out in this Clause 21.6 to assign their rights under the Finance Documents (but not, without the consent of the Borrower or unless in accordance with Clause 21.5 (*Procedure for transfer*), to obtain a release by the Borrower from the obligations owed to the Borrower by the Lenders nor the assumption of equivalent obligations by a New Lender) provided that they comply with the conditions set out in Clause 21.2 (*Conditions of assignment or transfer*).

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

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

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, 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
 - (ii) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 21.10, have been payable to it on that date, but after the deduction of the Accrued Amounts.

21.11 No assignment by Borrower

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

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.

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 Subject to Clause 22.2.3, 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.
- 22.2.3 Without prejudice to Clause 21.8 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), Clause 22.2.2 shall not apply to any Transfer Certificate or to any Assignment Agreement.
- 22.2.4 Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 22.2.5 If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- 22.2.6 If the 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.
- 22.2.7 The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- 22.2.8 The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no other shall be implied).

22.3 Role of the Arrangers

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

22.4 No fiduciary duties

22.4.1 Nothing in the Finance Documents constitutes the Agent or any Arranger as a trustee or fiduciary of any other person.

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

22.5 Business with the Borrower

The Agent and each Arranger and any associated company of any of them may:

- (a) act in an agency, trustee, fiduciary or other capacity on behalf of any other bank or financial institution providing facilities to the Borrower or any entity associated with the Borrower as freely in all respects as if they had not been appointed to act for the Arrangers or the Lenders under this Agreement in any such capacity;
- (b) subscribe for, hold, be beneficially entitled to or dispose of securities or other rights to and interests in securities issued by the Borrower or any entity associated with the Borrower; and
- (c) accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower,

without any obligation to disclose to the Lenders, or to account to them for or in respect of, any such arrangement or activity.

22.6 Rights and discretions of the Agent

22.6.1 The Agent may:

- (a) rely on any representation, warranty, notice, communication or document believed by it to be genuine, correct and appropriately authorised; and
- (b) assume that:
 - (i) any instructions received by it from the Majority Lenders, any Lender or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (ii) unless it has received notice of revocation, that those instructions have not been revoked; and
- (c) rely on a certificate from any person:
 - (i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (ii) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

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

- 22.6.2 The 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 The Agent may disclose to any other Party and to any person engaged by it or through whom it acts in accordance with this Clause 22 any information it reasonably believes it has received as agent under this Agreement.
- 22.6.9 Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- 22.6.10 The Borrower and the Lenders hereby acknowledge and agree that the Agent has the ability to exercise its rights severally and independently under the Finance Document (including in connection with Clause 20.14 (*Acceleration*)).
- 22.6.11 Notwithstanding any provision of any Finance Document to the contrary neither the Agent nor any Arranger is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

22.7 Majority Lenders' instructions

22.7.1 Unless a contrary indication appears in a Finance Document, the Agent (subject to its legal obligations) shall:

- (a) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the applicable Majority Lenders (or, if so instructed by the applicable Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent); and
- (b) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the applicable Majority Lenders.

22.7.2 The Agent shall act on the instructions of a Lender provided in connection with any split of its Commitment under Clause 31.4 (*Split voting*) and shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with such instructions.

22.7.3 The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.

22.7.4 Unless a contrary indication appears in a Finance Document, any instructions given by the applicable Majority Lenders will be binding on all the Finance Parties.

22.7.5 The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

22.7.6 In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

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.

22.8 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 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 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 regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

22.10.4 Notwithstanding the provisions of Clause 25 (*Payment mechanics*), the Agent shall not be liable to the Borrower or any Lender for the failure, or the consequences of any failure, of any cross-border payment system to effect same-day settlement to an account of the Borrower or any Lender.

22.10.5 Nothing in this Agreement shall oblige the Agent or any Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arrangers that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or any Arranger.

22.10.6 Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (such loss shall be determined as at the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at the time of entering into this Agreement, or at the time of accepting any relevant instructions, which increase the amount of the loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential

damages, whether or not the Agent has been advised of the possibility of such loss or damages.

22.10.7 The liability of the Agent under this Agreement will not extend to any liabilities arising through any acts, events or circumstances not reasonably within its control, or resulting from the general risks of investment in or the holding of assets in any jurisdiction, including, but not limited to, liabilities arising from: nationalisation, expropriation or other governmental actions; any law, order or regulation of a governmental, supranational or regulatory body; regulation of the banking or securities industry including changes in market rules or practice, currency restrictions, devaluations or fluctuations; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; and strikes or industrial action.

22.11 Lenders' indemnity to the Agent

22.11.1 Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately before their reduction to zero) indemnify the Agent and its officers and employees, within three Business Days of demand, against any cost, loss or liability (including for negligence, in relation to any FATCA-related liability or any other category of liability whatsoever) incurred by the Agent or any of its officers and employees (otherwise than by reason of the Agent's gross negligence, fraud or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 25.10 (*Disruption to payment systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent or an officer or employee has been reimbursed by the Borrower pursuant to a Finance Document).

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) 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

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.

22.15 Credit appraisal by the Lenders

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including:

- (a) the financial condition, status and nature of the Borrower and any surety for, or provider of Security in respect of, its obligations under any Finance Document;
- (b) the adequacy or value of any such Security, or the title of any provider of Security;
- (c) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

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

22.16 Agent's management time

If the Agent requires, any amount payable to the Agent by any Party under any indemnity or in respect of any costs or expenses incurred by the Agent under the Finance Documents after the date of this Agreement may include the cost of using its management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the relevant Party. This is in addition to any amount in respect of fees or expenses paid or payable to the Agent under any other term of the Finance Documents.

22.17 Deduction from amounts payable by the Agent

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

23 Conduct of business by the Finance Parties

No provision of this Agreement will:

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

24 Sharing among the Finance Parties

24.1 Payments to Finance Parties

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from the Borrower or any other person other than in accordance with Clause 25 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 25 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

- (c) the Recovering Finance Party shall, within (3) three Business Days of demand by the Agent, pay to the Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 25.5 (*Partial payments*).

24.2 Redistribution of payments

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

24.3 Recovering Finance Party's rights

- 24.3.1 On a distribution by the Agent under Clause 24.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.
- 24.3.2 If and to the extent that the Recovering Finance Party is not able to rely on its rights under Clause 24.3.1, the Borrower shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

24.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 24.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) 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.

Section 10 – Administration

25 Payment mechanics

25.1 Payments to the Agent

- 25.1.1 On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or that Lender 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).
- 25.1.2 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.

25.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 25.3 (*Distributions to the Borrower*) and Clause 25.4 (*Clawback 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.

25.3 Distributions to the Borrower

The Agent may (with the consent of the Borrower or in accordance with Clause 25.10 (*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.

25.4 Clawback and pre-funding

- 25.4.1 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.
- 25.4.2 Unless Clause 25.4.3 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.
- 25.4.3 If the Agent has notified the Lenders that it is willing to make available amounts for the account of the Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive fund from a Lender in respect of a sum which it paid to the Borrower:

- (a) the Borrower shall on demand refund it to the Agent; and
- (b) the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

25.5 Partial payments

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

- (a) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of each Arranger and the Agent under the Finance Documents;
- (b) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement in respect of the Facility;
- (c) **thirdly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- (d) **fourthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

25.5.2 Clause 25.5.1 will override any appropriation made by the Borrower.

25.6 No set-off by the Borrower

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

25.7 Business Days

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

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

25.8 Currency of account

25.8.1 Subject to Clauses 25.8.2 and 25.8.3, euro is the currency of account and payment for any sum due from the Borrower under any Finance Document.

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

25.8.3 Any amount expressed to be payable in a currency other than euro shall be paid in that other currency.

25.9 Change of currency

25.9.1 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).

25.9.2 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.

25.10 Disruption to payment systems etc.

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

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in Clause 25.10(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 25.10(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 31 (*Amendments and waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 25.10; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to Clause 25.10(d).

26 Set-off

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

27 Notices

27.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by letter or, subject to Clause 27.5, electronic mail.

27.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified next to its name in Part 3 of Schedule 1;
- (b) in the case of each Original Lender, that identified next to its name in Part 1 of Schedule 1;
- (c) in the case of any New Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party;
- (d) in the case of the Agent or an Arranger, that identified next to its name in Part 2 of Schedule 1,

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

27.3 Delivery

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

- (a) when it has been left at the relevant address; or
- (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 27.2 (*Addresses*), if addressed to that department or officer.

27.3.2 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).

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

27.4 Notification of address

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

27.5 Electronic communication

27.5.1 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.

27.5.2 Any such electronic communication as specified in Clause 27.5.1 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.

27.5.3 Any such electronic communication as specified in Clause 27.5.1 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.

27.5.4 Any electronic communication which becomes effective, in accordance with Clause 27.5.3, 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.

27.5.5 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 27.5.

27.6 English language

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

27.6.2 All other documents provided under or in connection with any Finance Document must be:

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

28 Calculations and certificates

28.1 Accounts

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

28.2 Certificates and determinations

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

28.3 Day count convention

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

29 Partial invalidity

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

30 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law.

31 Amendments and waivers

31.1 Required consents

31.1.1 Subject to Clause 31.2 (*Exceptions to amendment*) any term of the Finance Documents may be amended or waived only with the written consent of the applicable Majority Lenders and the Borrower, and any such amendment or waiver will be binding on all Parties.

31.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

31.2 Exceptions to amendment

31.2.1 Subject to Clause 31.3 (*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 provision which expressly requires the consent of all the Lenders;
- (h) a change in the currency of any payment under any Finance Document; or
- (i) 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 31, Clause 35 (*Governing law*), Clause 36 (*Arbitration*) or Clause 37 (*Jurisdiction*),

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

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

31.3 Replacement of Screen Rate

31.3.1 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;
 - (ii) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
 - (iii) implementing market conventions applicable to that Replacement Benchmark;
 - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
 - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any

adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

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

31.3.2 If, as at 1 July 2021 this Agreement provides that the rate of interest for a Loan is to be determined by reference to the Screen Rate:

- (a) a Screen Rate Replacement Event shall be deemed to have occurred on that date in relation to the Screen Rate; and
- (b) the Agent, (acting on the instructions of the Majority Lenders) and the Borrower shall enter into negotiations in good faith with a view to agreeing the use of a Replacement Benchmark in place of that Screen Rate from and including a date no later than 31 December 2021.

31.4 Split voting

31.4.1 For the purposes of responding (or failing to respond) to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of the Lenders under the terms of this Agreement, a Lender may split its Commitment into any number of portions and may respond (or fail to respond) or otherwise exercise its rights in respect of each such individual portion on a several basis.

31.4.2 If a Lender exercises its rights under Clause 31.4.1 in respect of any part of its Commitment, such Lender shall notify the Agent of the portions into which it has split its Commitment.

32 Confidential Information

32.1 Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 32.2 (*Disclosure of Confidential Information*) or Clause 32.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

32.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates 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 32.2(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;
 - (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 32.2(c)(iii) or 32.2(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 32.2(c)(iii) or 32.2(c)(iv) above;
 - (vii) any person who is a Party;
 - (viii) the Exporter or the Buyer; or
 - (ix) any person with the consent of the Borrower,

in each case, such Confidential Information as that Finance Party shall consider appropriate and if in relation to Clauses 32.2(c)(i) and (ii), the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry

out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information; and

- (e) to Euler Hermes.

32.3 Disclosure to numbering service providers

32.3.1 Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or the Borrower the following information:

- (a) name of the Borrower;
- (b) country of domicile of the Borrower;
- (c) date of this Agreement;
- (d) Clause 35 (*Governing law*);
- (e) the names of the Agent and the Mandated Lead Arranger;
- (f) date of each amendment and restatement of this Agreement;
- (g) amounts of, and names of, the Facility (and any tranches);
- (h) amount of Total Commitments;
- (i) currency of the Facility;
- (j) type of Facility;
- (k) ranking of Facility;
- (l) Final Repayment Date for the Facility;
- (m) changes to any of the information previously supplied pursuant to Clauses 32.3.1(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.

32.3.2 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.

32.3.3 The Borrower represents that none of the information set out in Clauses 32.3.1(a) to (n) is, nor will at any time be, unpublished price-sensitive information.

32.3.4 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.

32.4 Entire agreement

This Clause 32 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

32.5 Inside information

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

32.6 Notification of disclosure

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

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to Clauses 32.2(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 32.

32.7 Continuing obligations

The obligations in this Clause 32 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

33 Confidentiality of Funding Rates and Reference Bank Quotations

33.1 Confidentiality and disclosure

33.1.1 The Agent and the Borrower agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by Clauses 33.1.2, 33.1.3 and 33.1.4.

33.1.2 The Agent may disclose:

- (a) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the relevant Borrower pursuant to Clause 8.4 (*Notification of rates of interest*); and
- (b) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Reference Bank, as the case may be.

33.1.3 The Agent may disclose any Funding Rate or any Reference Bank Quotation, and the Borrower may disclose any Funding Rate, to:

- (a) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this Clause 33.1.3(a) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;
- (b) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances;
- (c) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the Borrower, as the case may be, it is not practicable to do so in the circumstances; and
- (d) any person with the consent of the relevant Lender or Reference Bank, as the case may be.

33.1.4 The Agent's obligations in this Clause 33 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.4 (*Notification of rates of interest*) provided that (other than pursuant to Clause 33.1.2(a)) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

33.2 Related obligations

- 33.2.1 The Agent and the Borrower acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and the Borrower undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.
- 33.2.2 The Agent and the Borrower agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
- (a) of the circumstances of any disclosure made pursuant to Clause 33.1.3(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 33.

33.3 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 33.

34 Counterparts

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

Section 11 – Governing law and enforcement

35 Governing law

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

36 Arbitration

36.1 Arbitration

Subject to Clause 36.5 (*Agent's option*), any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of in connection with this Agreement) (a **Dispute**) shall be referred to and finally resolved by arbitration under the Arbitration Rules of the London Court of International Arbitration (LCIA).

36.2 Formation of arbitral tribunal, seat and language of arbitration

36.2.1 The arbitral tribunal shall consist of three arbitrators. The claimant(s), irrespective of number, shall nominate jointly one arbitrator; the respondent(s), irrespective of number, shall nominate jointly the second arbitrator, and a third arbitrator (who shall act as presiding arbitrator) shall be nominated by the arbitrators nominated by or on behalf of the claimant(s) and respondent(s) or, in the absence of agreement on the third arbitrator within 30 days of the date of nomination of the later of the two party-nominated arbitrators to be nominated, he shall be chosen by the LCIA Court (as defined in the Arbitration Rules of the LCIA).

36.2.2 The seat of arbitration shall be London, England.

36.2.3 The language of the arbitration shall be English.

36.2.4 This arbitration agreement is governed by and shall be construed in accordance with English law.

36.3 Recourse to courts

For the purposes of arbitration pursuant to this Clause 36 (*Arbitration*), the Parties waive any right of application to determine a preliminary point of law or appeal on a point of law under Sections 45 and 69 of the Arbitration Act 1996 (UK).

36.4 Consolidation of arbitrations

36.4.1 The following shall apply to any disputes arising out of or in connection with this Agreement and out of or in connection with any other Finance Document in respect of which a Request for Arbitration has been delivered (or, where impossible, effectively notified) to all other parties to the arbitration. In relation to any such disputes if, in the absolute discretion of the first arbitral tribunal to be appointed in any of the disputes, they are so closely connected that it is expedient for them to be resolved in the same proceedings, that arbitral tribunal shall have the power to order that the proceedings to resolve that dispute shall be consolidated with those to resolve any of the other disputes, provided that no date for the final hearing of the first arbitration has been fixed. If that arbitral tribunal so orders, the parties to each dispute

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 36.4.1 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.

36.4.2 Clause 36.4.1 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 36.4.1 shall apply in addition to those powers.

36.5 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 Combined 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 37 (*Jurisdiction*).

37 Jurisdiction

If the Agent issues a notice pursuant to Clause 36.5 (*Agent's option*) the provisions of this Clause 37 (*Jurisdiction*) shall apply.

37.1 Jurisdiction

37.1.1 The courts of England have exclusive jurisdiction to settle any Dispute.

37.1.2 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.

37.1.3 Notwithstanding Clauses 37.1.1 and 37.1.2, 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.

37.2 Service of process

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

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

37.2.2 The Borrower waives any and all rights, privileges, immunities and inviolabilities that it has or may have that might otherwise prevent or inhibit service being effected at the offices (13 Belgrave Square, London, SW1X 8PN) of the High Commission or Embassy of the Republic of Ghana in the United Kingdom.

37.2.3 If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower must immediately (and in any event within five (5) days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may, at the Borrower's cost, appoint another agent for this purpose.

37.2.4 The Borrower expressly agrees and consents to the provisions of Clause 35 (*Governing Law*), Clause 36 (*Arbitration*) and this Clause 37 (*Jurisdiction*).

37.3 Waiver of immunity

37.3.1 The Borrower waives generally all immunity it or its assets or revenues may otherwise have in any jurisdiction, including immunity in respect of:

- (a) the giving of any relief by way of injunction or order for specific performance or for the recovery of assets or revenues; and
- (b) the issue of any process against its assets or revenues for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its assets and revenues.

but excluding immunity in respect of:

- (i) property or assets used by a diplomatic or consular mission of the Borrower;
- (ii) property or assets of a military character and under the control of a military authority or defence agency of the Borrower;
- (iii) property, assets and infrastructure located in Ghana and dedicated to a public or governmental use (as distinct from property, assets or infrastructure dedicated to a commercial use) by the Borrower; or
- (iv) petroleum assets protected in the Petroleum Revenue Management Act, 2011 (Act 815 as amended) (Ghana).

37.3.2 The Borrower agrees that in any proceedings in England this waiver shall have the fullest scope permitted by the United Kingdom's State Immunity Act 1978 and that this waiver is intended to be irrevocable for the purpose of such Act. The Borrower consents generally for

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.

38 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.

39 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

Schedule 1 – The Parties

Part 1 – The Original Lender[s]

Name of Original Lender	Facility Office and Notices	Commitment
Standard Chartered Bank	One Basinghall Avenue London EC2V 5DD England	EUR **

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

Agent

Standard Chartered Bank

Facility Office

One Basinghall Avenue
London
EC2V 5DD
England

Notices

One Basinghall Avenue
London
EC2V 5DD

England

Attention: Asset Servicing – Manager
Email: loans.agencyuk@sc.com

Mandated Lead Arranger[s]

Standard Chartered Bank

Facility Office

One Basinghall Avenue
London
EC2V 5DD

England

Notices

One Basinghall Avenue
London
EC2V 5DD

England

Attention: The Arranger
Email: Faruq.Muhammad@sc.com

Part 3 – The Borrower

Borrower

The Republic of Ghana,
represented by The Ministry of Finance

Notices

The Ministry of Finance
Ministries, P.O. Box MB40
Accra
Ghana

Tel No: +233(0) 302 747 197 /
+233(0) 302 665 310

Email: iarthur@mofep.gov.gh /
sarkhurst@mofep.gov.gh /
chiefdirector@mofep.gov.gh

Attention: Director, Treasury & Debt
Management Division

Schedule 2 – Conditions precedent

1 Authorisations

- (a) A certified 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 certified 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 certificate signed by the Minister of Finance identifying other persons 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.
- (d) A specimen of the signature of each person authorised on behalf of the Borrower in paragraphs (b) and (c) above.
- (e) A certified copy of the identification documents of each person authorised on behalf of the Borrower in paragraphs (b) and (c) above (e.g., a copy of a valid passport or authorised National Identification Card attesting his/her domicile).
- (f) A certificate of the Borrower (signed by the Borrower's Signatory)
 - (i) certifying that:
 - (A) each copy document relating to it specified in this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement;
 - (B) no Default is in existence or would result from the utilisation of the Facility; and
 - (C) there is no other event or circumstance in existence which may have a Material Adverse Effect;
 - (ii) confirming that utilisation of the Facility would not breach any restriction on its sovereign borrowing powers, whether such limit is set out in any law, parliamentary restriction or any legal instrument or agreement entered into by or between the Borrower and any international organisation or entity, including without limitation any obligation of the Borrower towards the IMF or the IBRD; and
 - (iii) appending, and in each case certifying that it is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement:
 - (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 Commercial Contract (therefore authorising the Buyer to enter into the Commercial Contract and to perform its obligations thereunder);
 - (B) 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);

- (C) 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);
- (D) 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; and
- (E) 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.

3 Commercial Contract

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

4 Exporter

- (a) Evidence that the signatory who signed the Commercial Contract on behalf of the Exporter was duly authorised to sign it.
- (b) Evidence that the Exporter has complied with any obligations owed by it to any Finance Party in connection with the transactions contemplated by this Agreement or the Commercial Contract.

5 Legal opinions

- (a) A legal opinion of Dentons UK and Middle East LLP, legal advisers to the Agent as to the laws of England and Wales, substantially in the form approved by the Lenders prior to the first Utilisation Date.
- (b) A legal opinion of ENSafrica Ghana, legal advisers to the Agent as to the laws of Ghana, substantially in the form approved by the Lenders prior to the first Utilisation Date.
- (c) A legal opinion of the Attorney General of Ghana substantially in the form set out in Schedule 9 (*Form of Attorney General legal opinion*) or in any other form acceptable to the Finance Parties.

6 Environmental and social matters

[to reflect the corresponding provision in the ECA Facility]

7 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 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 connection with the entry into and performance of the transactions contemplated by the Commercial Contract or for the validity and enforceability of the Commercial Contract.
- (h) Evidence that the ECA Facility has been executed by all parties thereto and that all conditions precedent to the effectiveness of the ECA Facility (other than those relating to payment of the Down Payment) have been satisfied or waived in accordance with the terms of the ECA Facility.
- (i) A copy of the Value for Money Audit Report relating to the Project.

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 upgrading of Eastern Corridor Road project – Lot 1**

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 [**], or, if less, the Available Facility

Proposed Utilisation Date: [**] (or, if that is not a Business Day, the next Business Day).
3. [We attach, as required under the terms of the Agreement, copies of the relevant invoice(s) approved by us to which the requested Loan relates.]¹ [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.]²
4. The proceeds of this Loan should be credited [the account of the Exporter set out in the attached Exporter Certificate][to the following account of the Exporter:

*[insert details of Exporter's account]*³].
5. We acknowledge and confirm that any Loan will be used in accordance with the Agreement.
6. We hereby confirm that each applicable condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
7. This Utilisation Request is a Finance Document.
8. This Utilisation Request is irrevocable.
9. This Utilisation Request shall be governed by English law.

¹ For the first Utilisation Request only.

² For other Utilisation Requests.

³ The Exporter's account should be stated in the first Utilisation Request stated; other Utilisation Requests will be accompanied by an Exporter Certificate

Yours faithfully

.....
duly authorised by and for and on behalf of
The Republic of Ghana,
represented by The Ministry of Finance

Schedule 4 – Form of Exporter Certificate

[subject to further discussion]

From: Inzag Germany GmbH

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 upgrading of Eastern Corridor Road project – Lot 1**

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 Uncovered Contract Payments, the aggregate amount of such invoice(s) being the **Utilisation Amount**.
 - b. The Utilisation Amount remains due and payable but unpaid to us. The Utilisation Amount should be paid to the following account:

[insert details of Exporter's account]
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 or any request for financing under the ECA Facility;
 - b. the Commercial Contract is in full force and effect;
 - c. 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;
 - d. the Down Payment has been paid to us;
 - e. each of the parties to the Commercial Contract have performed their respective obligations in full; and
 - f. 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.

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

Yours faithfully

.....

duly authorised by and for and on behalf of
Inzag Germany GmbH

Schedule 5 – Timetables

Delivery of a duly completed 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 5.4.3 (<i>Lenders'</i> <i>participation</i>)	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

Schedule 6 – Form of Assignment Agreement

To: The Agent and The Republic of Ghana, represented by The Ministry of Finance as Borrower

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

Dated: **

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 upgrading of Eastern Corridor Road project – Lot 1**

1. We refer to the Agreement. This is an Assignment Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 21.6 (*Procedure for assignment*):
 - a. The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
 - b. The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement specified in the Schedule.
 - c. The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph b above.
3. The proposed Transfer Date is [**].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 27.2 (Addresses) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 21.4 (Limitation of responsibility of Existing Lenders).
7. This Assignment Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 21.8 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), to the Borrower of the assignment referred to in this Assignment Agreement.
8. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
9. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it, are governed by English law.
10. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

THE SCHEDULE

Rights to be assigned and obligations to be released and undertaken

[insert relevant details]

[Facility office address 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:

Schedule 7 – Form of Transfer Certificate

To: Standard Chartered Bank as Agent

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

Dated: **

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 upgrading of Eastern Corridor Road project – Lot 1

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 21.5 (*Procedure for transfer*) of the Agreement:
 - a. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights, interests and obligations referred to in the Schedule in accordance with Clause 21.5 (*Procedure for transfer*).
 - b. The proposed Transfer Date is [**].
 - c. The Facility Office and address and attention details for notices of the New Lender for the purposes of Clause 27.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 21.4 (*Limitation of Responsibility of Existing Lenders*) of the Agreement.
4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
5. This Transfer Certificate is a Finance Document.
6. This Transfer Certificate is governed by English law.

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 8 – Existing Security

Name of Borrower / Ghanaian Government Authority	Security	Total principal amount of indebtedness secured
None	None	None

1750 81

Schedule 9 – Form of Attorney General legal opinion

[agreed form to be included]

Schedule 10 – Form of process agent letter

[On Letterhead of the Ghana High Commission in London, United Kingdom]

ACCEPTANCE OF APPOINTMENT AND CONSENT TO SERVE AS SERVICE OF PROCESS AGENT

To:

**Standard Chartered Bank
1 Basinghall Avenue
London EC2V 5DD**

**E-mail: loans.agencyuk@sc.com
Attention: Asset Servicing – Manager**

From: **H.E. THE HIGH COMMISSIONER
GHANA HIGH COMMISSION,
13 BELGRAVE SQUARE, LONDON,
UNITED KINGDOM, SW1X 8PS**

Dated: [●]

Dear Sirs

I refer to

- (a) EUR ** Euler Hermes-backed facility agreement dated [**] (the Agreement) between, inter alios, Standard Chartered Bank as Agent and The Republic of Ghana, represented by The Ministry of Finance (the "**Borrower**") relating to the upgrading of Eastern Corridor Road project – Lot 1, as amended from time to time (the "**Euler Hermes Facility Agreement**");
- (b) EUR ** facility agreement dated [**] between, inter alios, Standard Chartered Bank as Agent and the Borrower, as amended from time to time (the "**Commercial Facility Agreement**")
- (c) the appointment letter dated [●] from the Borrower to the Republic of Ghana High Commission (the "**High Commission**") in the United Kingdom.

I write in my capacity as the High Commissioner of the Republic of Ghana to irrevocably accept and consent to the appointment of the High Commission as the agent of the Borrower for the service of process in England in relation to any legal action or proceeding that may arise before the courts of England in connection with the Finance Documents (as defined in the Euler Hermes Facility Agreement) or the Finance Documents (as defined in the Commercial Facility Agreement), and designate the address of the High Commission to serve as the Borrower's address to receive such services of process in England. I confirm that the High Commission has waived all rights, privileges, inviolabilities and immunities that it has, or may have, that might otherwise prevent or inhibit such service of process.

We agree to promptly forward a copy of any summons, complaint or other legal process served on the High Commission as the agent of the Borrower to the Borrower.

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

Facility Agreement – execution page

The Borrower

Signed by)
duly authorised for and)
on behalf of)
The Republic of Ghana,)
represented by The Ministry of Finance)

The Original Lender[s]

Signed by)
duly authorised for and)
on behalf of)
Standard Chartered Bank)

The Agent

Signed by)
duly authorised for and)
on behalf of)
Standard Chartered Bank)

The Structuring Bank

Signed by)
duly authorised for and)
on behalf of)
Standard Chartered Bank)

The Mandated Lead Arranger[s]

Signed by)
duly authorised for and)
on behalf of)
Standard Chartered Bank)

